
(2011) 07 MP CK 0103
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4298 of 2011

Ramhet Tyagi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 166, 166(1), 166(3)
Contempt of Courts Act, 1971 — Section 2

Citation : (2011) 5 MPHT 325

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Brijesh Sharma, for the Appellant; Vishal Mishra, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Shri Brijesh Sharma, learned Counsel for the petitioner submits that the order dated 23-6-2011, whereby the petitioner, Assistant Grade-2, is placed under suspension is bad in law. The singular contention of the petitioner is that admittedly the Collector of the District is delegated with the power under Rule 9 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called "Rules of 1966") to place Class 3 employees under suspension. However, his contention is that Annexure P-1, dated 23-6-2011 is not an order issued and passed by the Collector, but it is an order issued by District Education Officer. Shri Sharma submits that admittedly the District Education Officer is not competent to place the petitioner under suspension. Further contention of learned Counsel for the petitioner is that merely writing --"ordered by Collector" in Annexure P-1 will not make it an order issued and passed by the Collector. Elaborating further learned Counsel for the petitioner submits that under Rule 9 of the Rules of 1966, which reads as under :
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9. (1) The Appointing Authority or any authority to which it is subordinate or the

Disciplinary Authority or any other authority empowered in that behalf by the Governor, by general or special order, may place a Government servant under suspension : --

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

The Disciplinary Authority or any authority empowered in that behalf by general or special order alone can place a Government servant under suspension. Learned Counsel submits that these powers are delegated by a special/general order by the Governor to the Collector and, therefore, the status of the Collector is of delegate. Thus, he may not further delegate these powers to anybody else including the District Education Officer. This kind of further delegation is impermissible in law and on this ground alone the suspension order is liable to be axed.

2. Shri Vishal Mishra, learned Government Advocate has produced the note sheet on the direction of this Court. The relevant note-sheet reads as under: --

3. Shri Mishra submits that the suspension is ordered by the Collector and Annexure P-1 is only its communication by the District Education Officer. Thus, Shri Mishra submits that the singular ground on which the entire petition is founded upon has no substance and it is liable to be rejected.

4. Learned Counsel for the petitioner has relied on various provisions and judgments. Shri Brijesh Sharma relied on Rule 9 (2) (a) of the Rules of 1966, which reads as under: --

9. (2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority --

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.

The contention of Shri Sharma by reading Rules 9(1) and 9 (2) (a) is that an order means an effective order passed with the signature of the Competent Authority. A note-sheet prepared for in-house proceedings or a note in a file by no stretch of imagination can be said to be an order. Since the note-sheet is not an order, the validity of impugned order is to be seen only from Annexure P-1, which shows that it is issued by the DEO, although there is a noting in the order that it is "ordered by Collector.

5. During the course of arguments, Shri Brijesh Sharma relied on Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another, Paragraphs 17 and 18, on which reliance is placed, are reproduced here as under:--

17. The next issue that we are required to consider pertains to internal

communications which are relied upon by the respondents and which were also referred to by the Tribunal as well as by the High Court. Ex facie, the aforesaid communications were exchanged between the officers at the level of board hierarchy only.

18. An order would be deemed to be a Government order as and when it is issued and publicised. Internal communications while processing a matter cannot be said to be orders issued by the Competent Authority unless they are issued in accordance with law. In this regard, reliance may be placed on the decision of this Court in *State of Bihar Vs. Kripalu Shankar*, wherein this Court observed, in Paras 16 and 17, as follows : -(*State of Bihar and Others Vs. Kripalu Shankar and Others*,

16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the officer concerned on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a Single Officer. It involves a complicated process. In a democratic set-up, it is conducted through the agency of a larger number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by officers concerned will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of clause (b) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action.

17. In *Bachhittar Singh Vs. State of Punjab*, a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file, which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file: (AIR p. 398, Para 9)

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be

regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

By placing reliance on the said paragraphs, learned Counsel for the petitioner submits that the note-sheet is not an order issued and publicized, it is, at best, an internal communication and, therefore, has not taken shape of an order.

6. Learned Counsel for the petitioner has also relied on a judgment reported in 1994 AIR SCW 3832, M/A. Sahni Silk Pvt. Ltd., and another Vs. Employees " State Insurance Corporation. Reliance is placed on Paragraphs 5, 6, 7, 10 and 15, which are reproduced here as under: --

5. The Courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set up extreme judicial aversion to delegation cannot be carried on an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by Statutory Authorities, the maxim *delegat us non potest delegare* is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the Legislature can permit any Statutory Authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, Supp SCR 311 this Court said in respect of sub-delegation (at p. 306 of AIR):

Bearing in mind that the maxim *delegatus non potest delegare* sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication.

7. Again in *Mangulal Chunilal Vs. Manilal Maganlal and Another*, , while considering the scope of Section 481(1) (a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the Rules and that officer to whom such functions were delegated could not further delegate the same to another.

10. So far as the present Section 94-A is concerned, it says that the Corporation

subject to any regulation made by the Corporation in that behalf, may direct that particular or any of the powers and functions which may be exercised or performed by the Corporation may, in relation to such matters and subject to such conditions, if any, as may be specified "be also exercisable by any officer or authority subordinate to the Corporation". Section 94-A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation may in his turn authorise any other officer to exercise or perform that power or function. But by the resolution dated 28-2-1976 the Corporation has not only delegated its power u/s 85-B (i) of the Act to the Director General, but has also empowered the Director General to authorise any other officer to exercise the said power. Unless it is held that Section 94-A of the Act enables the Corporation to delegate any of its powers and functions to any officer or authority subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated 28-2-1976 cannot be held to be within the framework of Section 94-A. According to us, the Parliament while introducing Section 94-A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated.

15. Hence the view taken in the case of Rameshwar Jute Mills Ltd. Vs. Union of India (UOI) and Others, , by the Full Bench of the Patna High Court as well as in the case of Employees State Insurance Corporation and Others Vs. M/s Dhanda Engineers Private Limited Faridabad-II, , by a Division Bench of the Punjab and Haryana High Court upholding the resolution, dated 28-2-1976 and office order dated 3-5-1976 cannot be sustained and the opinion expressed in the case of Sahni Silk Mills (P) Ltd. and Others Vs. Employees' State Insurance Corporation and Others, , by a Division Bench of the Karnataka High Court, that the aforesaid resolution dated 28-2-1976 and office order dated 3-5-1976 was invalid has to be upheld.

By placing reliance on these paragraphs, learned Counsel for the petitioner has relied on the age old legal maxim "delegatus non potest delegare ", which means that a delegatee cannot further delegate the power.

7. The contention of the petitioner is that the status of Collector itself is of a delegatee, who could not have further delegated it to the DEO. Such sub-delegation of the power of suspension to Subordinate Officer is totally unknown to law and is foreign to Service Jurisprudence and Administrative Law.

8. Shri Brijesh Sharma, also relied on a judgment reported in Govind Kumar Sen Vs. State of M.P. and others, . The emphasis is at Para 15 of the judgment, which is reproduced here as under: --

15. After going through the provisions of Section 58(1), it is apparent that the power of appointment of petitioner is vested to Mayor-in-Council or with

Commissioner. In the present case, petitioner was appointed by way of promotion as per the order of Commissioner, however, Mayor-in-Council or the Commissioner is the authority competent to pass the order affecting the service condition of the employee of the Corporation. In the present case, order of suspension has been issued by the respondent No. 3 under the instructions of Mayor. Learned Counsel appearing on behalf of respondent is not in a position to produce any resolution of Mayor-in-Council or the order passed by the Commissioner directing or approving the suspension order of the petitioner. In view of the above, it is apparent that respondent No. 3, can not exercise the power of the Appointing Authority or Disciplinary Authority to place the petitioner under suspension. Thus, the order of suspension, which is passed by respondent No. 3 is without any authority under the law.

By placing reliance on this judgment the contention is that mere on instruction of Collector if suspension order is passed, it has no sanctity of law.

9. Per contra, Shri Vishal Mishra, learned Government Advocate has relied on a judgment of Apex Court reported in State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, The relevant Paragraph Nos. 17 and 21 are reproduced here as under : --

17. The order of sanction for prosecution of a retired Government servant is undoubtedly an executive action of the Government. A Governor in exercise of his power under Article 166(3) of the Constitution may allocate all his functions to different Ministers by framing rules of business except those which the Governor is required by the Constitution to exercise his own discretion. The expression "business of the Government of the State" in Article 166(3) of the Constitution, comprises of functions which the Governor is though exercise with the aid and advice of the Council of Ministers including those which he is empowered to exercise on his subjective satisfaction and including statutory functions of the State Government. The Court has held in Godavari Shamrao Parulekar Vs. State of Maharashtra and Others, that even the functions and duties which are vested in a State Government by a statute may be allocated to Ministers by the Rule of Business framed under Article 166(3) of the Constitution. In E.M. Muthappa Chettiar Vs. The Income Tax Officer, Special Circle, Coimbatore, where power of issuing notification u/s 3(1) of the Bihar Land Reforms Act. 1950 has been conferred on the Governor of Bihar, this Court held : -- (Para 40 of AIR)

Section 3(1) of the Act confers the power of issuing notifications under it not on any officer but on the State Government as such though the exercise of that power would be governed by the rule of business framed by the Governor under Art. 166(3) of the Constitution.

21. In view of our aforesaid conclusion, the impugned order of the Tribunal is wholly unsustainable in law and we accordingly quash the same. The Transfer Application No. 3551 of-1988 filed by the respondent before Madhya Pradesh

Administrative Tribunal stands dismissed. The Appropriate Authority may now proceed with the departmental proceeding which has been initiated against the respondent.

Shri Mishra submits that in the light of the aforesaid pronouncement of the Supreme Court, there is no illegality in Annexure P-1 and it is in accordance with law.

10. I have heard the learned Counsel for the parties at length and perused the record,

11. The sole basis on which Annexure P-1 is sought to be quashed is that it is not issued nor it is an order passed by the Collector. The contention is that effectively it is an order passed by the District Education Officer. By relying on the aforesaid legal maxim "delegatus non potest delegare" and the judgment of Supreme Court in *Sahni Silk Mills* case (supra), it is submitted by the petitioner that sub-delegation is impermissible and is bad in law.

12. Blacks Law Dictionary defines "delegation of power" as under: --

Delegation of power -- transfer of authority by one branch of Government in which such authority is vested, to some other branch or administrative agency.

The definition shows that for the purpose of determining as to whether there is any delegation of power, one has to see whether there is any transfer of authority by A to B for example.

13. While dealing with the aforesaid maxim "it means that a delegate cannot further delegate the power. It ensures that a discretionary power is exercised by the authority on whom it has been conferred by the law in question, and not by anyone else. The justification underlying this principle is that when a law confers a discretionary power on a specified authority, it is indicative of the fact that the law has placed trust in the judgment of that authority, and consequently, it is that authority itself and none else which ought to discharge the function entrusted to it by law". [*Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd.*,

14. In the present case, in the light of the aforesaid principles it is required to be carefully examined whether the Collector has delegated his power to DEO or not. The note-sheet produced above clearly shows that he has not transferred his authority to DEO to place the petitioner under suspension. The Collector has also not delegated the power of judgment whether the petitioner is to be placed under suspension or not, to the DEO. The judgment to place the petitioner under suspension is of the Collector. The Collector took a decision in the note-sheet that the petitioner is to be suspended and directed for issuance of an order in this regard. The question is whether such a direction after taking such a decision to place the petitioner under suspension amounts to sub-delegation of power to DEO.

15. In the considered opinion of this Court, the Collector has not delegated his

power to the DEO. There is no transfer of authority or transfer of judgment by the Collector to the DEO.

16. The judgment relied by Shri Sharma in Govind Kumar Sen's case (supra), is of no help to him. The finding of the Single Judge in the said matter that "learned Counsel appearing on behalf of the respondent is not in a position to produce any resolution of Mayor-in-Council or the order passed by the Commissioner directing or approving the suspension order of the petitioner..."shows that in the said case, the respondent therein could not produce any resolution or order of the Competent Authority, whereas in the present case a note-sheet admittedly written by the Collector is produced and there is no dispute that the Collector is a Competent Authority to place the petitioner under suspension. Thus, the judgment in Govind Kumar Sen's case (supra), is of no help to the petitioner.

17. So far the judgment in M/s. Sahni Silk Mills's case (supra), is concerned, the said case deals with principle of sub-delegation. Needless to mention that this judgment will be applicable in cases of sub-delegation. In the present case, since in the opinion of this Court, there is no sub-delegation of power, authority or judgment by the Collector, the said principle of "delegatus non potest delegare" will have no application.

18. So far the judgment in M/s. Sahni Silk Mills's case (supra), is concerned, the judgment is passed in a different context. The issue before the Supreme Court was totally different and was with regard to an internal communication, which was relied by the respondents therein. The case of the respondent-employees before the Supreme Court was that the noting in the file was an order and, therefore, they are entitled for its benefits/enforcement. This is nobody's case here. Admittedly, on the basis of the note-sheet signed by the Collector, an order in writing "by the order of the Collector" is issued. Thus, the judgment in the said case has no application here.

19. This matter may be examined from yet another angle. The principle of delegation of power and assistance is not foreign to the Principles of Administrative Law. There is a distinction between an authority delegating its power to some authority and employing assistance to help it in discharging its functions. A power may not be sub-delegated but there should be no objection in an authority seeking assistance if the final judgment rests with it. Whether in a particular situation it is a case of sub-delegation or merely of employing assistants would depend upon the degree of control and supervision exercised by the Delegating Authority over the subordinate agency. If the administrative decision, judgment and control over the subordinate is clear with the direction as to how the Subordinate Authority has to deal with it, it may be a case not of delegation but of employing assistants to help the authority in discharging its statutory power. The Apex Court in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, held as under :--

If the Administrative Authority named in the statute has and retains in its hands

general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the Administrative Authority is of a substantial degree, there is in the eye of law no "delegation" at all and the maxim "delegatus non potest delegare" does not apply... In other words, if a Statutory Authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own.

20. In P.K. Roy's case (supra), normally the order is issued by the Assistants but the ultimate power of decision was of the Competent Authority and, therefore, it was held that it was a case of employing assistants and not a case of delegation of power.

21. In the light of the aforesaid legal discussion, this Court is of the considered opinion that in the facts and circumstances of the case, the Collector has not transferred his authority, but himself took the decision/judgment of placing the petitioner under suspension and merely directed the DEO to pass the orders. Thus, DEO, at best, is providing assistance to the Collector in discharging its statutory power. The principle of sub-delegation is not attracted in the aforesaid fact situation and, therefore, the judgments cited by Shri Brijesh Sharma have no application in the present matter.

22. Accordingly, Annexure P-1 cannot be called in question on the ground of competence/jurisdiction. So far the merits are concerned, the order (Annexure P-1) is appealable under Rule 23 of the Rules of 1966 and the petitioner is at liberty to avail the aforesaid remedy. The petitioner has not argued any other point. The singular question is, therefore, has not argued any other point. The singular question is, therefore, answered against the petitioner, as per the detailed analysis made herein above. On the basis of said analysis, the petition deserves to be dismissed. However, the petitioner is at liberty to avail the statutory appellate remedy under the rules on merits. With the aforesaid observation, the petition is dismissed. No costs.