

(1953) 08 BOM CK 0002

In the Bombay High Court

Case No : O.C.J. Miscellaneous No. 358 of 1952

Shantaram D. Salvi

APPELLANT

Vs

M.M. Chudasama and Others

RESPONDENT

Date of Decision : 20-08-1953

Acts Referred:

Bombay Police Act, 1951 — Section 25, 25(2)
City of Bombay Police Act, 1902 — Section 12, 6(2), 7, 7(2)
City of Bombay Police Rules — Rule 1, 12, 14, 2, 3
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Bom 361 : (1954) 56 BOMLR 350 : (1954) ILR (Bom) 1271

Hon'ble Judges : Desai, J

Bench : Single Bench

Advocate : N.K. Gamadia and S.G. Samant, for the Appellant; G.N. Joshi, for the Respondent

Judgement

1. This is a petition for a writ in the nature of "certiorari", or a writ of prohibition, or any other writ, direction or order under Art. 226 of the Constitution in a matter arising out of certain proceedings and inquiry held in respect of the petitioner's conduct under the City of Bombay Police Act (4 of 1902).

2. Briefly stated the facts are these: The petitioner was appointed as a sub-inspector in the Bombay Police Force in August 1939. In 1948 he was promoted to the rank of Deputy Inspector. In June 1949 he was attached to the Byculla police Station as a Deputy Inspector when he was suspended from the Police Force.

Between June 18 and 8-9-1949, he was called several times by Inspector Subhand of the Anti-Corruption Branch, and his statement was recorded. He was furnished with a charge sheet by the Superintendent,, "F" Division, based on statements recorded by Inspector Subhand, alleging that the petitioner by reason of the charges mentioned therein had acted in a manner prejudicial to or likely to throw discredit on the discipline or reputation of the Police Force, and as

such was liable under Rules. 12 and 14 of Appendix "A" of Section 12(a), City of Bombay Police Act.

It is the petitioner's case that when he was called for recording his statement he was asked by the Superintendent whether he wished to call any of the witnesses whose statements were recorded in the course of the proceedings during the preliminary inquiry held by Inspector Subhand.

By an order passed on 10-11-1949, the petitioner was dismissed from the Police Force. He thereupon gave notice u/s 80 of the Civil P. C. to file a suit challenging the validity of that order. That order was thereupon cancelled and a show-cause notice dated 21-11-1952, was served upon the petitioner. The petitioner then filed the present petition challenging the jurisdiction of respondent No. 1 to do so on various grounds.

In the petition the petitioner goes on to make a number of allegations about the improper and irregular manner of the proceedings in which statements were recorded by Inspector Subhand, and in which cross-examination of witnesses was conducted before Inspector Subhand.

I do not want to express any opinion about the alleged irregularity or impropriety of the proceedings which took place before the charge sheet was handed over to the petitioner, because, in my opinion, it is abundantly clear that the entire proceedings were conducted by a person who was not the person duly authorised by law to conduct the same.

It is the petitioner's case, and considerable stress was laid by Mr. Gamadia, learned counsel for the petitioner, on this aspect of the case, that under the provisions of Rule 3(b) of Appendix "D" the proceedings and the preliminary inquiry against the petitioner from its commencement up to its conclusion, although required to be held by the Superintendent of the Division in which the alleged misconduct had taken place, or by some other superintendent of other Division, if the Commissioner of Police so directed, those proceedings and inquiry were in fact conducted, not by a superintendent of police, but by an officer of lower rank.

To put it differently Mr. Gamadia's contention is that the proceedings not having been held by a superintendent of police were entirely vitiated, and I must on that ground hold that there were no proceedings at all.

3. Rule Ha) of Appendix "D", City of Bombay police Act is as follows :

"1a) No police officer shall be departmentally punished otherwise than as provided in these rules."

4. Rule 1(j) (i) lays down that "dismissal" is major punishment. Then, Rule 2 is as under :

"2. No major punishment shall be inflicted on any officer until a Departmental enquiry has been held and no punishment of fine, suspension, reduction,

discharge or dismissal shall be inflicted until a note of the enquiry, and the reasons for passing such order have been made in writing."

Clause (i) of Rule 3(a) is as under :

"3. (a) Departmental enquiries against officers of the Greater Bombay Police shall be classified as follows :

(1) Enquiries into misconduct by Inspectors, Deputy Inspectors, Sergeants and Sub-Inspectors."

5. Rule 3(b) which is the material rule and on which reliance was placed on behalf of the petitioner "inter alia" provides as follows : "3. (b) In cases falling under item (1) the proceedings will ordinarily be held by the Superintendent of the Division in which the misconduct has taken place; but the Commissioner of Police may order them to be held by any other Superintendent. After the Superintendent has gone through the preliminary enquiry papers, the grounds on which it is proposed to take action against the defaulter shall be reduced to the form of a definite charge or charges, which shall be communicated in writing to the defaulter and shall be accompanied by a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. Every charge and all other documents in evidence against the defaulter must also be fully explained to the defaulter, who should be given or allowed to take copies, if he wishes, to assist him in his defence.

Defaulter's statement should then be recorded, acknowledging that he has understood the charge and evidence then on record against him and stating whether or not he admits the charge, if he does, it only remains for the Superintendent to proceed in accordance with Rule 3(e). If he does not, his statement should be continued stating whether he wishes to cross-examine any, and which, of the witnesses against him and to call witnesses, whom he will specify in his defence.

The Superintendent should recall the witnesses required for cross-examination and, in the defaulter's presence read out any statement they have made in the preliminary enquiry any record, if necessary, and further statements they may have to make. Defaulter should then be allowed to cross-examine. Cross-examination shall be confined to relevant facts connected with the matter under enquiry.

The defaulter should then be called upon to enter on his defence and to produce his witnesses, if any. Such witnesses may be examined by the defaulter, cross-examined, if necessary, by the Superintendent and re-examined by the defaulter if he desires to do so. Defaulter's further statement should then be recorded in continuation of his previous one referred to above or he may be allowed to submit his defence in writing, a reasonable time for the purpose being fixed by the Superintendent". (Rules u/s 7(2) of the City of Bombay Police Act, 1902,

Government Resolution H. D. No. 87-3-VIII dated March 28. 1935 and G. R., H. D. No. 87-3-VIII dated November 27, 1935.)

6. Rule 3(e) "inter alia" states that when the departmental enquiry has been completed, in cases falling under Rule 3(b) (i) the Superintendent shall record in writing a summary of the facts of the case and express briefly his opinion regarding the guilt or otherwise of the defaulter. The papers and proceedings will then be forwarded to the Commissioner of Police, or to such Deputy Commissioner of Police authorised by him u/s 6(2) to exercise and perform any of the powers conferred upon and duties assigned to the Commissioner of Police u/s 7 of the Act. In all cases so dealt with by the Deputy Commissioner of Police, the final order inflicting punishment shall be the work of the Deputy Commissioner so appointed.

7. Now, it is clear that the authority which the Superintendent of Police exercises in the matter of dismissal of any officer, that being a major punishment, is conferred on him by the relevant provisions of the Act and Rule 2 already referred to by me. As to the relevant provisions of the Act reference need only be made to Section 25, Bombay Police Article 22 of 1951, wherein Clause (c) lays down that the exercise of any power conferred by Sub-section (2) of the section shall be subject always to such rules and orders as may be made by the State Government in that behalf. The appointment of an officer being in accordance with the rules, his dismissal can only be in accordance with the conditions of his service.

8. In para 11 of his affidavit the petitioner categorically and specifically alleged that no proceedings were conducted with regard to his conduct at any time as required by Rule 3(b) of Appendix "D". That rule as I have already stated provides that the proceedings shall be conducted by a superintendent of police. When I turn to the affidavit in reply filed in opposition to the rule I find that there is no averment at all in reply to this allegation contained in para 11 of the affidavit made by the petitioner. Para 12 of the affidavit of the petitioner also makes a reference to Rule 3(b).

In paras 19 and 20 of the affidavit in reply reference is made to this paragraph, but I do not find anything stated there about the contention of the petitioner that the proceedings were not conducted by a superintendent of police. When I turn to the affidavit filed in opposition to the rule "nisi" in para 19 of that affidavit no reference is made at all to the contention raised by the petitioner about there being no proceedings held by any superintendent of police, but the only statement is that it has been the normal practice that preliminary inquiries are conducted by an inspector and he in the course of such inquiry records the statements of the witnesses.

Now, a preliminary inquiry would be a part of the proceedings to be held by the superintendent himself. If the preliminary inquiry is not a part of the proceedings to be held by the superintendent, then it is evident that no enquiry at all can be

said to have been held in the matter. So whatever view is taken, I find that there is in fact no reply at all to the contention of the petitioner on this point. I have, therefore, reached the conclusion that in the matter of the petitioner no proceedings at all were held by any officer duly authorised in that behalf and that only some inquiry was carried on by some Inspector. But that cannot amount to an inquiry under the provisions of Rule 3(b).

The only conclusion that I can reach is that the so-called inquiry was held by a person not duly authorised to do so. If that be so, and I have no doubt that this is what has really happened, the holding of a proceeding by an unauthorised person does not amount to a proceeding at all. And if there had been no proceedings held in the matter, the Commissioner of Police would have no power or jurisdiction to act under any provisions of the Act or rules which authorise him to inflict a major punishment on an officer only after a departmental inquiry, as envisaged under the rules, is held.

9. As I was of the opinion that this went to the root of the matter I did not deem it necessary to let Mr. Gamadia go into the other contentions raised in the petition. Mr. Joshi, learned counsel for the respondents, strenuously argued before me that all that can be said in favour of the petitioner is that no inquiry as required by Rule 3(b) was held in the matter or at the highest it can be said that there was no departmental inquiry. But that at the most would be an illegality and would not amount to absence of jurisdiction on the part of the Commissioner of Police. The argument was that the jurisdiction of the Commissioner of Police was a different thing from an illegality or irregularity in any previous or preliminary inquiry,

I must observe in this connection that the authority of the Commissioner of Police to dismiss an officer would not substantially differ from his jurisdiction to dismiss an officer in the police force. These are "quasi"-judicial matters and the authority is either vested with the power or is not vested with the power. If he is vested with the power to dismiss the officer, then only it can be said that he has jurisdiction to dismiss the officer. The distinction sought to be made by learned counsel cannot, in my opinion, be really applicable in a case like the present one. This so-called illegality or absence of departmental inquiry goes to the root of the matter and it affects the very power, authority or jurisdiction of the Commissioner of Police.

10. Now, it is well established that a tribunal though duly constituted may be acting without or in excess of jurisdiction by reason of the absence of some essential preliminary or non-compliance with a condition precedent. The holding of a departmental inquiry by a superintendent of police is a condition precedent, a fact which must exist before the Commissioner of Police can assume jurisdiction or authority for the purpose of passing the final order of dismissal under Rule 3(e) against a deputy inspector of police. This is not, therefore, a case merely of any illegality or error in conducting the departmental inquiry, but a case of acting without or in excess of jurisdiction.

It is also clear that in any view of the matter, here is a case in which there is substantial error apparent on the face of the record and this is regarded as an error of jurisdiction for the purposes of "certiorari" or prohibition. For this reason also it must be held that the Commissioner of Police has no jurisdiction to take the action threatened against the petitioner.

11. It was next urged on behalf of the respondents that if the Court were to interfere before the final order is passed, officers, against whom departmental inquiries were going on, would all of them at any stage of the inquiry rush to the Court asking for writs of prohibition. The submission was that the Court cannot interfere at this stage of the proceedings. I do not find myself able to accept this submission. Nor am I able to share Mr. Joshi's anxiety. The show cause notice served on the petitioner states at the end.

"I propose his dismissal from the Force. The defaulter should show cause why the punishment proposed above should not be awarded to him."

It is the case of the respondents themselves that the proceedings are over and the matter is at a stage where all that remains for the Commissioner of Police to decide is what punishment should be inflicted on the petitioner who has already been found guilty. Now, the very purpose of issuing a writ of prohibition is to prevent a person or a body of persons having legal authority to determine, questions affecting the rights of a subject judicially from acting in excess of their legal authority and the writ goes "ex debito justitiae". It is preventive in its character and not remedial.

It has been said that the Court should not be chary of exercising it. I am unable to accept the argument of Mr. Joshi that the writ should not go in a matter like this till the final order is passed. The argument ignores that ordinarily the writ is issued where there remains something to which the prohibition can apply. The argument "ab inconvenienti" advanced by Mr. Joshi, may be of some value when the Court has to construe some ambiguous words and even then it is a method which is shunned by Courts. It has been said that at best, it is an unhandy weapon. The present contention of the respondents must, therefore, be negatived.

12. The result is that the rule must be made absolute to the extent that the petitioner has asked for a writ of prohibition. A writ will issue prohibiting the respondents from proceeding to take any further action against the petitioner by way of dismissal of the petitioner from the Police Force or doing any other act to the prejudice of the petitioner based on the purported inquiry and the findings thereon referred to in the petition. Respondents will pay the costs of the petitioner fixed at Rs. 600.

13. Rule made absolute.