
(2005) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Special Appeal (Writ) 2980 of 2004 DR (J)

State of Rajasthan and Others

APPELLANT

Vs

Madho Singh Bhati

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Limitation Act, 1963 — Section 5
Rajasthan Municipalities (Class IV Service) Rules, 1964 — Rule 20
Rajasthan Municipalities (Subordinate and Ministerial Service) Rules, 1963 — Rule 238, 297, 309, 36, 38
Rajasthan Municipalities Act, 1959 — Section 10, 297, 299, 310, 310A

Citation : (2006) 2 RLW 1347 : (2006) 2 WLC 14

Hon'ble Judges : Rajesh Balia, J; R.S. Chauhan, J

Bench : Division Bench

Advocate : B.L. Bhati, Addl. Government Advocate, for the Appellant; Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Heard learned Counsel for the parties.

2. This appeal is barred by 83 days. The order under appeal is dated 19.12.2003. The memo of appeal was presented on 21.5.2004. The period for filing the Special Appeal from the date of the order of the learned Single Judge to the Division Bench is 30 days excluding the period spent in receiving the certified copy of the order under appeal. The office pointed out that the appeal is barred by 83 days and not accompanied with application u/s 5 of the Limitation Act for condonation of delay. The application u/s 5 of the Limitation Act has been filed finally on 21.12.2004 after taking number of adjournments including two from Court on 30.11.2004 and 9.12.2004.

3. The fact which has not been disputed is that on 21.5.2004, the memo of appeal was filed. Hence, without furnishing any reason which prevailed with any of the authorities taking decision for filing of appeal within limitation, the delay

cannot be condoned.

4. The vague assertion that after receipt of the copy of order, it was sent in the office for legal opinion to Executive Officer, Municipal Board, Balotra on 19.1.2004, who in turn sent the matter to the Director, Local Self Bodies, Jaipur and thereafter the matter was also moved to the Additional Commissioner, Jodhpur. Thereafter, after receiving the matter in the office of the Director, Local Self Bodies, Jaipur, the same was processed at different levels, and ultimately the appeal was filed on 21.5.2004, cannot be a good ground for condoning delay.

5. Taking liberal view does not mean that law of limitation is to be given an complete go bye by resorting to the vague assertions and vague reasons given by the appellants without giving any semblance of reason which could have delayed taking decision within period of limitation to file an appeal or not which could constitute sufficient cause, therefore, we are of the opinion that the appellant was not prevented by sufficient cause from filing the appeal within limitation and, therefore, the appeal deserves to be dismissed on the ground that it is barred by time.

6. Even assuming that taking most liberal view in favour of the appellant, the delay caused in filing the appeal is condoned, still on merit, there is no substance in this appeal.

7. The undisputed facts which emerge from the pleadings are as follows:

8. The petitioner-respondent was initially employed as Naka Guard Tax Jamadar in Municipal Board, Balotra on 16.9.71. He was, thereafter, promoted on the recommendation of the administrative committee of the said Board on the post of Sub-Nakedar vide order dated 31.7.82. The petitioner was confirmed on the post of Sub-Nakedar w.e.f. 5.8.1982. Vide order dated 6.4.92 based on the resolution of the Board Committee dated 17.2.92. In 1998, the levy of Octroi duty by the various municipalities in the State was abolished by the State Government w.e.f. 1.8.98. As a result, the petitioner-respondent was declared surplus and was absorbed on the post of Fireman vide order dated 11.12.2001 in his parent Municipality, Balotra. The petitioner was assigned the duties of building Fireman on 12.8.2002 and so also he was given additional duties of the Establishment. Vide order dated 7.11.2002, the petitioner who was posted as building fireman was also given additional duties to look after the duty arrangement of Chowkidar working in the office of the Municipal Board, Balotra.

9. The petitioner made a complaint on 20.2.2003 against two Members of the Municipal Board namely Madan Lal Chopra and Misra Ram Bheel alleging that they have demanded illegal gratification from him. Thereafter, on 29.3.2003, the Municipal Board, Balotra relieved the petitioner of the duties and directed him to report to the Director, Local Self Government, Jaipur. This led to filing of S.B. Civil Writ Petition No. 1501/2003. In the said petition, the order relieving the petitioner from the duties at Balotra Municipal Board and directing him to report at Director, Local Self Government was stayed by the Court.

10. Then the petitioner was transferred vide order dated 19.6.2003 from Municipal Board, Balotra to Municipal Board, Bhinmal. However, on finding that there is no post of Fireman at Bhinmal, by issuing an amendment the petitioner's posting was made to Jaisalmer. The order of transferring the petitioner from Balotra to Bhinmal and finally to Jaisalmer was passed by Divisional Commissioner, Jodhpur purporting to be in exercise of power conferred to him to transfer of employee of one Municipal Board to any other Municipal Board within his jurisdiction vide Notification dated 9.7.2002 subject to directions contained in earlier Government order dated 8.2.2002.

11. The other facts emerging from the reply submitted by the Municipal Board, Balotra are that Shri Suresh Chandra, an RAS Officer, working as Sub Divisional Officer, Balotra recommended to the Divisional Commissioner for transfer of Madho Singh Bhati from the Municipal Board, Balotra.

12. The transfer orders from Municipal Board, Balotra to Municipal Board, Bhinmal and Municipal Board, Jaisalmer was challenged by the petitioner by way of filing a writ petition on the ground that the Divisional Commissioner has no validly delegated authority to transfer the petitioner from one district to another district. Apart from challenging the validity of delegation of authority in favour of Divisional Commissioner on number of grounds, it has also been urged in the writ petition that the impugned order is punitive in character as the Divisional Commissioner has been conferred with power to transfer any officer or the servant of the Board, who is member of subordinate service, ministerial service or Class IV service, only in the circumstances of the proven misconduct, at the instance of the representation submitted by the Vigilance Committee. Hence the order being punitive, by an authority which is neither an appointing authority nor disciplinary authority under the Rules empowered to take the disciplinary proceedings under the Rules governing the disciplinary matters, against the employees of the Municipal Board, the exercise of power of transfer by the Divisional Commissioner in circumstances cannot be upheld in the garb of the transfer on administrative reasons only.

13. The conferment of authority on Divisional Commissioner in the circumstances has been challenged including on the ground that the power has been conferred for the purpose of removing the person on proven misconduct and not otherwise. Thus, there is direct casual connection between transfer of the petitioner on alleged proven misconduct and authority of the Divisional Commissioner which make the whole exercise by Divisional Commissioner to be an exercise in the aid of the disciplinary proceedings which power has not even conferred upon him under the Municipal Act or Rules and which power is not conferred on the State Government. Power for taking disciplinary measure against an incumbent of a Local Self Body having not been conferred on State Government, it could not have been further delegated to the Divisional Commissioner.

14. Another contention which has been raised by the learned Counsel for the petitioner before the learned Single Judge in this petition was that since Section

310A of the Rajasthan Municipal Act, 1959 confers power of inter district transfer on the State Government subject to Rule 297 and since under the rules, the power is to be exercised by the Director, Local Self Government, the power exercised by the Divisional Commissioner in the case is contrary to Rules. Without amending Rule 38 of the Rajasthan Municipality Act, 1963, no such power could be conferred on Divisional Commissioner even u/s 299 of the Act of 1959.

15. The last contention raised before the learned Single Judge in this petition and on which the petition was allowed was that by delegating power to the Divisional Commissioner contrary to Rules, the order passed by the Divisional Commissioner was not valid because the delegation of the authority on him is contrary to the Rules.

16. In appeal, learned Counsel for the appellant has urged that power of transfer has been conferred on the State Government and exercise of this power could be delegated by the State Government u/s 229 of the Act on any of the Officer subordinate to it.

17. Learned counsel for the respondent-appellants has a caveat to this contention. Firstly on the ground that once the State Government has prescribed the manner of transfer of an employee of one Municipal Board to another Municipal Board, under the Rules; Rules envisage that such power shall be exercised by the Director, Local Self Government or a person authorised by him. The State Government, in absence of any provision in the Act or Rules is denuded of its authority to permit any body else to exercise the power of Director. Local Self Government, which is contrary to the provisions of the Rules. He also urges, otherwise also, delegation of the power of State Government to the Divisional Commissioner is not delegation of general authority of the State Government to transfer an employee from one Municipal Board to the other Municipal Board simpliciter, but the power has been conferred clearly for a limited purpose for giving effect to the finding against an employee about his misconduct by Vigilance Committee. The impugned delegation obviously is in the field of disciplinary proceedings in respect of the proven misconduct and to pass an appropriate order. No such authority is vested in State Government under Act of 1959 to strike another note for holding disciplinary proceedings and devise another mode of punishment in exercise of its authority to delegate its power, relating to transfer of a Municipal employee from one Municipality to another. He invites attention of the Court to the order delegating the power of the State Government to transfer an incumbent of one Municipal Board to another Municipal Board, which is circumscribed by conditions, contained in earlier directions issued by the State Government on 8.1.2002 Annex. 10 to its own departments, inter alia providing unequivocally that wherever a transfer from a Municipal Board is recommended by a Vigilance Committee about the alleged misconduct of absence from the duties or for other misconduct, then the Divisional Commissioner will be authorised to transfer the incumbent from one

district to another district. The power has clearly not been conferred, according to the learned Counsel, only in view of administrative exigency, but the power has been conferred on proven misconduct of such nature. The Vigilance Committee is required on receipt of a complaint, or on a surprise inspection by itself to submit its report with recommendation to Divisional Commissioner.

18. The direction further envisages that the Divisional Commissioner on recommendation of aforesaid Vigilance Committee or on recommendation of Sub Divisional Officer can transfer those incumbent who are found guilty, outside the District of his posting to another District within his jurisdiction. The Annexure 10 dated 8.1.2002 within it embraced employees of Municipal Boards, councils or Corporation and UIT to such Board, Council or Corporation of other Districts, or UIT.

19. Curiously while in respect of Public Sector Enterprises, it was envisaged that transfers shall not be made by Divisional Commissioner, but he will be entitled to recommend such transfer to such public sector Enterprises, where Chief Executive Officer alone will be entitled to pass orders of transfer, in the case of Municipalities and UIT, who are Local Self Government Authorities and have independent existence with juristic personality vested with sovereign functions, have been subordinate to Divisional Commissioner, by authorising him to pass order of transfer of its employees himself. He was not even required to make his recommendations to competent authority under the Statute or rules to enable him to pass appropriate orders, thus maintaining the integrity of independent autonomous existence of local bodies.

20. The directions dated 8.1.2002, which conditions the delegate's authority is in terms to establish a casual connection between inter District Transfer and the alleged mis conduct. Such casual connection makes the order of transfer a measure of punishment and not merely an administrative exigency. It is not open to the Municipal Board or to State Government in exercise of its executive authority as conferred by Act of 1959 in relating to Municipalities to devise another method of dealing with the delinquent of proven misconduct otherwise than as provided under Disciplinary Rules which govern the field, in the guise of exercise of power of transfer u/s 310-A of the Act.

21. Other points have also been raised that there is no authority left with the State Government to delegate the powers of transfer. Once the Director, Local Self Bodies was named by Rule to be the person authorised to make such orders by himself or the person authorised by Director could alone pass such orders.

22. Learned counsel for the petitioner-respondents states that conferment of power on the Director, Local Self Government through Rules was only an exercise of power of delegation conferred on the State Government u/s 229. Once the State Government delegate its function to any officer by framing Rules, it cannot again delegate its power to some one else, without amending rules.

23. Lastly it has been urged in support of its plea taken in the petition itself that

on the admitted facts, it is established that the transfer of the petitioner has been taken place as a disciplinary and punitive measure only and not otherwise is administrative exigency. Hence, not sustainable.

24. Apparently, the question would arise whether in the absence of Section 310-A of the Act, could the State Government exercise the power of transfer of any employee of Municipal Board/Council/Corporation in exercise of its General Executive Power, so as to find whether power of State Government to transfer an employee of a local authority exists independent of Statute under which a local authority has been constituted so that answer to issues raised in this appeal can be searched on that premise.

25. That suggestion has been negated by this Court in *Chhagan Lal v. State of Rajasthan and Ors.* reported in RLR 1990 (1) 95.

26. The Division Bench of this Court in *Chhagan Lal's* case supra had occasion to consider the issue when Section 310-A was not under Statute Book. The Division Bench held that:

all the Municipal Board are autonomous bodies. It is true that u/s 297 read with Section 88 of the Act of 1959, the State Government has a power to frame the rules for the servants of various municipalities in Rajasthan. But nonetheless the appointing authority for subordinate, ministerial and class IV employees is the concerned municipal board or council as the case may be. In case an incumbent is transferred, be that a ministerial, subordinate or class IV employee, to another municipal board or council then it will amount to violating the autonomy of the board or council, as the case may be, and it also amounts to termination of the services from one municipal board or council and appointment in another board or council.

27. In coming to this conclusion, the Court relied on Supreme Court decision in *General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another*, wherein such provision in the Rules was held to be ultra vires to the Parent Act. The Court on same analogy held that Rule 38 of the Rajasthan Municipal Subordinate and Ministerial Service Rules, 1963 and Rule 20 of the Rajasthan Municipalities Class IV Service Rules, 1964 confers such power on State Government was ultra vires of the Rajasthan Municipalities Act, 1959 and they were struck down. The State Government could not in exercise of its General Executive power, affect the domain of the Local Self Government. It needed a specific conferment of such power under the Statute.

28. This being the position, the power of the State Government, if conferred by the Statute, as it was necessary before the State could assume the power of transferring an incumbent from one Municipal Board to another Municipal Board, the power is controlled and conditioned by the Statute conferring such power. The conferment of power u/s 310-A which was inserted in the Rajasthan Municipalities Act, 1959 after the aforesaid judgment of this Court, therefore, becomes watchwords of the Legislative Policy behind the conferment of power on

State Government affecting transfer of an employee from one Municipal Board to another Municipal Board, Section 310 A of the Act reads as under:

310-A : Transfer from one board to another@IN =

Any officer or servant of a board who is a member of subordinate service, ministerial service or class IV service may be transferred by the State Government from the service of one board to the services of another board in accordance with the rules made u/s 297.

29. A bare perusal of Section 310A gives out clearly that while conferring power of inter Board transfer on the State Government, the circumstances and manner in which the power of transfer would be exercised by the State Government was not detailed by the Legislation but it was left to the State Government, as Rule Framing authority, to fill in the details of the policy decision which should govern the exercise of power by the State Government in the matter of inter Municipal Board transfer of a member of the subordinate service, Ministerial Service or Class IV employee. The power by the State Government was to be exercised in accordance with Rule 297 only.

30. Pausing here, while Section 297 confers the Rule Making Authority on the State Government, which is legislative in character and as such matter of delegated legislation by which the delegate could be authorised to detail the policy of the legislation through Subordinate legislation. Section 297 therefore, is conferment of legislative function on the State Government, Section 310A is conferment of executive power of transfer of an incumbent.

31. Section 299 confers power on the State Government wherever it is entrusted any function under the Act, it can discharge it either itself or authorise some other officer subordinate to it to discharge such function or exercise such power. Section 299 further reiterates this authority of delegation Of function to be discharged by the State Government by restricting that such delegation is not permissible with regard to the powers conferred on the State Government under various Sections of the Act of 1959. Suffice it to say that Section 310-A has not been included in the list of prohibited powers which could not be delegated to any officer, therefore, Section 299 is the conferment of authority to delegate the administrative function of the State Government or other function which the State Government is required or empowered to discharge itself as an executing authority in implementing the provisions of the Act.

32. The two provisions 299 and 297 of the Act cannot be equated with each other.

33. In the aforesaid light, if we peruse Rule 238, it appears to be amalgam of both the powers by the State Government. When it lays down that the transfer of an incumbent from the Municipal Board to another Municipal Board could be made "if it is felt necessary", it is exercise of Rule making authority as a delegate of Legislative function, when it further laid down that the power of transfer shall be exercised by the Director, Local Self Government or any person authorised by

it, it is delegation of State Government's power to effect transfer of an incumbent of one Municipal Board to another u/s 299.

34. Apparently, once the Statute has authorised the State Government to exercise that power, the Rule making authority of the State cannot be used to denude the State Government of its authority to effect transfers, vested in it by parent Statute. Nor in exercise of rule making power, State can be deprived of its authority to delegate its function under the Act to any officer subordinate to it, as and when it so desires. So also in exercise of its rule making power the State Government cannot confer power to subdelegate its function by its delegate, in the absence of any such enabling power in the parent Act, authorising Subdelegation of authority. Principle is well settled that a delegate cannot further sub-delegate his authority unless such subdelegate is authorised by law.

35. We have noticed that in the absence of Section 310-A, State Government itself could not have exercised the power of transfer under the authority of Rule. Power of transfer having been conferred upon State Government by legislative Act, the power has to be exercised by State Government itself, except to the extent delegation of such authority is permitted by the parent Act. Parent Act neither permits creating a parallel authority, nor denuding the State Government of its authority by nominating an authority to exercise such power on its behalf, nor could it confer on its delegate authority to subdelegate the power of transfer to delegate's own subordinate. Section 299 confers powers of delegation only to State Government and not to its delegate. The scope of delegation permissible under Statute cannot be enlarged or narrowed down by State Government itself in exercise of its rule making authority as a subordinate legislative authority.

36. If the interpretation commanded by the petitioner is taken as correct, it would make the provision itself ultra vires. However, the cardinal principle of interpretation is ordinarily to lean in favour of validity of the Statutory provision, if it can be saved through any logical interpretation, not affecting the substance of the matter.

37. As we have noticed that while conferring power on the State Government to transfer an incumbent from one Municipal Board to another Municipal Board was administrative in nature and Section 299 authorises delegation of its functions to any other officer, therefore, to the extent the State Government has named the Director Local Self Government, as authority to exercise the power of the State in the matter of transfer, it would be in exercise of power u/s 299. However, the same thing cannot be said about conferment of power on the Director, Local Self Government to further delegate the power of inter Board transfer to its subordinate for which no authority exists in Parent Act. Under the Parent Act, Director, Local Bodies is not the principal authority vested with such power.

38. However, since there is no further delegation by the Director, Local Self Government in the present case, even taking this view would not affect the validity of delegation of power in favour of the Divisional Commissioner only for

the reason that the Director, Local Self Government has been named as delegate of State under the Rules.

39. It is trite to say that by delegating its power, the parent authority does not denude itself of its authority to revoke the delegation nor he is denuded of its authority to exercise its power as parent authority. Since the impugned order has not been passed by the Director, Local Self Government as the first delegate but power has been exercised by the subsequent delegated authority namely the Divisional Commissioner.

40. We are not deciding whether successive delegations can be made without removing earlier delegation as the issue does not arise for consideration in this appeal. However, it is clear that when successive delegation takes place without specific revocation of existing delegation, unless delegation made earlier is revoked either it results in implied revocation of existing delegation or the power continues to be exercised concurrently by both. In either case, unless subsequent delegation is invalid, or power has not been exercised validity otherwise the exercise of authority by later delegate does not become invalid for that ground alone.

41. This provision brings into light the question whether the delegation of power in favour of the Commissioner was in accordance with the provisions of the Act or date.

42. Apparently, this would take us to a document Annexure 9 by which the delegation has been conferred.

43. A perusal of the Annexure 9 clearly goes to show that it is not delegation of general power of the State Government to be exercised in the manner in which the State Government could exercise its power of inter board transfer under the Statute read with Rules. The power is to be exercised in the manner and the circumstances as per directions on 8.1.2002 Annexure 10. The essential conditions under which the Commissioner can exercise his power of transfer are contained in the order dated 8.2.2002. It has been prefaced by saying that in the urban offices at the Head Office or at the place where the complaints are received that the incumbent is absent from duty or having affected the citizen's right. It also refers to like directions already existing in respect of the persons employed in the rural area. Then it says in Clause i that for aforesaid purpose, the Vigilance Committee is to be constituted which include Chairman, Municipal Board/Council of the Corporation as its Chairman Ex Officio Chairman as also Member of such Corporation, Council or the Corporation and in case the Chairman has not a minimum Member of the Board as retired official named by the Collector, who will remain the executive member of the Committee and a District Level employee of the concerned Department as the Member of the Committee. It goes on to say that if on receipt of a complaint against any officer, he is found to be guilty of the aforesaid misconduct, the order is issued either on the recommendation of the Vigilance Committee or of Sub Divisional Officer. The

Commissioner is authorised to make inter-district transfer of such tainted employee to another district within his jurisdiction. The order passed by the Divisional Commissioner was further made subject to the finality and only the said committee of the Cabinet level approved, the order passed by the Divisional Commissioner was to attain finality.

44. Apparently, the order dated 8.2.2002 not only authorises the Divisional Commissioner to exercise power of transfer only in the case of proven misconduct, but also sets up an appellate or Reviewing Committee which could set aside his order. Therefore, the power exerciseable under the instructions were not exercise of power by appellate authority under the Statute, but as subordinate authority to its own power subject to the disciplinary or subject to superintendence or reviewing power of the authority named in the order. Authorisation of the Divisional Commissioner to exercise the power of transfer in the purported exercise of Section 299 of the Act of 1959 has also been made subject to the directions contained in order dated 8.2.2002. Thus authorising the Divisional Commissioner only to make transfer on proven misconduct of an employee of the Municipal Board or Council or Corporation also made the order of the Divisional Commissioner subject to review or revision or appeal by the Special Committee of Cabinet Level and this power of the appellate court was to be further scrutinised by the State Government which is subject to appeal, revision. The State Government itself could pass a fresh order that is a different matter. Had the power been exercised in administrative exigency, the State Government could exercise as and when occasion arise, but when power is not subject to any review, revision or appeal out side the State Government purview for which no such authority is given in the parent Statute, one of the major character of the exercise of authority of delegation is on the principle of vacancy nor on the principles of subordination. While delegating the power to subordinate authority, the parent authority does not denude itself to function by itself. The fact remains of power by delegation and becomes the act of parent authority itself and that cannot be reviewed or revised by the parent authority as it a parent authority. That being the clear distinction it is clear that the Divisional Commissioner was not delegate under the Act to function for the State but was directing the subordinate authority to exercise power in its own right which was to be exercised by the State Government. Such delegation of authorities is not permissible under the law nor it is authorised to delegate the power by the State.

45. Before proceeding further, we must notice that while vesting the State Government with power to make inter-board transfers, it does not detail the circumstances and the purpose for which the power could be exercised. Assuming such power could be exercised in public interest of administrative exigency, as a rule making authority when the State Government framed Rule 38, it also did not lay bare policy but only said that in the case of necessity, The Director Local Bodies could make such transfers. However, what shall be the guiding factor for such necessity has not been spelt out in the rule and it has been left within the discretion of Director, Local Bodies to consider what he

deems to be necessity warranting inter-board transfer. Leaving determination of necessity at the discretion and subjective satisfaction of delegate is susceptible to challenge on the ground of ultra vires the constitutional mandate. Since the question has not been raised in this lis, we refrain from further probe in this aspect of the matter.

46. Be that as it may, we are of the opinion that the delegation of authority on the Divisional Commissioner vide Annexure 9 dated 19.6.2005 and 9.7.2005 was not in conformity with the provisions of Parent Act nor such delegation withstand the test of valid delegation on general principles. Firstly, Section 310A which enables the State Government to exercise power of inter-board transfer, irrespective of district within which a municipal board is situate, delegation of authority of transfer in favour of Divisional Commissioner makes it imperative that transfer must be inter-district within his jurisdiction. It restricts inter-board transfers within same district. Within a district itself, there may be number of municipal boards. Secondly, the impugned order dated 9.7.2002 and the order dated 8.1.2002 make any transfer by Divisional Commissioner punitive and stigmatic. Section 310A does not empower State Government to make inter-board transfer by way of punishment as a measure of disciplinary action by finding the order on a proven misconduct and take disciplinary action in that regard can only be under Rules governing disciplinary proceedings. It is common ground that to the Municipal employee for the purpose of subjecting disciplinary proceedings Rajasthan CCA Rules framed under proviso to Rule 309 as primary legislature, have been adopted. Section 229 confers authority to delegate only such functions of the State Government to its subordinate officers which are assigned to it under the Act. The functions which are not assigned to State Government under the Act of 1959, could not have been conferred on its delegate by the State Government. Since State Government itself was not enabled to make inter-municipal board transfer by way of punitive action by making a punitive order, in exercise of its authority u/s 299, such authority could not have been delegated by it.

47. Thirdly, when authority to exercise such power is delegated to another person, the delegate exercising the same power as the parent authority and can be subjected to same condition. The delegation of authority can be made to another person by retaining power of its review, revision or appeal with itself. Such a delegation amounts to conferring a subordinate power on a delegate, which is subject to review and revision and amounts to create a new authority to exercise such power on its own and not as a parent authority, under the control and supervision of parent authority. That is not permissible. Chhagan Lal's case has negative claim to any such power of locality authorised for exercising power de hors the Parent Act by the State in its rule making authority.

48. Apart from the aforesaid, we have noticed that the power has been conferred to be exercised on proven misconduct, which is a subject matter of disciplinary action for which Rule 36 of the Rajasthan Municipalities Subordinate and

Ministerial Services Rules, 1963 clearly postulates that the Rajasthan Civil Services Classification, Control and Appeal Rules as framed *mutatis mutandis* provide that the disciplinary authority in the case of service shall be the Executive Officer subject to right of an appeal as provided u/s 310 of the Act.

49. Apparently, the delegation of authority by Notification dated 9.7.2002 is purported to be in furtherance of exercise of disciplinary power. The rule makes it clear that for the purpose of conducting disciplinary proceedings in terms of the CCA Rules in the case of municipal employees, the Executive Officer is the disciplinary authority and right of appeal has been conferred on some body against the order of the original authority u/s 10 of the Act of 1995. In the name of delegation of power of disciplinary authority as well as appellate authority under the CCA Rules have been conferred on different authorities. In this regard, the order of transfer is not appealable under the Act. Secondly, conferment of power of appeal against/revision against order of Divisional Commissioner is also contrary to provisions of appeal under the Act. The delegation vide order dated 9.7.2002 is thus clearly in violation of Section 299 and 360A of the Act.

50. In that view of the matter, the power of delegate exercise by the Divisional Commissioner u/s 310-A is *de hors* the provisions of the Rules, which designates the "disciplinary authority" to deal with the matter and does not envisage an outsider to handle disciplinary matter. On that ground also the delegation of authority in the manner in which it has been delegated in favour of the Divisional Commissioner cannot be sustained. Last but not the least, apparently the power has been exercised not for the purpose for which the power of transfer has been conferred in the present case. Firstly, it is on an intention of some alleged misconduct recorded either on the recommendation of the Vigilance Committee or by the Sub Divisional Officer. The respondents in their reply have clearly stated that transfer was not on recommendation by any Vigilance Committee but it was on the complaint of the S.D.O. The S.D.O. cannot exercise the power of considering himself as a supervisory authority and recommend transfers on alleged misconduct which he has found to be proved against any employee of the Municipality. He is totally stranger to the administration of the Municipality and his recommendations cannot be taken to be correct.

51. Apparently, no enquiry was made by the Divisional Commissioner. In reply it is clearly averred that the complaint was received by the Divisional Commissioner from the S.D.O. Moreover, notwithstanding raising this plea that the elected Members of the Municipal Board namely Madan Lal Chopra and Mishra Ram Bheel were not made parties, the fact of receipt of complaint has been admitted by the Municipality itself and as a follow up relieving the petitioner to appear before the Director, Local Self Government has also been admitted by the Municipal Board on the ground of false complaints against elected members in its reply.

52. The respondents have admitted that the complaint was lodged by Sub Divisional Officer. They have also admitted that the petitioner had firstly lodged a

complaint against two elected Members of the Board for demanding from him illegal gratification. It is also admitted that this complaint led to passing of resolution by Municipal Board for relieving the petitioner from Municipality and asking him to report to the Director Local Self Government, Jaipur on the ground that he is indulging in false complaints against Members. When the said order was challenged and its operation was stayed the impugned order was passed by the Divisional Commissioner in exercise of power conferred by the State Government vide order dated 9.7.2002 read with Order dated 8.1.2002. Chain of events leave no room of doubt that exercise of power has been in abuse of authority delegated by the State Government and it cannot be sustained.

53. The transfer order was clearly an out come of malice in law. The Act of Divisional Commission even if delegation of authority is held to be valid cannot be sustained on this ground also.

54. Accordingly, the appeal fails on merits. The application u/s 5 of the Limitation Act so also the appeal are dismissed. No costs.