

(1951) 07 CAL CK 0035
In the Calcutta High Court
Case No : Civil Revision Case No. 930 of 1951

Tarapada Banerjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 31-07-1951

Acts Referred:

Bengal Police Regulations, 1943 — Regulation 862, 863
Constitution of India, 1950 — Article 311, 311(2), 313
Police Act, 1861 — Section 35, 7

Citation : AIR 1951 Cal 179

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : J.C. Maitra and Rama Prasanna Bagchi, for the Appellant; S.M. Bose, Advocate General and Jagneswar Majumdar, for the Respondent

Judgement

Bose, J.—This is an application under Article 226, of the Constitution for a writ in the nature of prohibition prohibiting the respondent from proceeding with certain departmental proceedings taken against the petitioner and from taking any steps against the petitioner under the Police Regulations, Bengal, 1943.

2. The petitioner's case is that he was appointed as Sub-Inspector of Police on 2-1-1945 and has continued in such service under the State of West Bengal. The petitioner was posted as such Sub-Inspector at the Police Station of Sarupnagar in Basirhat Sub-Division in the District of 24 Parganas on the border of East Pakistan. On or about 13-1-1951, the petitioner was entrusted with the execution of warrant of arrest issued against one Anil Kumar Banerji of Charghat within the said Sarupnagar Police Station. The said warrant of arrest was issued by the Magistrate of Basirhat Sub Division as the said Anil Kumar Banerji failed to attend as a witness in his Court in one of the smuggling cases which were pending before the Magistrate. The petitioner deputed a Head Constable to execute the said warrant of arrest and the said Head Constable Khublal Singh brought the said Anil Kumar Banerji under arrest to the Charghat camp. When the petitioner visited the said Charghat camp on his way to the Police Station he

was informed by Khublal that the said Anil Kumar Banerji attempted to avoid the execution of the warrant. The petitioner offered to release Anil on bail on the spot. Anil, however, refused to offer bail and refused to proceed to the Police Station unless he was forced to do so and he also used vile language against the petitioner and against the authority who issued the said warrant of arrest. The petitioner thereupon directed the Head Constable to take Anil to the Police Station by force. Anil was thereafter brought to the Police Station but was subsequently released on bail. It is alleged that after such release Anil threatened the petitioner with personal violence and loss of service and he represented to the petitioner that he had considerable influence with persons at the helm of affairs. On or about 20-2-1951 the petitioner received an order from the Superintendent of Police, 24 Parganas by which he was suspended from service pending an enquiry into his conduct. On or about 27-3-1951 the petitioner received a notice under the signature of one Mr. S. K. Mitra the Sub-Divisional Police Officer, Basirhat, containing certain charges framed against the petitioner and calling upon him to show cause why he should not be dismissed, discharged, reduced or otherwise severely dealt with, The charges against the petitioner were : (1) That the petitioner acted in a most high-handed manner in the matter of execution of the warrant of arrest and in excess of requirements. (2) That the petitioner betrayed mala fide and displayed tactlessness in ordering Anil Kumar Banerji to be tied with a rope, (3) That the petitioner acted in bad faith in not releasing Anil on bail in the village although the petitioner was personally present there and thus committed another act of excess without sufficient cause.

3. On or about 30-3-1951 the petitioner protested against any departmental enquiry being held and offered to be tried for the alleged charges by a competent Court of Law. On 11-4-1951, the petitioner was, however, informed that there was no bar to the departmental proceedings being held and his request for enquiry by the Court was rejected. On 30-4-1951, the present petition was moved before this Court and rule nisi was issued.

4. It is contended by Mr. J. C. Moitra, the learned counsel for the petitioner, that the departmental enquiry started against the petitioner is illegal inasmuch as it has been initiated by the Sub-Divisional Police Officer who has no power to do so. Mr. Moitra relies on Section 5, Police Act (Act v [5] of 1861) which is as follows:

"The Inspector General of Police shall have the full powers of a Magistrate throughout the general police district; but shall exercise those powers subject to such limitations as may from time to time be imposed by the Provincial Government."

5. It may be noted that such Magisterial powers had also been conferred on other Police officers like the Deputy Inspector General, Assistant Inspector General and others u/s 6 of the Police Act. But this section was repealed in 1882.

6. Section 35, Police Act, runs as follows: "Any charge against a Police officer above the rank of a Constable under this Act shall be enquired into and determined only by an officer exercising the power of a Magistrate."

7. Mr. Moitra submits that Section 35 read with Section 5 of the Act makes it quite clear that the Inspector General of Police is the only person who has jurisdiction to enquire into the charges that have been levelled against the petitioner in connection with the execution of the warrant entrusted to him and as this has not been done the entire departmental proceedings are illegal and without jurisdiction.

8. It appears, however, from Reg. 741 of the Police Regulations 1943 that the Superintendent of Police of the district is the appointing authority of a Sub-Inspector of Police and so the Superintendent of Police has the power to dismiss or suspend the petitioner if the petitioner merits such a punishment. Section 7, Police Act provides: "Subject to such rules as the Provincial Government may from time to time make under this Act the Inspector General, Deputy Inspectors General, Assistant Inspectors General and District Superintendents of Police at any time dismiss, suspend or reduce any Police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same."

9. Regulation 857 divides punishment into two classes--major and minor and major punishments include dismissal, removal from service, reduction, deprivation of approved service increment, removal from any office of distinction or special emolument and award of Black Marks. Under Rule 858 (a) (2) a Superintendent of Police may award to any police officer subordinate to him below the rank of an Inspector any punishment which may be awarded to such officer by the Inspector General or Deputy Inspector General under this Regulation.

10. Under Regulation 861 no major punishment shall be awarded unless a definite charge is framed before evidence is recorded. The alleged offence has to be clearly specified with particulars of time and place and the person charged has to be supplied with a copy of the charge and an oral enquiry has to be held if the person charged so requires it and at such enquiry oral evidence shall be heard and witnesses may be cross-examined and various other matters are provided for. In fact the enquiry held is a full and thorough enquiry resembling the proceedings of a judicial enquiry held in a Court of law. It is only after the requirements of this rule No. 861 are complied with and the person charged is afforded full facilities for presenting his case and for defending himself against the charges that the officer conducting the enquiry comes to a finding on each of the charges after duly considering the evidence recorded in relation to the enquiry and then he makes an order or recommends an order to the authority empowered to pass an order. After this stage of enquiry is concluded, then a subsequent stage of the enquiry begins and the authority empowered to pass the order of punishment grants a personal hearing to the person charged and then

passes the final orders. It is thus clear that the opportunity which is offered to the person charged is what is contemplated by the Constitution under Article 311(2) thereof and it is also this kind of enquiry which was laid down to be the proper and reasonable enquiry by Lord Thankerton in the case of *High Commissioner for India v. I. M. Lal* reported in 75 I. A 225 at p. 242,

11. The Sub-divisional Police Officer has affirmed the counter affidavit on behalf of the respondent. It appears from the affidavit and the annexures thereof that at the instance of the Inspector General of Police who ordered drawing up of proceedings against the petitioner that the Superintendent of Police made certain preliminary investigation and submitted his report to the Inspector-General. Thereafter charges have been drawn up and served on the petitioner under the signature of the Sub-divisional Police Officer. Section 35, Police Act, does not require that every stage of the enquiry should be conducted by the Inspector General himself. If at any stage of the enquiry the Inspector General of Police participates in the enquiry as to the charges and comes to a decision as to the charges there is sufficient compliance with Section 35. Until the proceedings come to a close it cannot be stated whether Section 35 has not been substantially complied with or not. The departmental proceedings against the petitioner are in their preliminary stage and so cannot be declared to be illegal or void. Moreover I am inclined to think that Section 35 was intended to apply to a judicial enquiry into the charges and not to enquiries in the nature of departmental proceedings.

12. It was contended by Mr. Moitra that as there is no provision in the Constitution corresponding to Section 243, Government of India Act, 1935 the Police Regulations and Section 7, Police Act are ultra vires the Constitution or should be deemed to have been abrogated. It is true that to the extent the Police Regulations and the sections of the Police Act are inconsistent with the provisions of the Constitution such inconsistent provisions will be void but the whole of the Regulations or the Police Act cannot be said to be ultra virus or to have been abrogated. If the appointing authority is the authority which conducts the departmental proceedings of the nature prescribed by the Regulations, which as I have pointed out already, conform to the nature of enquiry or proceedings contemplated by Article 311(2) of the Constitution and as a result of the proceedings or enquiry decides to inflict the punishment of dismissal upon the person against whom the proceedings are taken, I fail to see how the proceedings can be said to be illegal or void. Article 818 of the Constitution preserves the Police Act and Regulations.

13. It was next contended by Mr. Moitra that as the charges against the petitioner amount to criminal offence he should have been tried before a Court of law and the departmental proceedings are without jurisdiction. Mr. Moitra submits that the charges against the petitioner fall within Sections 220 and 342, Penal Code, and Section 29, Police Act. A perusal of the charges as set out in Para. 15 of the petition makes it clear that Sections 220 and 342, Penal Code

read with Section 50, Criminal Procedure Code may cover the charges framed against the petitioner if a liberal construction is put upon the sections. But merely because the charges amount to criminal offence cannot have the effect of preventing departmental proceedings against the petitioner. Regulations 862 and 863 completely negative the contention of Mr. Moitra. Regulation 862 provides :

"that the fact that any departmental punishment has been awarded to a Police Officer shall not affect his liability to prosecution and punishment under any law for the time being in force."

14. Regulation 863 is as follows:

"An order of discharge or acquittal of a Police Officer by a Court shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter."

15. Mr. Moitra relies in this connection on Article 20(2) and Article 21 of the Constitution. I, however, fail to see what relevancy these Articles have to the facts, of the present case.

16. As to what are the true implications of Article 20(2) of the Constitution have been pointed out by me in the case of Suresh Chandra Vs. Himangshu Kumar Roy and Others, .

17. Mr. Moitra has also attacked the validity of the departmental proceedings on the ground that the Prosecutor himself cannot be the judge in the cause. The person who is the complainant cannot himself enquire into the charges and arrive at a decision on such charges. The fundamentals of fair play require that a stranger should act as judge in the matter. Although that is no doubt a desirable thing, it is clear that the departmental proceedings cannot be declared as illegal on that ground. Instances are not rare where the authority which is the propose is the judge in its own cause. Many statutory bodies having a duty to act quasi judicially act as judges in the matters in which they are themselves interested as parties, (See the cases cited in Province of Bombay Vs. Kusaldas S. Advani and Others, .) Moreover it is in the fitness of things that the person who made the appointment of a particular employee should himself decide whether the employee is fit to continue in employment or not or whether he de-serves any punishment or not. (See also Section 7, Police Act-- "Whom they shall think etc). I do not think that the contention of Mr. Moitra can be accepted as sound.

18. Mr. Moitra contended relying on the case of Tun Ya v. The King A. I. R. 1938 Rang. 181 that the delegation of the power of determination of the question whether a Police Officer merits any punishment or not to the District Superintendent of Police who is at present conducting the enquiry is ultra vires, I do not see what application the Rangoon case has to the facts of this case. Section 7, Police Act, designates the District Superintendent of Police as one of the officers who can suspend or dismiss officers of the subordinate ranks. No question of any delegation arises on the facts of this case. This contention of Mr.

Moitra must fail.

19. Mr. Moitra has drawn my attention to an order of the District Superintendent of Police dated 23-2-1951 which directs the petitioner to join the Police Lines at Alipur and to remain under the control of R. I. and obey all line discipline and Hajira as per P. R. B. Rules and contends that the order is ultra vires as it infringes Section 7(b), Police Act. Mr. Moitra relies on Ram Gopal v. Emperor 58 Cal. 1132. In the case relied on by Mr. Moitra the Police Officer concerned was ordered to live in the Police lines until further orders and was also directed not to leave the lines without permission and this was held as confinement for more than 15 days within the meaning of Section 7(b), Police Act, and as such ultra vires. In the case before me the petitioner has not been asked to live in the Police lines and so there is no question of any confinement. This point of Mr. Moitra must also fail.

20. The learned Advocate General has drawn my attention to Para. 330 of the Regulations (p. 144 of the Manual) and submits that tying a prisoner with rope is an unusual thing and it is clear the petitioner acted in excess of the requirements. Reg. 330 is as follows:

"(a) Prisoners arrested by the Police for transmission to a Magistrate or to the scene of enquiry and also under-trial prisoners, shall not be subjected to more restraint than is necessary to prevent their escape. The use of handcuffs or ropes is often an unnecessary indignity."

21. I do not propose to enter into an investigation of the question whether the petitioner had in fact acted in excess of requirements or not as any expression of opinion by this Court may prejudice the departmental enquiry.

22. It was also suggested by the Advocate-General that the Memorial annexe³ to the affidavit of Cour Chandra Ghosh Biswas has been prepared for the purpose of this case. This suggestion of the Advocate-General cannot be accepted. The Memorial is dated 31-3-1951 and it contains some inaccurate statements. If the petitioner had any hand in the preparation of the Memorial the mistakes would not have been there. The Memorial was drawn and sent to the Prime Minister about a month before the Rule was issued.

23. In my view this petition must fail. The Rule is discharged, I make no order as to costs.