
(1969) 12 CAL CK 0021
In the Calcutta High Court
Case No : C.R. 440 (W) of 1967

The Administrator, 24 Parganas Zilla Parishad

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-12-1969

Acts Referred:

Constitution of India, 1950 — Article 154, 166

West Bengal Zilla Parishad Act, 1963 — Section 105, 30, 31(2)

Citation : AIR 1970 Cal 346

Hon'ble Judges : K.L. Roy, J

Bench : Single Bench

Advocate : Rabindra Nath Mitra and Ranen Mitra, for the Appellant; Bankim Chandra Roy, (for No. 3) and G.P. Mukherjee, (for Nos. 1 and 2), for the Respondent

Judgement

K.L. Roy, J.—One Kartick Chandra Das, the respondent No. 3 herein, was employed as a driver originally by the District Board of 24 Parganas and later by its successor the 24 Parganas Zilla Parishad constituted under the West Bengal Zilla Parishad Act, 1963 (hereinafter referred to as "the Act") which is the petitioner in this case. Respondent No. 3 was asked to show cause by a notice dated the 8th January, 1964, in respect of certain alleged offences committed by him, but the enquiry in respect thereof was kept in abeyance by an order of the Administrator to be revived in case there were further complaints against the said respondent. Thereafter further complaints having been received another show-cause notice dated the 2nd December 1964 was served on him and an enquiry proceeding was started against the said respondent During the course of enquiry in respect of the said two show-cause notices, further complaints were received and a third show-cause notice dated the 15th February 1965 was served on the said respondent Enquiry proceedings in respect of the above three show-cause notices were held by the Executive Officer of the petitioner when witnesses including witnesses called by respondent No. 3 were examined and by his report dated the 31st March 1965 the said Executive Officer reported that one out of six

in the first charge-sheet and all the charges in the subsequent two charge-sheets were proved and the said Executive Officer recommended the dismissal of respondent No. 3. On the basis of the said report, the petitioner served notice on the said respondent to show cause why he should not be discharged from service. The respondent showed cause in writing. By an unanimous resolution dated the 5th May, 1965, the petitioner discharged the respondent from service. Against the aforesaid order of discharge the respondent No. 3 preferred an appeal. There is some dispute as to whom the appeal was addressed. According to the petitioner the appeal was addressed to the Commissioner, Presidency Division, through the Chairman of the 24 Parganas Zilla Parishad as evidenced by the copy of the petition of appeal being annexure "J" to the petition while in the affidavit-in-opposition filed on behalf of the first two respondents, the State of West Bengal and the Secretary, Panchayat Department, affirmed by the Deputy Secretary, Panchayat Department, it is asserted that the petition of appeal filed was addressed to the Secretary to the Government of West Bengal, Panchayat Department, through the Commissioner, Presidency Division and the Chairman, 24 Parganas Zilla Parishad and the alleged heading of the said petition has been annexed to the said affidavit. In any event there is no dispute that the said petition was forwarded to the Secretary, Panchayat Department, by the said Commissioner. By an order dated the 8th November 1966, the Secretary, Panchayat Department, the respondent No. 2 herein, purported to decide the appeal. He held, inter alia, that the holding of a single enquiry in respect of three different charge-sheets must have caused confusion to the delinquent, and that the report of the Enquiry Officer did not disclose clearly how particular charges had been proved against the appellant. He accordingly set aside the order of dismissal and directed that three separate enquiries should be held afresh in connection with the three charge-sheets drawn up against the appellant and that the Zilla Parishad would be at liberty to pass such orders therein as it might think fit. It is to be noticed that this order is not purported to be made by the order of the Governor. By a letter dated the 1st December, 1966, the Deputy Secretary, Panchayat Department, forwarded a copy of the aforesaid order, purporting to be an order passed in appeal by the State Government, to the Commissioner, Presidency Division, who is the respondent No. 4 in this application. The said letter further intimated to the Commissioner that in future appeals u/s 31 (2) of the Act should not be forwarded to the Government but be heard by the Divisional Commissioners to whom necessary powers have been delegated by the notification dated the 15th June, 1964. 2. u/s 30 (2) of the Act, the Executive Officer of a Zilla Parishad can impose any punishment other than dismissal, removal or reduction in rank on an employee holding a post, carrying a monthly salary of less than Rs. 300 per month, while u/s 30 (3) in the case of an employee with a salary of less than Rs. 300 per month, the Executive Officer may recommend the dismissal, removal or reduction in rank to the Finance and Establishment Committee and such Committee shall forward the case to the Zilla Parishad with its own recommendation and on such recommendation, the Zilla Parishad may dismiss remove or reduce in rank any such employee. There is no

dispute that in the case of the dismissal of respondent No. 3 the procedure laid down in the above section has been followed by the relevant authorities. Section 31 (2) is the material section and it provides for an appeal to the State Government against an order of punishment awarded by the Zilla Parishad u/s 30. u/s 105 of the Act the State Government may by notification delegate, subject to such conditions as it may specify, all or any of its powers under the Act except the powers mentioned in Sections 9, 12, 57, 60, 107, 108, 112 and 117 to any person or authority subordinate to it. Section 112 authorises the State Government to make rules for carrying out the purpose of the Act. Statutory rules have been framed under the authority of Section 112 of the said Act, Chap. XLIV whereof deals with appeals by employees of Zilla Parishads against orders of punishment. Rule 167, provides, inter alia, that every appeal u/s 31 shall contain all the material statements and arguments relied on by the appellant and shall be complete in itself.

3. By a notification dated the 15th June 1964, made in exercise of the powers conferred by Section 105 of the Act, the Governor was pleased to delegate, inter alia, the power to hear appeals u/s 31 (2) of the Act against the orders of punishment awarded by Zilla Parishads to the Divisional Commissioner. The notification was by the order of the Governor signed by the Joint Secretary to the Local Self-Government and Panchayat Department of the Government of West Bengal.

4. It would be necessary here to refer to another notification dated 5-2-1959 made by the Governor in exercise of the powers conferred by Article 166(2) of the Constitution prescribing the following rule in supersession of all provisional rules made in that behalf:

"Orders and other instruments made and executed in the name of the Governor shall be authenticated by the signature of the Secretary or an officer of the Government of West Bengal specially empowered in this behalf by the Governor."

5. This notification is also expressed to be by the order of the Governor and signed by the Chief Secretary, Government of West Bengal.

6. The only other statutory provision I need refer to is Section 3 (60) of the General Clauses Act under which a State Government as respect to anything done or to be done means in a State the Governor, and in a Union Territory the Central Government.

7. It is pointed out by the learned advocate for the petitioner that the Act came into force on the 25th March, 1964, the statutory rules were notified on 4-6-1964 and the delegation of the power to hear appeals u/s 31 by the Governor was on the 15th June, 1964. It is submitted that after 15th June, 1964, the only authority with jurisdiction to hear the appeal was the respondent Commissioner, and the impugned order made by the respondent No. 2 purporting to dispose of the appeal filed by the respondent No. 3 was without jurisdiction, illegal and ultra vires. Even if it be conceded that in spite of the aforesaid

delegation the State Government still retained the power to entertain the appeal u/s 31, such power could only be exercised by the Governor or in his name by one of the persons designated in the said notification dated the 5th February, 1959. The Secretary, Panchayat Department, had neither the authority nor the jurisdiction to entertain and decide the appeal in his individual official capacity. The following observation of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , were relied on :

"A State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions."

8. It is accordingly submitted that even in case it is contended that the appeal was disposed of by the State Government, the order should have been made in the name of the Governor by an officer entitled to authenticate such an order. In this case no rules or standing orders made by the Governor delegating his power under the Act to a Minister and a further delegation by the Minister to the respondent No. 2 have been disclosed by the respondents. So the order cannot be justified either on the authority of the above Supreme Court decision or by the decision of this Court in Bejay Laxmi Cotton Mills Ltd. Vs. The State of W.B. and Others, .

9. The only submission by the learned advocates for the respondents to justify the impugned order was to refer to the letter by the Deputy Secretary of the Panchayat Department dated 1-12-1966 to the respondent Commissioner, forwarding the impugned order describing it as the order passed in appeal by "the State Government. The contention was that as the State Government had the authority to decide the appeal u/s 31 it has done so and the mere fact that the respondent No. 2 had signed it in his official capacity and not on behalf of the State Government would not affect its validity in law. The case of Godawari S. Parulekar and Others Vs. State of Maharashtra., , was relied on where the Supreme Court had observed that by delegating its power to pass an order of detention to the District Magistrate, the State Government had not denuded itself of its power to act under Rule 30 of the Defence of India Rules.

10. I do not think that there is any substance in the argument advanced on behalf of the respondents. Under Articles 154 and 166 of the Constitution the executive power of the State could be exercised by the Governor either directly or through officers subordinate to him as designated and notified in that behalf. Any executive order on behalf of the State Government must be made in the name of the Governor authenticated by a person authorised under the notification dated 5-2-1959 unless specific rules or orders of business made by the Governor provide otherwise. Instead of instructing the respondent Commissioner that in future appeals u/s 31 (2) of the Act should not be forwarded to the Government but be heard by the Divisional Commissioners by

his letter dated 1-12-1966, the Deputy Secretary should have sent the impugned appeal itself to the respondent Commissioner for disposal. The impugned order dated 8-11-1966 purported to be made by the respondent No. 2 u/s 31 (2) cannot be held to be an order passed by the State Government under the said section. The impugned order must, therefore, be quashed and the respondents directed to decide the appeal preferred by the respondent No. 3 in accordance with law. In the view I have taken, it is not necessary for me to refer to the contention of the petitioner that as no such grounds on which the appeal had been disposed of were taken in the application for appeal, the impugned order was bad.

11. In the result, the Rule is made absolute. There will be no order for costs. Rule made absolute.