(1985) 04 CAL CK 0023

Calcutta High Court

Case No: None

A.N. Saha — APPELLANT

Vs

High Court and Others — RESPONDENT

Date of Decision: April 22, 1985

Acts Referred:

- Bengal General Clauses Act, 1899 - Section 17
- Constitution of India, 1950 - Article 14, 235, 309, 311
- General Clauses Act, 1897 - Section 16

Citation: (1986) 1 LLJ 114

Hon'ble Judges: B.C. Ray, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

B.C. Ray, J.

The Petitioner, an Additional District Judge, has assailed the departmental proceedings purported to have been started against him wherein he is going to be suspended on the grounds inter alia, that the power of control over the District Courts and Courts subordinate to the High Courts vested in the High Court by Article 235 of the Constitution cannot be exercised until the conditions of services are prescribed by law made by the appropriate legislature or in the absence of any law by rules made by the Governor under proviso to Article 309 of the Constitution. As no law has been made nor any rules have been framed laying down the condition of service and providing for any right of appeal the High Court is not competent to exercise its power of control over District Courts and Courts subordinate thereto. The petitioner stated that he had come to know on July 29, 1983 over telephone from the then Registrar, Appellate Side, High Court, Calcutta, Sri S.N. Koley, about the initiation of the departmental proceeding against him and he was going to be suspended soon. The petitioner has further stated that no formal explanation had

ever been called for from him in regard to any of the allegations forming the subject matter of the enquiry. It has been submitted that no rule has been framed under Article 235 of the Constitution empowering the High Court to hold any enquiry or to start any disciplinary proceeding against any Judicial Officer including the petitioner, who is posted as Additional District and Sessions Judge, 3rd Court, Alipore and is now on leave. It has been further submitted by the petitioner that the Governor, who is the appointing authority, has not delegated to the High Court any such power of starting departmental proceeding and suspending any judicial officer. As such the impugned order of departmental proceeding and suspension against the petitioner is without any jurisdiction and legal authority and is liable to be quashed. It has also been submitted that the High Court has no power to suspend a Judicial Officer. It is only the Governor who can suspend u/s 16 of the General Clauses Act, any Judicial Officer in absence of any Rule delegating such power to the High Court. The petitioner has, therefore, prayed for a Writ of or in the nature of Mandamus commanding the Respondents to show cause as to why the impugned proceeding should not be quashed, cancelled or set aside and also for a Writ of Prohibition prohibiting the Respondents from proceeding any further with the proceeding. There is also a prayer for a Writ of Certiorari upon the Respondents 1 to 4 to certify and transmit the relevant records for quashing the same. There is a prayer for ad-interim injunction restraining the respondents from giving effect to the order of departmental enquiry as well as the order of suspension made, if any, pending the hearing of the petition.

2. On 10th August, 1983 this Court after hearing the petitioner''s Advocate fixed the application for hearing a week hence at the top of the list An interim order of maintaining status-quo as on the date was made in the meantime. The petitioner was directed to serve the copies of the application on the Respondents 2 to 4.

3. Against the said interim order the Respondents filed an appeal being F.M.A.T. No. 325 of 1983 and made an oral prayer for stay and obtained an order of stay of operation of the interim order. The said appeal was heard and allowed.

4. The petitioner thereafter filed an application for Special Leave to appeal being SLP (Civil) No. 1248 of 1983 in the Supreme Court of India against the said judgment and order of Appellate Bench of this Hon''ble Court. On 23rd March, 1984 the SLP was permitted to be withdrawn.

With liberty to the petitioner to move the High Court for leave to amend the writ petition in appropriate manner and raise further grounds as may be advised.

5. Thereafter an application for amendment of the writ petition praying for taking notes for subsequent events stated in the petition has been filed and it has been prayed that the said petition may be treated as a part of the writ application.

6. In para 6 of the said petition it has been stated that on 4th October, 1983 the petitioner was served with two communications -- (1) bearing No. 11,942-R dated 1st

October, 1983 and (2) bearing No. 11,943-R dated 1st October, 1983 issued by the Registrar. Appellate Side, High Court, Calcutta, by order of the Full Court, By the communication No. 11,942-R dated 1st October, 1983 the petitioner was suspended with retrospective effect from the forenoon of the 15th September, 1983 and by the communication No. 11,943-R dated 1st October, 1983 the petitioner was served with a charge-sheet containing three charges and also the list of documents and witnesses by whom the charges are proposed to be substantiated and the petitioner was called upon to submit a written statement against those charges. He was also informed that the departmental proceeding will be held against him in respect of the said charges. A copy of the said communication was annexed as Annexure II to the petition.

7. It has been stated that the order of suspension and the charge-sheet and the disciplinary proceeding are unauthorised and incompetent and without jurisdiction. It has been further stated that the petitioner who is an author of many books of law, had made comments on many judgments of this Hon''ble Court and also commented in his books that the judgment on the question of law rendered by this Court were erroneous. This perhaps is the basis of initiating the disciplinary proceeding against the petitioner. This application was allowed and the amendment petition was directed to be treated as a part of the writ petition and an interim order was made on 7th February, 1985 while allowing the amendment petition to the effect that the disciplinary authority might proceed with the disciplinary proceedings but no final order would be made until further orders of this Hon''ble Court.

8. Two affidavits-in-opposition sworn on 9th August, 1983 and 11th March, 1985 by Sudhangshu Sekhar Ganguly, Registrar, High Court. Appellate Side, Calcutta, on behalf of the Respondents 1 to 4 have been filed. In para 3 of the affidavit-in-opposition filed on 11th March, 1985 it has been stated that the writ application should be dismissed in limine as it is premature. It has been stated that the petitioner has already submitted his explanation to the charge-sheet and he inspected the documents for the purpose of raising objections regarding the maintainability of the said proceeding. This application is therefore not maintainable. It has also been stated in para 6 of the said affidavit that on 29th July, 1983 no departmental proceeding was started against the petitioner. It has been further stated that the interpretation of the second part of Article 235 of the Constitution as made in the petition is not the correct interpretation of the second part of the said Article. It has been stated that under Article 235 of the Constitution High Court in exercise of its control can deal with a Judicial Officer and all allegations contrary to it have been denied. The deponent has also stated that the Constitution vests in the High Court, Administrative, Judicial and Disciplinary Control over members of the judicial service. In para 9 of the said affidavit it-has been stated that no rules under Article 309 of the Constitution have so far been framed by the Governor regulating the conditions of service of persons employed in the judicial service of the State of West Bengal. It has been denied that there has been violation

of principles of natural justice in passing the order of suspension against the petitioner as stated in the petition. It has also been denied that the order of suspension of the petitioner from service is in derogation and disregard of the second part of Article 235 of the Constitution as alleged. The deponent has averred that the control vested in the High Court under Article 235 of the Constitution is complete control and in exercise of this power the High Court can hold a disciplinary enquiry and put a member of judicial service under suspension. It has been further stated that to uphold the image and dignity of the judiciary and to save embarrassment to all concerned the order of suspension during the pendency of judicial proceeding was considered to be most appropriate and proper and as such it was passed by the competent authority. It has been stated that the West Bengal Services (Classification, Control and Appeal) Rules, 1971 has no application to any member of the Judicial Service. It has also been denied that the power to suspend a judicial officer belongs to the Governor, u/s 17 of the Bengal General Clauses Act as wrongly suggested in the petition. The statement that in the absence of statutory rules High Court has no power to place the petitioner under suspension in contemplation of a departmental proceeding as made in the petition is wholly incorrect. It has also been stated that the order of suspension and charge-sheet issued against the petitioner are not unauthorised, incompetent and without jurisdiction. It has also been denied that the charge-sheet was issued with a closed mind. Other portions of the affidavit being not relevant are not referred to herein. An affidavit-in-reply sworn by the petitioner on 11th March, 1985 reiterating the statements and allegations made in the petition has been filed. It is not necessary to refer to all these statements and allegations which have already been made in the petition.

9. The first question that poses itself for consideration is whether the power of control over the District Courts and the Courts subordinate thereto as vested in the High Court by the first part of Article 235 of the Constitution extends to or includes within its ambit the power to initiate disciplinary proceeding against a member of the Judicial Service of the State and to suspend such Officer during the pendency of the disciplinary proceeding, even though neither any rule nor any law laying down or prescribing the terms and conditions of all the members of the judicial service as well as providing for appeal against the orders made by the High Court in exercise of its power of control have been made.

10. It has been contended by the petitioner Mr. Saha, himself appearing in person, before this Court that the High Court is not legally competent to initiate any disciplinary proceeding against any member of the judicial service of the State and also to pass any order suspending any member of the judicial service until and unless appropriate rules and/or law has been made laying down the terms and conditions of the judicial service and also providing for appeal that will be filed by the Officer concerned against the order made by the High Court under its control or jurisdiction.

11. It has been submitted further in this connection by the petitioner himself that in the absence of the rules laying down the conditions of service the exercise of its power of control by the High Court will obviously violate the principles of rule of law. It has also been submitted that this exercise of unlimited power without any guidelines as conferred by Article 235 is arbitrary and violative of Article 14 of the Constitution. It has therefore been submitted that the initiation of the disciplinary proceeding against the petitioner and issuance of charge-sheet and also the issuance of the order of suspension against the petitioner are absolutely illegal, arbitrary, unauthorised and without jurisdiction.

12. Undoubtedly no rule has yet been framed by the Governor regulating the conditions of service of members of the Judicial Service of the State nor any law has been enacted in this regard. Article 235 of the Constitution provides that the control over the District Courts and the Courts subordinate thereto including the posting and promotion and the grant of leave to persons belonging to Judicial Service of the State and holding any post inferior to the post of the District Judge shall be vested in the High Court. It has been further provided therein that the control over the persons of the judicial service of the State is subject to any right of appeal which any person of the judicial service may have under the law regulating the condition of his service. It has also been provided therein that the High Court while exercising this power cannot act in derogation of the conditions of service prescribed under such law. Thus Article 235 which vests control over the District Courts and the Courts subordinate thereto in the High Court clearly prescribed two limitations on the exercise of such power, namely -- (1) that the exercise of this power shall be subject to any right of appeal which any member of the judicial service may have under the law regulating conditions of his service and secondly this power has to be exercised in accordance with the conditions of service prescribed by such law.

13. Therefore on a consideration of the provision of Article 235 of the Constitution it cannot be inferred that High Court cannot exercise its power of control over the District Courts and the Courts subordinate thereto including posting and promotion and grant of leave etc. to persons belonging to the judicial service of the State, until and unless rules are framed by the Governor under Article 309 of the Constitution or any law has been made by the appropriate legislature laying down the conditions of service of the members of the judicial service. The scope of this Article came to be considered by the Supreme Court in the case of State of West Bengal v. Nripendra Nath Bagchi 1968-I L.L.J. 270 and it has been held that the word "control" as used under Article 235 includes disciplinary control or jurisdiction over District Judges. The history which lies behind the enactment of these articles indicates that control was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well as the very object would be frustrated. It has been further observed that the word "control" is accompanied by the word "vested" which is a strong word. It shows that the High Court has been made the sole custodian of the control over the

judiciary and it contemplates disciplinary jurisdiction on the Presiding edge. The control which has vested in the High Court is a complete control subject only to the power of Governor in the matter of appointment (including dismissal and removal) and posting and promotion of the District Judges. The High Court can in exercise of control vested in it hold enquiries, impose punishment other than dismissal or removal subject however to the conditions of service and a right of appeal if granted thereby and to the giving of an opportunity of showing cause as required under Clause (2) of Article 311, unless such opportunity is dispensed with by the Governor acting under provisos (b) & (c) to that clause. The High Court can alone hold this enquiry and to hold otherwise would be to reverse the trend which has moved determinedly in this direction. This observation of the Supreme Court has been followed in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, and it has been held that the disciplinary control is vested in the High Court by Article 235 of the Constitution and this control over the conduct and discipline of the Judges. When the High Court functions in a disciplinary capacity it has power to make enquiries and start disciplinary proceedings against judicial officers in furtherance of the administration of the justice. The same view has been reiterated by the Supreme Court in a later case of State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, : where it has been observed that the control vested in the High Court under Article 235 of the Constitution is complete control subject only to the power of the Governor in the matter of appointment including dismissal, removal, reduction in rank and initial posting and of initial promotion to District Judges. There is nothing in Article 235 to restrict control of the High Court in respect of Judges other than District Judges in any manner (sic) Article 311 has taken away the power of dismissal and removal and reduction in rank from the High Court and the Governor has been given that special power referred to in Article 311(3).

14. It has also been observed that administrative, judicial and disciplinary control over members of the judicial service of the State is vested solely in the High Court. The vesting of complete control over the Subordinate Judiciary in the High Court leads to this that the decision of the High Court in regard to matters within its jurisdiction will bind the State.

15. It is therefore clear on a conspectus of the above decisions that the High Court in exercise of its power of control vested in it under Article 235 of the Constitution can initiate disciplinary proceedings against any members of the judicial service of the State even though no Rules have been framed regulating the conditions of service of the members belonging to the judicial service of the State. Therefore, this submission made by the petitioner in person is a totally devoid of any merit and as such it is rejected.

16. The decision in Sant Ram Sharma Vs. State of Rajasthan and Another, is not applicable to the instant case as the facts of that case are different from the facts of the instant case. In that case the question arose whether in the absence of any

statutory rules covering promotion to the selection post Government can issue administrative instructions laying down the method of promotion. It was held that till the statutory rules are framed in this respect the Government is competent to issue administrative instructions regarding the principles to be followed for promotion for Officers concerned to the selection grade of course, the Government cannot amend the statutory rules by administrative instruction, but if the rules are silent on the particular point the Government can fill up the gap and issue instruction. This question is not involved in the present case and as such this decision has got no application to the instant case. I am constrained to hold that absence of law or rule will not render control vested in the High Court nugatory or inoperative merely on the plea that no rules or enactment has been made under Article 309 of the Constitution.

17. It has been tried to be submitted by the petitioner that Article 235 confers unlimited power in the High Court without laying down any guide lines to exercise its power in the matter of initiation of the disciplinary proceedings and as such the exercise of this power is arbitrary and violative of Article 14 of the Constitution. The submission, in my opinion, is of no substance inasmuch as the control over the District Courts and the Courts Subordinate thereto has been vested in the High Court by Article 235 of the Constitution and this power has to be exercised in accordance with the provision of Article 311 of the Constitution i.e. the members of the judicial service against whom the disciplinary proceeding is started, has to be given an opportunity of hearing as provided under Clause (2) of the Article 311 of the Constitution. Moreover the power has been vested in the High Court by the Constitution itself, as such this submission that the conferment of this power without any guideline is arbitrary and violative of Article 14 of the Constitution is wholly unsustainable. The petitioner has been served with the charge-sheet and he has been given time to submit his defence against the charge-sheet. Along with the charge-sheet a list of documents intended to be relied upon and names of witnesses to be examined in the proceedings to bring home the charges have been given and the petitioner has been asked to submit his reply to the said charge-sheet within certain period of time. In such circumstances it cannot be said that the principles of natural justice has been violated and the disciplinary proceeding has been initiated by the High Court arbitrarily.

18. It has been contended that the High Court acted without jurisdiction in passing an order of suspension against the petitioner as there is neither any law nor any rule conferring such power on the High Court and as such the order of suspension that has been made against the petitioner is wholly illegal and without jurisdiction. This submission is also not sustainable at all inasmuch as the High Court has got power to pass an order of suspension pending enquiry into the conduct of the members of the judicial service. This has been held in Balvantray Ratilal Patel Vs. The State of Maharashtra, where it has been held that the authority entitled to appoint public servant is entitled to suspend him pending the departmental enquiry into his

conduct or pending a criminal proceeding. It is also to be held that "it is equally well settled that the order of interim suspension can be passed against the employee while an enquiry is pending against his conduct even though there is no such term in the contract or appointment or under the rules but in such a case the employee would be entitled to his remuneration for the period of suspension, if there is no statute or rule in which it could be withheld. The suspension is always an implied term in every contract of service."

19. I have stated hereinbefore already that the control vested in the High Court includes not only administrative control but also disciplinary control over the members of the judicial service. In the instant case a disciplinary proceeding has already been started against the petitioner for enquiry into certain charges of misconduct and as such pending the disciplinary proceeding the impugned order of suspension has been made to uphold the image and dignity of the judiciary. This power of interim suspension is incidental to the power of disciplinary control. This order of suspension cannot be questioned as illegal or without jurisdiction. This submission is therefore overruled.

20. It has been tried to be contended by the petitioner that the rule of law requires that decision must be predictable i.e. person affected must know where he is and in what manner the decisions is rendered. In the instant case as I have said already that the disciplinary proceeding has been started by the High Court in due exercise of its power of control vested in it under Article 235 of the Constitution and the petitioner has been served with the charge-sheet containing the charges framed against him and the documents intended to be relied upon in the said disciplinary proceedings have also been mentioned. The petitioner applied for inspection of the said documents and inspection of the documents has been given to the petitioner by the High Court. The petitioner also filed his reply to the charges. In these circumstances it cannot be said that the rule of law has been violated. The proceedings are pending and as such it is premature to urge before this Court that the decision must be predictable as the decision is yet to be rendered in the said disciplinary proceeding. The argument therefore has got no substance.

21. For the reasons aforesaid the submissions made on behalf of the petitioner having failed this application fails and the Civil Order is dismissed. There will however be no order as to costs.

22. The prayer to stay is refused inasmuch as the question agitated has been finally settled by the decisions of the Supreme Court.