

S.V. Ramesh Vs. The State of Karnataka, rep. by its Principal Secretary and Another

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Court : Karnataka

Decided On : Mar-13-2015

Judge : P.B. Bajanthri

Appeal No. : Writ Petition No. 30703 of 2014 (S-DE)

Appellant : S.V. Ramesh

Respondent : The State of Karnataka, rep. by its Principal Secretary and Another

Advocate for Pet/Ap. : Sri. M.S. Bhagwat

Judgement :

(Prayer: This Writ Petition filed under Article 226 of the Constitution of India praying to call for records pertaining to the impugned Government Order dated 29.5.2014 issued by the R1 vide Annexure-A, and the articles of charge dated 12.6.2014 issued by the R2 vide Annexure-B.)

1. The petitioner has questioned the Government Order dated 29.5.2014 by which the disciplinary proceedings are entrusted to Upalokayukta and articles of charge dated 12.6.2014 issued by respondents 1 and 2 respectively vide Annexures-A and B insofar as petitioner is concerned.

2. The petitioner is stated to have been recruited as Assistant Engineer in the Bangalore Water Supply and Sewerage Board (for short, Board) on 29.9.1998. He was promoted to the post of Assistant Executive Engineer by the Board on 27.10.2007(Annexure-C1).

3. During the period from 1.9.2008 to 15.6.2009 petitioner was on deputation to Bruhat Bangalore Mahanagara Palike (for short, BBMP). The Office of the Karnataka Lokayuktha received complaint about the inaction of the petitioner and others alleging that unauthorized construction is undertaken at site No.B/7, 17, I Main, 5th Block, Koramangala, Bangalore, by encroaching upon public park and below the high-tension wire. The complaint was made by Sri. Ashwath Narayana Rao, R/o.No.472, 8th Block, Koramangala, Bangalore. In pursuance of the complaint and various correspondences the office of the Lokayuktha issued a show-cause notice to the petitioner on 20.12.2013 seeking explanation of the petitioner in respect of the complaint/allegations made by one Sri. Ashwathnarayana Rao. The petitioner is stated to have submitted his explanation/reply to the show cause noticed dated 20.12.2013 on 16.1.2014. The second respondent dissatisfied with the explanation of the petitioner proceeded to investigate the matter and prepared a report under Section 12(3) of the Karnataka Lokayuktha Act, 1984.

4. The Upalokayuktha forwarded report prepared under Section 12(3) to the Government to proceed under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short CCA Rules).

5. In pursuance of the report of the Upalokayuktha and communication dated 1.4.2014 the first respondent by its order dated 29.5.2014 vide Annexure-A entrusted the disciplinary proceedings to the Upalokayuktha under Rule 14-A of CCA Rules. Thereafter, on 5.6.2014 the Upalokayuktha nominated one Sri.A.M. Bennur, Additional Registrar Enquiries-10, office of the Karnataka Lokayukta, Bangalore, as an Inquiring Officer. Consequently, on 12.6.2014 the Inquiring Officer framed article of charges against the petitioner and two others. The petitioner aggrieved by the order of entrusting disciplinary proceedings to Upalokayuktha under Rule 14-A of CCA Rules and framing of Articles of charge

filed the above petition.

6. Heard Sri. M.S. Bhagwat, counsel for the petitioner, Smt. Prathima Honnapura, Government pleader for Respondent No.1 and Sri. Mallikarjun C. Basareddy, counsel for Karnataka Lokayuktha, Respondent No.2.

7. The petitioners counsel submitted that petitioner is a Board employee and as such CCA Rules are not applicable. Consequently, the order of entrusting disciplinary proceedings to the Upalokayukta invoking Rule 14-A of CCA Rules dated 29.5.2014 is without authority of law.

It was further contended that petitioner is not a government servant, consequently Upalokayuktha can conduct enquiry only against Government servants and not against Board employees like petitioner. In support of this contention, he has relied on the decision in Kuldeep Singh .vs. Commissioner of Police [1999(2) SCC 10] para 28; D. Manu and another .vs. State of Karnataka in W.P.25502/2005 disposed of on 15.9.2008 and K.S. Srinivasan .vs. The State of Karnataka and others in W.P.No.36932/99 disposed of on 6.1.2005. Overall submission of the petitioners counsel is that CCA Rules are not applicable, the BWSSB (Board) has not adopted KCS(CC and A) Rules, 1957 and the first respondent has not examined report of the Upalokayukta submitted under 12(3) read with 12(4) of Karnataka Lokayukta Act, 1984.

8. The learned Government Pleader produced two notifications bearing No.SWL.72.LBW.82 dated 12.10.1982 and Notification No.BWSSB/CAO-S/112/EST-1/4163/2005-06 dated 1.3.2006 to contend that Board has adopted CCA rules. Thus, invoking Rule 14-A of CCA Rules by the first respondent-Government in entrusting the disciplinary proceedings to the Upalokayuktha is in order.

9. The learned Government Pleader further submits that when CCA Rules are adopted by the Board to its employees like petitioner, there is one more provision by which the first respondent-Government-Urban Development Department is empowered to initiate disciplinary proceedings viz., under Rule 15(2)-B of CCA Rules, which provides for taking disciplinary action against Board employees who

are on deputation to BBMP.

This has been pointed out with reference to the deputation of the petitioner from Board to BBMP. The deputation and repatriation power is vested with the first respondent-Government-Urban Development Department. Therefore, there is no infirmity insofar as entrustment of disciplinary proceedings is concerned. It is further contended that entrustment of disciplinary proceedings order dated 29.5.2014 has been passed after due examination of 12(3) report of the Upalokayuktha. It is also contended that the judgment cited by the petitioners counsel are not relevant to the present case having regard to the adoption of CCA Rules by the Board read with Rule 14-A and 15(2)-B of the CCA Rules. In support of this contention the learned Government pleader relied on decision of the Apex Court viz., *Nair Service Society v. Dr. T. Beermasthan*, (2009) 5 SCC 545, wherein it is held as follows:

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.

Thus, the petitioner has not made out a case so as to interfere with the entrustment of disciplinary proceedings as well as framing of article of charges.

10. The learned counsel for the second respondent-Karnataka Lokayukta submitted that Office of Lokayukta has got powers to investigate the complaints and to take further action in accordance with the provisions of the Karnataka Lokayuktha Act, 1984 read with Section 124 of BWSSB Act, 1964. Accordingly, the action taken by the first and second respondents are in order and there is no infirmity or lacuna in submitting 12(3) report and seeking entrustment of disciplinary proceedings under Rule 14-A of CCA Rules and further framing of article of charges.

11. The learned counsel for the petitioner submitted that he is an employee of the Board. The Government-first respondent has no power to take disciplinary action against Board employees, since there are no provisions to take disciplinary action under BWSSB Act, 1964. In this background, it is necessary to examine certain provisions of the BWSSB Act, 1964. Section 4 relates to term of office and conditions for re-appointment of members of Board. Section 5 relates to disqualification for becoming a member of the Board. Section 12 relates to appointment of staff. An extract of Section 12 is reproduced herein:-

12. Appointment of staff.- The Board may appoint a Secretary, a Chief Engineer, a Sanitary Engineer, a Water supply Engineer and such other Officers, and servants as may be required to enable the Board to carry out its functions under this Act.

Provided that the appointment of the Secretary, the Chief Engineer, the Sanitary Engineer and the Water Supply Engineer shall be (made after consultation with) the State Government.

Section 89 relates to directions by the State Government. Extract of Section 89 is reproduced herein:-

89. Directions by the State Government.-(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(Provided that such direction shall be given after consultation with the Board.)

(2) In case of any difference of opinion as to what is a question of policy the decision thereon of the State Government shall be final.

Further, Section 124 reads as under:-

124. Members, Officers and servants of the Board to be public servants.-(1) All members, Officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of the provisions of this Act or any rule or regulation made thereunder, to be public servants within the meaning of Section 21 of the Indian Penal Code(Central Act 45 of 1860) and the Prevention of Corruption Act,

1947 (Central Act 2 of 1947) for the time being in force.

(2) The words State Government and Government in Section 161 of the Indian Penal Code shall for the purposes of sub-section(1) be deemed to include the Board.

In view of the aforesaid provisions, the learned counsel for the petitioner submits that Board is the appointing authority and disciplinary authority since petitioner was promoted to the present cadre by the Board. The State Government is not identified anywhere as disciplinary authority or competent authority to take disciplinary proceedings against Board employees like the petitioner. Therefore, the first respondent-Government-Urban Development Department action in entrusting disciplinary proceedings to the Upalokayukta is without authority of law and consequently, framing of Article of charges by the Inquiring authority is illegal.

12. It is relevant to reproduce Section 12 (3) and (4) of the Karnataka Lokayukta Act, which reads hereunder:-

12(3). If, after investigation of any action (xxxx) involving an allegation has been made, the Lokayukta or an UpaLokayukta is satisfied that such allegation (is substantiated) either wholly or partly, he shall by report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the Competent Authority.

(4) The Competent Authority shall examine the report forwarded to it under sub-section (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upa-lokayukta the action taken or proposed to be taken on the basis of the report.

13. Section 12(4) of the Karnataka Lokayukta Act commands that the competent authority shall examine the report forwarded to it under Sec.12(3) of the Karnataka Lokayuktha Act. The first respondent while entrusting disciplinary proceedings to the Upalokayukta has not complied with the examination of Sec. 12(3) report. What has been stated in the order is that report and documents have been examined. The decision is only conclusive. There is no material to show,

examination of the report by the first respondent-Government. When Section 12(4) of Karnataka Lokayuktha Act mandates i.e. shall examine, it was duty cast on first respondent to reveal how the report has been examined. From a reading of the impugned Government Order, it is crystal clear that there is no examination of report. Thus, it is an arbitrary decision.

14. In view of the notifications dated 12.10.1982 read with 1.3.2006, which are produced by the learned government pleader it is evident that CCA Rules are applicable. Therefore, the contention of the petitioner that the CCA rules are not applicable since they have not been adopted is not tenable. Rule 15 (2)-B of CCA Rules can be invoked by the first respondent-Government only in the circumstances where the first respondent and the BBMP takes a decision to initiate disciplinary proceedings against Board employees like the petitioner. In the present case, the action has been taken under the provisions of the Karnataka Lokayukta Act, 1984. Consequently, Rule 15(2)-B of the CCA Rules has no application.

15. The Upalokayukta while forwarding report under Section 12(3) of the Karnataka Lokayukta Act sought for entrustment of disciplinary proceedings under Rule 14-A of the CCA Rules. Seeking such entrustment with reference to Section 12(4) of the Lokayukta Act without examining what is the role of the Government in respect of Board employees like the petitioner. In other words, whether the Government-first respondent can be a disciplinary authority or not with reference to the Bangalore Water Supply and Sewerage Act, 1964 in particularly Section 12 read with Section 89 and 124 where the Board is the appointing authority for all purpose and role of the Government is only to issue necessary directions to the Board on questions of policy as may be given to it and in case of any difference of opinion as to what is a question of policy, the decision whereof of the State Government etc. In other words, there is no specific provision provided in the BWSSB Act, 1964 empowering the Government to take disciplinary action against Board employees. Therefore, 2nd respondent seeking entrustment of disciplinary proceedings to Government is without application of mind. Consequently, the impugned order dated 29.5.2014 by which the first respondent-Government entrusting disciplinary proceedings to the Upalokayukta under Rule 14-A of CCA

rules and further action of framing of article of charges dated 12.6.2014 under Rule 11 of CCA Rules are without authority of law.

16. No doubt Rule 14-A of CCA Rules gives powers to the Government. However, BWSSB Act 1964 could not prevail over the CCA Rules. At this juncture, it is relevant to note that under BWSSB Act, role of the Government is limited and it has no power in respect of taking disciplinary action against the employees of the Board. At the same time it is to be noted that insofar as taking action under Section 21 of IPC and the Prevention of Corruption Act is concerned, it is specifically provided that State Government and Government for the aforesaid Act that it should for the purpose of sub-section(1) of Sec.124 of BWSSB Act be deemed to include the Board. In other words, Government is replaced by Board. Therefore, issuance of the impugned order by the Government and framing of article of charge by the Inquiry authority are without authority of law.

17. Decisions cited by the learned counsel for the petitioner are not relevant to the present case since some of the provisions like BWSSB Act was not the issue therein.

18. The Apex Court in number of decisions held that an authority can act within the four corners of the laws which are provided for exercising statutory provision. In the present case, the State Government exceeded its authority in entrusting disciplinary proceedings to the Upalokayukta in the absence of specific provision in the BWSSB Act, 1964. Therefore, issuance of impugned order dated 29.5.2014 and article of charges dated 12.6.2014 by respondents 1 and 2 are without jurisdiction.

19. The Apex Court in *Chairman-cum-Managing Director, Coal India Limited and Others (2011) 5 Supreme Court Cases 142* at paragraphs 32 and 33 has held as under:-

32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33 In *Badrinath V. Govt. of T.N.* this court observed that once the basis of a proceedings is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. (See also *State of Kerala v. Puthenkavu N.S.S. Karayogam and Kalabharati Advertising v. Hemant Vimalnath Narichania*).

Further, the Apex Court in (2004) 6 SCC 440; 2011(5) SCC 435; (2012)5 SCC 242 and AIR 2014 SC 88 has held as under:-

Captain Sube Singh v. Lt. Governor of Delhi, (2004) 6 SCC 440;

29. In *Anjum M.H. Ghaswala* a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection *Dhananjaya Reddy v. State of Karnataka*). The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof.

Joint Action Committee of Air Line Pilots Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435;

27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji, Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Pancham Chand v. State of H.P.*, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order.

Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

Vijay Singh Vs. State of Uttar Pradesh and others, (2012) 5 SCC 242;

14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide *Bachhittar Singh v. State of Punjab*, AIR 1963 SC 395; *Union of India v. H.C. Goel*, AIR 1964 SC 364; *Mohd. Yunus Khan v. State of U.P.*, (2010) 10 SCC 539; and *Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha*, (2011) 5 SCC 142.

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.

Union of India and others v. B.V. Gopinath, AIR 2014 SC 88;

43. Accepting the submission of Ms. Indira Jaising would run counter to the well known maxim *delegatus non potest delegare* (or *delegari*). The principle is summed up in *Judicial Review of Administrative Action* De Smith, Woolf and Jowell (Fifth Edition) as follows:-

The rule against delegation

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.

The same principle has been described in Administrative Law H.W.R. Wade and C.F. Forsyth (Ninth Edition), Chapter 10, as follows:-

Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power.

44. This principle has been given recognition in Sahni Silk Mills (P) Ltd. (1994 AIR SCW 3832) (supra), wherein it was held as under:

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place.

The aforesaid principle is applicable to the present case.

20. The writ petition is allowed. The impugned order dated 29.5.2014 and article of charges dated 12.6.2014 issued by respondents 1 and 2 vide Annexures-A and B respectively are set aside. No order as to costs.

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