SUBHAS CHANDRA AND OTHERS

v.

MUNICIPAL CORPORATION OF DELHI AND ANOTHER

September 25, 1964

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Punjab Municipal Act (Punj. III of 1911), *ss.* 232, 235 *and* 236—*Scope of.*

The now defunct Municipal Committee of Delhi resolved in November 1957 that a graduate allowance should be paid to its graduate clerks in the junior grade. The Municipal Committee was replaced by the Municipal Corporation of Delhi under Act 66 of 1957 and the Commissioner of the Corporation admitted the claim only of those graduate junior grade clerks who were granted permission to pursue higher studies before July 1954. The petitioners who were other clerical employees serving the Corporation moved the Supreme Court by a petition under Art. 32 of the Constitution alleging that the order of the Commissioner was discriminatory because there was no rational basis for excluding them from the benefits of the resolution. The respondents contended that the Chief Commissioner of Delhi by his order dated October 30, 1956, passed under s. 232 of the Punjab Municipal Act (3 of 1911), had prohibited the granting of such special pays or other pecuniary benefits and so, the impugned order being itself without jurisdiction the petitioners could not complain of being discriminated against.

HELD : The Order of the Chief Commissioner was perfectly legal and in view of that Order it was not open to the Committee to sanction the payment of any allowance to any of its employees in November 1957. The resolution being without jurisdiction, the Commissioner of the Corporation could not treat it as a basis for sanctioning the graduate allowance to a graduate employee. The order of the Commissioner being thus illegal, no question of discrimination arises and the petition should be dismissed. [359 B-D].

By virtue of the provisions of the Delhi Laws Act 1912, Adaptation of Laws Order, 1950, and s. 3 of the General Clauses Act, 1897, the Chief Commissioner could make the order under s. 232 of the Punjab Municipal Act, 1911. He had two sources of power under s. 232 and s. 236 and was free to avail himself of either source. Section 232 certainly empowered him to prohibit the Committee from granting special pay or other pecuniary advantage to its employees when it was "about to" do so. When the doing of an act was so prohibited, the Committee ceased to have any power to do it and a resolution passed by it that such act may be done can have no legal validity. The precise meaning that should be given to the expression "about to" depends upon the context in which it is used, but there is no difficulty in the instant case because, the order itself mentions that it was made to appear to the Chief Commissioner that the Municipal Committee was "about to" grant special pay or other pecuniary benefits to some of its employees. Though no opportunity was given to the Committee as required by s. 235 of the Punjab Municipal Act, the Committee can acquiesce and waive such non-compliance, and since the section does not require that an opportunity should be given to the parties affected by

the Order of the Chief Commissioner, they are not entitled to say the Order is bad. Further, the section would be inapplicable in a case where the Order was passed by the Chief Commissioner himself. [354D-G; 355A-C. D-F; 357D-G; 358F-G].

ORIGINAL JURISDICTION: Writ Petition No. 33 of 1964.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

K. Baldev Mehta, for the petitioners.

S. G. Patwardhan and *O. C. Mathur* for the respondents.

The Judgment of the Court was delivered by

Mudholkar J. Eleven clerical employees serving the Corporation of Delhi have moved this Court under Art. 32 of the Constitution for quashing an order dated November 5, 1958 made by the Commissioner of the Corporation of Delhi and issuing a writ of *mandamus* or other appropriate writ, order or direction requiring the respondents to give effect to a resolution dated November 1/8, 1957 passed by the Executive and Finance Sub-Committee of the now defunct Municipal Committee of Delhi. The main ground on which the reliefs are claimed is that the action of the Commissioner in making the order has resulted in discrimination against the petitioners.

In order to appreciate the point some facts have to be stated. Prior to the year 1948 the Municipal Committee recruited matriculates and non-matriculates as clerks in the junior grade of Rs. 35-2-65-3-95. In order to attract better qualified persons they offered Rs. 45 as starting salary for graduates in this grade. Thereafter the Committee, by its resolution dated September 16, 1948, revised the grades and scales of pay for its entire staff on the basis of the recommendations of the Central Pay Commission appointed by the Government of India. By this resolution the Committee created two junior grades for recruitment of clerks, a grade of Rs. 55-3-85-4-125-5-130 for matriculates and the grade of Rs. 45-2-55-3-95-4-105 for non-matriculates.

According to the petitioners the Committee, in order to attract graduates and persons of higher academic qualifications and for giving an impetus to the clerical employees for pursuing higher studies, decided by the same resolution, *inter alia,* that graduates working in the junior grade would be paid a "graduate allowance" of Rs. 20 p.m. Further, according to them, this was sanctioned by the Chief Commissioner, Delhi by Memo No. F. 2(102)48-L.S.G. dated July 26/27, 1949.

It is common ground that by resolution No. 447 dated July 16, 1954 as amended by resolution No. 550 dated July 30, 1954 the Committee stopped payment of the graduate allowance to future recruits but continued its payment to such of the permanent and temporary employees in the junior grade who were already in receipt of the allowance. Thirty employees of the Committee made representations to the Committee against confining the payment of the allowance only to those persons who were already in receipt of it and demanded that this allowance should be paid to every employee who passed his B.A. examination after 1954 as well as to every graduate employee recruited after 1954. This representation succeeded and by resolution No. 693 dated November 1, 1957 the Committee resolved that the system of payment of personal pay of Rs. 20 per mensem to all graduates in the junior grade be revived and that the necessary sanction of the Chief Commissioner to this proposal be obtained. On November 8, 1957 the Committee amended the aforesaid resolution by resolution No. 701 and directed that the words "Necessary sanction of the Chief Commissioner be obtained" appearing at the end of the resolution be deleted. According to the petitioners, therefore, this resolution came into operation immediately and they became entitled to payment of Rs. 20, with retrospective effect.

Before this resolution could be implemented the Municipal Committee of Delhi was replaced by the Municipal Corporation of Delhi by the coming into force of the Delhi Corporation Act, 1957 (66 of 1957). The petitioners, therefore, approached the Commissioner of the Corporation and requested him to give effect to the resolution of November 1, 1957 as amended by the resolution dated November 8, 1957. By Office Order No. 1343 EST (58) dated November 5, 1958 the Commissioner admitted the claim for payment of graduate allowance to those graduate junior grade clerks of the erstwhile Delhi Municipal Committee who had been granted permission to pursue higher studies before July 30, 1954, but not to the remaining 18 persons. The grievance of the petitioners is that this Order of the Commissioner is discriminatory because there is no rational basis for excluding them from the benefit of the aforementioned resolution of the Committee. The petitioners then moved a petition under Art. 226 of the Constitution before the High Court of Punjab but eventually withdrew it. They have now come to this Court under Art. 32 of the Constitution.

The petitioners' application is resisted on behalf of the Corporation on two main grounds. The first ground is that they

have come to this Court after a long delay and the other ground is that the impugned order of the Commissioner was itself without jurisdiction and, therefore, the petitioners cannot complain of being discriminated against.

The petitioners admit that there was a delay of about five years in making this petition but they explain it by pointing out that all this was occasioned by reason of the fact that their writ petition remained pending in the High Court of Punjab for almost five years and that they had to withdraw it ultimately because the learned Judge before whom the petition went for final hearing pointed out that in view of a previous decision of the High Court a joint petition of the kind was not entertainable. Further, according to them, where a person seeks to enforce a fundamental right under Art. 32 of the Constitution mere delay cannot stand in his way. In our opinion, it is not necessary to pronounce upon this point because the petition must fail on the other ground urged on behalf of the respondents.

It is true that no resolution of the Committee nor any rule or bye-law has been brought to our notice which requires that an employee must, before pursuing higher studies, obtain the permission of the Committee and, therefore, there was no reasonable basis for treating the petitioners differently from the 12 persons whose claim to the allowance was admitted by the Commissioner. But the question is whether the Commissioner could legally admit the claim even of those 12 persons. Mr. Patwardhan, appearing for the respondents, contends that the Chief Commissioner of Delhi by his Order dated October 30, 1956 made in exercise of the powers vested in him by s. 232 of the Punjab Municipal Act 1911 (hereafter referred to as the Act) prohibited all municipal and notified area Committees within the State of Delhi, from among other things, revising the existing scales of pay of any of their employees and granting any special pay or any other pecuniary benefits to them. The Committee was therefore, according to Mr. Patwardhan, incompetent to pass the resolution No. 693 dated November 1, 1957 and then amend it by resolution No. 701 dated November 8, 1957. Mr. Baldev Mehta appearing for the petitioners challenges the validity of the order of the Chief Commissioner on the grounds that it was beyond the scope of s. 232 of the Act and that no opportunity was given to the Committee to offer an explanation as contemplated by s. 235 of the Act nor was any order ultimately made under that section.

In the first place, according to him, s. 232 of the Act could not be resorted to by the Chief Commissioner but only by the Deputy Commissioner. Before the passing of Punjab Act 34 of 1953 this section read as follows:

> "232. The Commissioner or the Deputy Commissioner may by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if, in his opinion the resolution, or order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely, to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons."

By the aforesaid Act the words "Commissioner or the" were deleted. It has not been brought to our notice that the amending Act was applied to the State of Delhi. We must, therefore, proceed on the footing that the word "Commissioner" was still there in s. 232 of the Act as applied to the State of Delhi. By virtue of the provisions of the Delhi Laws Act, 1912 contained in Schedule B as adapted by the Adaptation of Laws Order, 1950, the expression "the Commissioner" used in any enactment applicable to the State of Delhi has to be read as "the State Government of Delhi". The expression "State Government" as defined in sub-s. (60) of s. 3 of the General Clauses Act, 1897 shall as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956 mean, in a Part C State, the Central Government. "Central Government" is defined in sub-s. (8) of s. 3 of that Act and meant in relation to a Part C State like Delhi, the Chief Commissioner thereof. Clearly, therefore, the Chief Commissioner could make an order of the kind we have to consider here under s. 232 of the Act.

Mr. Mehta, however, contends that what the Chief Commissioner could do under the section before the Delhi Corporation Act of 1957 came into force was to suspend the execution of a resolution or order of a Committee or prohibit the doing of an act which was about to be done and that it did not empower him to prohibit

the Municipal Committee from passing a resolution. It is true that the section did not enable the Chief Commissioner to prohibit a Committee from passing a particular kind of resolution but it certainly empowered him to prohibit the Committee from doing an act which was about to be done. Here, the order of the Chief Commissioner to which we have adverted, in fact prohibited the Committee from, among other things, granting special pay or any other pecuniary advantage to any of its employees. What was thus expressly prohibited was the doing of an act but not passing of a resolution. Even so, we think that when the doing of an act was prohibited the Committee ceased to have any power to do that act and a resolution passed by it to the effect that the act be done, can have no legal validity.

But, Mr. Mehta said, the power of the Chief Commissioner was exercisable only when the Municipal Committee was *about to* do something and not to prohibit something in the distant future. In this regard he has referred us to the meaning given to the expression "about to" in Stroud's *Judicial Dictionary* and to an English decision referred to therein. What precise meaning should be given to the expression must naturally depend upon the context in which it is used but it does involve the element of anticipation. To this extent, therefore, Mr. Mehta is right that s. 232 does not authorise the authorities mentioned therein to make a blanket prohibition as to the doing of an act or a series of acts unless the authority anticipated that such acts would be done. There is, however, no difficulty in the case before us because the order itself mentions that it had been made to appear to the Chief Commissioner that the Municipal Committee of Delhi, amongst other things, was about to revise the existing scales of pay of its employees, creating posts and granting advance increments or special pay or other pecuniary benefits to some of its existing employees. The obvious reason for making this order was that the Municipal Committee was soon to cease to exist and the Corporation of Delhi to take its place. The Chief Commissioner, therefore, did not want the Committee to enter into commitments which would bind its successor. A perusal of the proceedings of the Committee during the relevant period shows that the Committee had before it numerous proposals relating to the emoluments of its employees and the Chief Commissioner must have known about them.

Mr. Mehta then contended that if upon its true construction s. 232 permitted the Chief Commissioner to suspend the execution of any resolution or order of a Committee but did not prohibit

the passing of a resolution the Committee was quite competent to pass the resolutions of November 1 and 8, 1957 and in this connection he referred us to the decisions of the Punjab High Court in *Mistri Mohammad Hussain* v. *Municipal Committee, Sialkot*(1), *Lahore Municipality* v. *Jagan Nath*(2) and *Mahadeo Prasad* v. *U. P. Government*(3). None of these cases helps him but one of them goes against his contention. In the first case the Deputy Commissioner had ordered the suspension of a resolution passed by a Committee sanctioning the construction of a platform after the platform had been constructed. In order to give effect to the orde- the Committee ordered under s. 172 the demolition of the platform. The High Court held that as the platform could not be said to have been constructed without sanction its demolition could not be ordered under s. 172. In the second case the High Court, following the above decision, held that under s. 232 the Deputy Commissioner can prohibit the doing of an act or suspend the execution of a resolution before the act was done or the resolution carried out. In the third case the Allahabad High Court had, amongst other provisions, to consider s. 34(1) of the U. P. Municipalities Act, 1916 whereunder the District Magistrate could prohibit the execution or further execution of a resolution passed by a Municipal Committee. The High Court pointed out that this provision did not, as did the corresponding provision in an earlier Act, empower the District Magistrate to make an order in anticipation of an act which was about to be done. This case is thus distinguishable.

Then there is the objection of Mr. Mehta that no opportunity was given to the Municipal Committee to show cause against the order of the Chief Commissioner as required by s. 235 of the Act. It is obvious that s. 235 applies to a case where an order was made by an authority subordinate to the State Government and does not, in terms, apply to an order made by the State Government (here, the Chief Commissioner) itself. Mr. Mehta, however, contends that the essential requirement of s. 235 is that the Committee must be given an opportunity to be heard and such opportunity cannot be dispensed with even if the original order under s. 232 is made by the State Government. According to him, the non-compliance with this requirement has rendered the order void and ineffective. In support of this contention he relies on the decision in *Abdul Gaffoor* v. *State of Madras*(4). That was a case in which a Municipal

Committee had granted the application of the petitioner under s. 250 of the Madras District Municipalities Act, 1920 and permitted him to instal an oil engine to run his cinema but had rejected a similar application by the second respondent. The Government, acting under s. 252 of the Madras Act, set aside the resolution of the Municipality and directed it forthwith to accord its permission to respondent No. 2 to instal an oil engine. The High Court quashed the order of the Government on the ground that the Government could not make such an order without giving an opportunity to the petitioner, who was affected by the order, to offer an explanation as contemplated by the first proviso to s. 36 of the Act. This decision cannot afford any assistance to the petitioners before us as there is no provision in the Punjab Municipal Act analogous to the above provision requiring the Government to afford an opportunity to all the persons affected, to offer an explanation. Section 235 requires the State Government to give an opportunity to the municipality and to none else. No grievance is alleged to have been made by the Committee of the omission by the Government to give it the opportunity contemplated by s. 235. It has to be borne in mind that an order under s. 232 takes effect immediately and its operation is not made dependent upon the action contemplated under s. 235. Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report its order is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in s. 235 is complied with it cannot be regarded as final. But want of finality does not vitiate the order under s. 232. The order is, unless modified or annulled by the State Government, legally effective and binding on the Committee. The Committee can, therefore acquiesce in it and waive the non-compliance by the State Government with the provisions of s. 235. Since section 235 does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that the order is bad. The decision relied on thus does not assist them. Besides, as we have already pointed out, in the present case s. 235 is wholly inapplicable because the order in question has been passed by the Chief Commissioner.

Then, according to him, the Chief Commissioner or the State Government could not resort to s. 232 of the Act which is a general provision but could act only under s. 236, sub-s. (2)

read with sub-s.(1) which is a special provision dealing with the powers of the State Government. The provision runs thus:

> "236(1). The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committees have authority.
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> (2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under section 232."

Comparing them with those of s. 232 it would be apparent that though there is a certain amount of overlapping when we read in s. 232 the words 'State Government' for 'Commissioner', the ambit of the two provisions is not quite the same. The overlapping is due to the fact that the two provisions are contained in an Act which was passed in 1911 for being applied in the former Province of Punjab and that it was by virtue of the Delhi Laws Act, 1912 that they were applied to the erstwhile province of Delhi with certain modifications. In its original form the power under s. 232 was not exercisable by the Provincial Government. It is only because of the modification made in s. 232 that the words "the Provincial Government of Delhi" and later "the State Government of Delhi" had to be read for the word "Commissioner" in s. 232. As a result of the overlapping between the two sets of provisions in their application to the State of Delhi what has happened is that two sources of power, one under s. 232 and another under s. 235, are now available to the State Government and it was free to avail itself of either source.

Finally, according to Mr. Mehta the proper provision under which action could be taken by the authorities was s. 42 and this provision rendered s. 232 inapplicable. Under that provision a Deputy Commissioner can check extravagant expenditure by the Committee and order it to reduce the remuneration of any of its employees but that action under it cannot be taken in anticipation. No ground has been raised in the petition in regard to this. That apart, here we are concerned with the competence of the State

Government to make an order of the kind which the Chief Commissioner made on October 30, 1956. That provision could not have been resorted to by him and cannot, therefore, be regarded as a special provision which excluded the utilisation of s. 232. Further, it cannot be so construed as to disentitle the authorities mentioned in s. 232 from prohibiting in anticipation an action such as increasing the emoluments of its employees.

We are satisfied that the order of the Chief Commissioner dated October 30, 1956 was perfectly legal and in view of that order it was not open to the Committee to sanction the payment of an allowance to any of its employees thereafter. The resolution passed by it on November 1, 1957 was, therefore, beyond its jurisdiction and consequently the Commissioner of the Corporation could not treat it as a basis for sanctioning the allowance of Rs. 20 p.m. to any graduate employee of the Municipal Committee who was not in receipt of the allowance till then. The order of the Commissioner dated November 5, 1958 being thus illegal no question of discrimination arises.

The petition is dismissed; but in the circumstances of the case we make no order as to costs.

Petition dismissed.