

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BHAGWANT SINGH JAIN,—Petitioner.

versus

SHRI R. L. SUDHIR, I.A.S., DEPUTY COMMISSIONER,
MOHINDERGARH AND OTHERS,—Respondents.

Civil Writ No. 420 of 1970.

March 16, 1970.

The Patiala Municipal (Executive Officers) Act (VI of 2003 Bk.)—Sections 3 and 10—Punjab Municipal Act (III of 1911) Sections 10 and 232—Deputy Commissioner—Whether has the jurisdiction to suspend or remove an Executive Officer—Word 'suspension' in section 10—Whether relates to suspension of an Executive Officer.

Held, that the powers of appointment of an Executive Officer vest with the State Government under section 3(1) of the Patiala Municipal (Executive Officers) Act, 2003 Bk. He can be suspended or removed from that post by the State Government *suo motu* or on the recommendation of the Municipal Committee in the manner provided in sub-section (4) of section 3 of the Act. No doubt under section 10 of the Act, the Government of the State, the Minister Incharge and the Nazim (Deputy Commissioner) have been given all the powers of control, inspection, requisition, suspension and all other powers whatsoever that are conferred upon them respectively in respect of the Committee by Chapter XII of the Punjab Municipal Act, in respect of the orders of the Executive Officers, but the word 'suspension' in this section does not relate to the suspension of the Executive Officer but to the suspension of his orders under section 232 of the Punjab Municipal Act. Hence a Deputy Commissioner has no power to suspend or remove an Executive Officer and such a power vests in the State Government. (Para 3).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ order or direction be issued quashing the impugned order dated 12th February, 1970, passed by respondent No. 1 (Annexure 'C') and further praying that an ad interim writ, direction or order be issued by this Hon'ble Court staying the operation of the impugned order, dated 12th February, 1970 (Annexure 'C') during the pendency of the writ petition in this Hon'ble Court.

H. L. SARIN, SENIOR ADVOCATE WITH V. C. NAGPAL AND H. S. AWASTHY, ADVOCATES, for the appellant.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL (HARYANA), for the respondents.

JUDGMENT

B. R. TULI, J.—The petitioner served as Executive Officer in various Municipalities and his last appointment was in Municipal Committee, Narnaul, which was made by the Governor of Haryana on August 8, 1969, for a period of one year from the date he took charge of the post. The petitioner took charge of his post on August 19, 1969, and was suspended by the Deputy Commissioner, Mohindergarh, by order, dated February 12, 1970. The reasons for suspension were certain irregularities in the accounts of the Municipal Committee which were brought to light by the Sub-Divisional Officer (Civil), who was deputed to make an inspection in response to the complaints made by the Municipal Commissioners. The petitioner filed the present writ petition challenging that order principally on the ground that under the Patiala Municipal (Executive Officers) Act, 2003 Bk. (hereinafter called the Act), which is admittedly applicable to Narnaul Municipal Committee, the Deputy Commissioner has no jurisdiction to suspend an Executive Officer, this power being vested in the State Government. The petitioner has also alleged that the order of his suspension is *mala fide* because it was passed by the Deputy Commissioner in order to appease the Municipal Commissioners and general public, who turned against him as a result of the demonstrations on January 31, 1970, which were held to protest against the decision of the Central Government on Chandigarh. I do not find any force in the second allegation made which is not supported by any facts. It is also to be remembered that the complaints against the petitioner were made much earlier and the enquiry was ordered in December, 1969. The enquiry officer made his report in January, 1970, before the Central Government took a decision on the issue of Chandigarh. I, therefore, repel this allegation of the petitioner as without foundation.

(2) I, however, find force in the first submission of the learned counsel for the petitioner. The relevant sections of the Act are sections 3 and 10 reading as under :—

- “3. (1) The Government of the State may appoint any person as Executive Officer of the Committee for a renewable period not exceeding 5 years and he would be classed in the grade of Under Secretaries in respect of pay and grade.
- (2) When a member of the Committee is appointed Executive Officer, he shall on his appointment cease to be a member of the Committee.

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- (3) The remuneration of such Executive Officer shall be payable by the Committee from the Municipal fund.
- (4) The Executive Officer may at any time be suspended or removed from office by the Government of the State *suo motu* or on the recommendation of the Committee if at its meeting convened to consider the question of his suspension or removal, not less than five-eighth of the total number of members constituting the Committee for the time being, vote in favour of his suspension or removal, and if the Executive Officer is suspended, the Government of the State shall appoint some person to officiate as Executive Officer.
- (5) Leave exceeding one month may be granted to the Executive Officer by the Government of the State and whenever such leave is granted, the Government of the State shall appoint some person to officiate as Executive Officer :

Provided that if the period of leave does not exceed one month it may be granted by the Minister Incharge Municipalities if it is either casual or privilege leave and the President or in his absence the Vice-President shall, without remuneration, exercise the powers of Executive Officer for the period of such leave.

- (4) Whenever an Executive Officer dies, resigns or is removed, the Government of the State shall appoint another person to be Executive Officer :

Provided that the President or in his absence the Vice-President shall without remuneration exercise the powers of Executive Officer until another Executive Officer is appointed.

10. The Government of the State, the Minister Incharge and the Nazim shall have in respect of the Executive Officer all the powers of control, inspection, requisition, suspension and all other powers whatsoever that are conferred upon them respectively in respect of the Committee by Chapter XII of the Municipal Act."

Section 4 of the Act enumerates the powers of the Executive Officer and Schedule II to the Act enumerates various sections of the Punjab

Municipal Act, 1911, which have been amended in view of the powers conferred on the Executive Officer which he is to exercise under various sections of that Act.

(3) It may be noted that the power of appointment of an Executive Officer vests with the State Government. He can be suspended or removed from that post by the State Government *suo motu* or on the recommendation of the Municipal Committee in the manner provided in sub-section (4) of section 3. Even the Municipal Committee has no power to suspend or remove the Executive Officer. It can only recommend his suspension or removal and the decision to suspend or remove the Executive Officer rests with the State Government. Under section 10, the Government of the State, the Minister Incharge and the Nazim (Deputy Commissioner) have been given all the powers of control, inspection, requisition, suspension and all other powers whatsoever that are conferred upon them respectively in respect of the Committee by Chapter XII of the Municipal Act, in respect of the orders of the Executive Officers. The word "suspension" in this section does not relate to the suspension of the Executive Officer, but to the suspension of his orders under section 232 of the Punjab Municipal Act. This interpretation of section 10 finds support from the various sections in Chapter XII of the Municipal Act which starts with section 231. The word "respectively" in section 10 also indicates that the Government of the State, the Minister Incharge and the Deputy Commissioner have those powers *qua* the orders of the Executive Officer which are vested in them under the provisions of sections 231 to 240 of the Municipal Act. Section 231 of the Municipal Act provides for control, inspection and requisition in various clauses of sub-section (1). Section 232 gives the power to the Deputy Commissioner to 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, 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, etc. The orders of a Committee include the orders of the Executive Officer as he has been empowered to exercise a large number of powers which are vested in the Municipal Committee under the Punjab Municipal Act by the amendments set out in Schedule II to the Act. It is the suspension of those orders of the Executive Officer

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which has been referred to in section 10 of the Act and not the suspension of the Executive Officer himself. I am, therefore, of the opinion that Deputy Commissioner had no jurisdiction to pass the impugned order, dated February 12, 1970, suspending the petitioner from his post as Executive Officer of Municipal Committee, Narnaul, and this order is liable to be quashed on that ground.

(4) For the reasons given above this petition is accepted with costs and the impugned order of the Deputy Commissioner, dated February 12, 1970, suspending the petitioner from his post as Executive Officer of Municipal Committee, Narnaul, is hereby quashed. Counsel's fee Rs. 100.

N. K. S.

APPELLATE CRIMINAL

Before Jindra Lal and A. D. Koshal, JJ.

STATE,—Appellant.

versus

KHAZAN CHAND,—Respondent.

Criminal Appeal No. 372 of 1966.

March 18, 1970.

Code of Criminal Procedure (V of 1898)—Section 155(1) and (2)—Investigation of a non-cognizable offence by a police officer without the permission of the magistrate—Police officer filing report before the magistrate having jurisdiction—Such magistrate—Whether can refuse to take cognizance of the offence—Objection regarding irregular investigation taken in initial stages of the trial—Duty of the magistrate to cure the irregularity—Stated—Objection not taken and trial resulting in conviction—Such conviction—When can be set aside—Essential Commodities Act (X of 1955)—Sections 7 and 11—Report for an offence under section 7 submitted by a police officer—Whether valid.

Held, that undoubtedly, a police officer is not authorised to investigate a non-cognizable offence without the permission of a magistrate having jurisdiction in the matter, but if he does so and files a report before a magistrate, the magistrate cannot refuse to take cognizance of the matter. He can take cognizance under any of the sub-sections of section 190 of Code of Criminal Procedure. A defect and illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating