

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

MOTI RAM,—Petitioner

versus

MUNICIPAL CORPORATION OF DELHI AND OTHERS,—Respondents

Civil Writ No. 573-D of 1965.

Criminal Miscellaneous No. 199-D of 1966.

September 20, 1960.

Delhi Municipal Corporation Act (LXIV of 1957)—Ss. 59 and 92—Delhi Municipal Corporation Service (Control and Appeal) Regulations (1959)—Enquiry against a Corporation Officer on charges of misconduct—Power to suspend such officer pending enquiry—Whether can be exercised by the Commissioner alone—Municipal Corporation—Whether can also exercise that power.

Held, that the Commissioner is the Chief Executive head of the Delhi Municipal Corporation and the entire executive power vests in him under section 59 of the Delhi Municipal Corporation Act, 1957, which power includes the power of suspension of Municipal Corporation Officer. The Commissioner has further been conferred the power of suspension expressly by the Delhi Municipal Corporation Service (Control and Appeal) Regulations. The power of dismissal and suspension is defined and circumscribed by the provisions of the Act and the Regulations and has to be culled from express provisions thereof. Since the power to suspend has been conferred by law on the Commissioner, it cannot be exercised by the Corporation even though by some stretch of reasoning it can be said that the Corporation has a general overall control over the Commissioner who is an authority under it. The Act and the Regulations clearly contemplate different authorities for exercising different powers and the authority that has been constituted for ordering suspension of Municipal Corporation Officers, is the Commissioner who alone is entitled to exercise that power.

Petition under Article 226 of the Constitution of India seeking to quash—

- (a) *the Resolution No. 363, dated 10th June, 1965, of the Standing Committee of Municipal Corporation of Delhi (Annexure I), ordering a special audit of the Office of the Public Relations Officer by the Chief Auditor of the Corporation for the period from 1958 to 1965 and report within a fortnight, in pursuance of its earlier Resolution No. 974 of 10th December, 1964 (Annexure II), as being without jurisdiction, ultra vires of its powers, mala fide and/or a colourable exercise of its powers, in disregard of the judgment of the High Court in C.W. 717-D of 1964, dated 3rd February, 1965, holding that the Standing Committee's Resolution No. 974, dated 10th December, 1964 was without jurisdiction;*
- (b) *the Resolution No. 363, dated 9th July, 1965, of the Standing Committee of the Municipal Corporation of Delhi (Annexure III), recommending the suspension of the petitioner from his service as*

Liaison Officer of the Corporation as being without jurisdiction, ultra vires, mala fide, and colourable exercise of its powers;

- (c) *the Resolution No. 271, dated 19th July, 1965, of the Municipal Corporation of Delhi (Annexure IV), suspending the petitioner from his service as Liaison Officer of the Corporation, and entrusting the Standing Committee with the preparation of a charge-sheet against him as being without jurisdiction, ultra vires, mala fide and a colourable exercise of its powers;*
- (d) *the Resolution No. 1129, dated 17th January, 1965, of the Standing Committee of the Corporation (Annexure V) deleting the post of the Public Relations Officer from Schedule No. 1 as being ultra vires, mala fide and a fraudulent exercise of its powers;*
- (e) *the Resolution of the Corporation No. 798 of the adjourned Special Meeting, dated 15th February, 1965 (Annexure VI), as being ultra vires, mala fide and colourable exercise of its powers;*
- (f) *for a direction to the Corporation and its authorities that a budgetary provisions be made for the extent post of the Liaison Officer for the year 1965-66 since the omission to do so is mala fide and without any legal justification;*
- (g) *for a direction to the Corporation and its authorities that the petitioner shall be paid all the dues in respect of annual increments since 31st August, 1961, arrears of pay and allowances on account of revised pay scale of the Liaison Officer's post in accordance with Pay Commission's recommendations, as well as special pay and allowances recommended by the Standing Committee in their resolution No. 204, dated 7th June, 1963 (Annexure VII);*
- (h) *for a direction to the Corporation and its authorities that the petitioner be paid all his arrears of salary and allowances in respect of the period of suspension from 10th December, 1964, till 28th June, 1965, in accordance with the order of reinstatement, dated 28th June, 1965 (Annexure VIII), treating the said period of suspension as period spent on duty as well as the salary and allowances for the period from 29th June, 1965, till 19th July, 1965, when the impugned resolution suspending the petitioner was passed and the pay and allowances thereafter;*
- (i) *for such other consequential reliefs as may be just and proper in the circumstances of the case.*

Petitioner in person.

H. HARDY, SENIOR ADVOCATE, WITH D. D. CHAWLA, BISHAMBER DAYAL, KESHAV DAYAL, S. N. ANDLEY, AND S. L. BHATIA, ADVOCATES, for the Respondents.

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JUDGMENT

GROVER, J.—This is a petition under Article 226 of the Constitution of Moti Ram, Liaison Officer, Municipal Corporation of Delhi (at present under suspension). He has impleaded as respondents the Municipal Corporation of Delhi, the Commissioner, the Deputy Commissioners, some ex-Commissioners of the Corporation, members of the Standing Committee, the Mayor, certain Councillors and other persons including two members of Parliament, who are stated to be associated with a 7-man Committee of the Delhi Pradesh Congress Committee, and a number of journalists who are Editors and Managing Editors of various newspapers, etc.

At the outset it may be stated that the petitioner argued his own case before me and it appears that in the matter of drafting of the petition which is very lengthy as also filing of numerous documents and enclosures the petitioner has not taken any substantial assistance of counsel. A number of matters have thus been introduced and raised which might have been omitted by a trained lawyer.

The petitioner says that he is a journalist of very old standing and had served on the staff of leading newspapers including the 'Hindustan Times', 'Indian News Chronicle' and the 'Tej'. In the years 1952—54, he was correspondent of the daily 'Tej' and used to cover the proceedings of Parliament and Delhi State Assembly. He had occasion to write critical articles about the working of the Delhi State Government and more particularly about its Chief Minister, Ch. Brahm Perkash (respondent No. 25). He also used to assist certain members of the Delhi Legislative Assembly by supplying information on various political matters. According to the petitioner, the part which he played both as a journalist and as a backstage politician, was responsible in a fair measure for the resignation of Ch. Brahm Perkash as Chief Minister. He, therefore, earned what he calls "the unmitigated malice" of Ch. Brahm Perkash who started putting the petitioner into various difficulties.

On 12th September, 1955, the petitioner was appointed to the post of Liaison Officer of the then Delhi Municipal Committee. He was confirmed in that post and became a permanent incumbent after the establishment of the Corporation in April, 1958, under section 511 of the Delhi Municipal Corporation Act, 1957 (hereinafter called the Act). It is alleged that following the municipal and general

elections in 1962, Ch. Brahm Perakash and his group gained absolute control of the affairs of the Corporation, Although he had not been elected as a Councillor or an Alderman of the Corporation, he was co-opted as a member of the *ad hoc* Administrative Committee which laid down major policies and took important decisions relating to the Corporation. It is altogether unnecessary to refer to the further allegations made against Ch. Brahm Perakash because they are relevant to the question of *mala fides* which, as will be discussed later, cannot be and need not be decided in these proceedings. On 10th December, 1964, the Standing Committee of the Corporation passed a resolution (Annexure II) placing the petitioner under suspension with immediate effect. A sub-committee of five members was constituted to frame a charge-sheet and statement of allegations. The petitioner has made allegations of *mala fides* against the members of the Standing Committee also and in particular against those who constituted the sub-committee for framing the charge-sheet. The resolution of the Standing Committee was followed by an order made by Shri B. N. Seth, Deputy Commissioner of the Corporation, on 11th December, 1964, suspending the petitioner. He filed Civil Writ No. 717-D of 1964 on 29th December, 1964, which was admitted to a hearing and was finally disposed of by D. K. Mahajan, J., on 3rd February, 1965. It will be necessary to refer to the matter decided by Mahajan, J., in greater detail later, but all that is necessary to be stated at this stage is that according to Mahajan, J., the Standing Committee had no authority to order the suspension of the petitioner but since he had been suspended by the Deputy Commissioner also by virtue of the powers delegated to him, by the Commissioner his petition could not succeed. The petitioner filed a Letters Patent appeal against the judgment of Mahajan, J., but it was dismissed.

According to the petitioner, the Commissioner wrote a letter, dated 6th February, 1965, to the Chairman, Standing Committee, asking him to send the charge-sheet and statement of allegations against the petitioner expeditiously and the correspondence took place between the Commissioner and the Standing Committee about the framing of the charge-sheet and the statement of allegations, the suggestion being that neither of these authorities was willing to take responsibility for framing the charge-sheet as also the statement of allegations against the petitioner (*vide* paragraphs 29 to 34). The petitioner says that since no charge-sheet had been sent by the Standing Committee to the Commissioner, the latter made an order of his reinstatement on 28th June, 1965. It was signed by Shri N. N. Tandon, Deputy Commissioner, who made it clear that the period

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of suspension from 10th December, 1964 to 29th June, 1965, would be treated as period spent on duty. On 9th July, 1965, the Standing Committee passed another resolution (Annexure III) saying that in view of the Commissioner's report, dated 5th July, 1965, and the findings, dated 5th July, 1965, of the Enquiry Committee, etc., it was recommended to the Corporation that the petitioner be placed under suspension and a committee consisting of Shri Daroga Mal, Shri Tulsi Nath and Shri Kishore Lal be set up for framing of the statement of allegations and charge-sheet against the petitioner. The Standing Committee's resolution then came up before the meeting of the Corporation where there was a good deal of discussion as to whether the Corporation could order the suspension of the petitioner in view of the provisions of the Act and the regulations framed under it which conferred that power on the Commissioner. It was decided that the Corporation was competent to make such an order and resolution No. 271 was passed on 19th July, 1965, accepting the recommendations of the Standing Committee made by means of a resolution, dated 9th July, 1965. It was, however, decided that the Standing Committee be asked to prepare statement of allegations and frame charges against the petitioner (Annexure IV). The petitioner has sought the quashing not only of resolution No. 271, dated 19th July, 1965 of the Corporation suspending him from service but also of the resolution, dated 9th July, 1965, of the Standing Committee recommending his suspension. He has further prayed that the following three resolutions be quashed :—

- (1) Resolution No. 363, dated 10th June, 1965 of the Standing Committee (Annexure I).
- (2) Resolution No. 1129, dated 17th January, 1965 of the Standing Committee (Annexure V).
- (3) Resolution No. 798, dated 15th February, 1965 (Annexure VI).

He has also prayed for appropriate writs and directions in the matter of payment of his salary and allowances, etc., as per clauses (g) and (h) of paragraph 83 of the petition.

In the return filed on behalf of respondents 1 and 5 (the Municipal Corporation and the Standing Committee, respectively), a number of preliminary objections have been raised. It is stated *inter alia* that the Corporation could be sued only through the

Commissioner and the Standing Committee had no legal entity and could not be sued through the Municipal Secretary. It has also been maintained that there are many disputed questions of fact which cannot be agitated in a petition under Article 226 of the Constitution and that the appropriate remedy was by way of a suit. It is claimed that suspension of an employee relating to disciplinary proceedings does not afford him any cause of action and that the petition is liable to be dismissed on account of misjoinder of parties and causes of action. The appointment and confirmation of the petitioner as Liaison Officer is admitted as also the fact that Ch. Brahm Perkash had been co-opted on the *ad hoc* (Administrative Set Up) Committee. The allegations relating to the part attributed to Ch. Brahm Perkash in the whole matter have been denied. Paragraphs 26 and 30 have not been admitted nor has it been admitted that the Commissioner of the Corporation disowned responsibility for placing the petitioner under suspension or that he acted under any pressure. It is not denied that Shri N. N. Tandon had recorded a note to the effect that the Mayor had informed the Commissioner that he had spoken to the members of the Standing Committee on the subject of framing a charge-sheet and statement of allegations and had been assured that this would be prepared within ten days and it was agreed that if the charge-sheet and the statement of allegations were not supplied within that period, the petitioner would be reinstated nor has it been denied that the Commissioner had written a letter to the Chairman of the Standing Committee stating that he would be compelled to reinstate the petitioner in the absence of any specific allegations of misconduct on his part. It has been denied that the resolution of the Standing Committee was actuated by any *mala fide* intentions and that the resolution passed by the Corporation on 19th July, 1965, was the outcome of any *mala fide* step taken by the Standing Committee and the Commissioner as had been alleged in the petition. It is further stated that the resolution passed by the Corporation on 19th July, 1965, had the backing and support of 74 members out of total strength of 77 members present at the meeting. Most of the other respondents have also filed affidavits in reply but it will hardly be necessary to refer to them except for the purpose of deciding the matters which really require determination in the present case. It may be mentioned that the petitioner has also moved this Court under sections 476 and 479A of the Code of Criminal Procedure for taking action against Shri Nur-ud-din Armed and Ch. Brahm Perkash for making certain statements which are alleged to be false and misleading. The petitioner sought permission of this Court to put

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into evidence certain tape recordings of the conversation between him and the aforesaid respondents but for the reasons which will be stated later it is neither possible nor necessary to decide whether any of the alleged offences have been committed as the question of *mala fide* is not being determined in these proceedings and the statements which have been alleged to be false have been made mostly in connection with that point.

The first question which has been canvassed and which has to be determined is whether the power to suspend the petitioner pending an enquiry against him on certain charges of misconduct could be exercised by the Commissioner alone or whether the Municipal Corporation could also exercise that power. Mr. Hardayal Hardy for the Corporation maintains that the aforesaid power can be exercised both by the Commissioner and the Corporation and that it does not exclusively vest in the Commissioner.

Now, it is necessary to refer to certain provisions of the Act in order to determine the respective powers of the Corporation and the Commissioner. Section 3(1) provides that with effect from such date as the Central Government may appoint, there shall be a Corporation charged with the Municipal Government of Delhi. The Corporation shall be composed of councillors and alderman and at its first meeting in each year it has to elect one of its members to be the Mayor and another to be the Deputy Mayor (section 35). Section 39 provides for the constitution of certain Committees, e.g., the Delhi Electric Supply Committee, the Delhi Transport Committee, etc. Section 40 empowers the Corporation to constitute Special *ad hoc* Committees. The *ad hoc* Committee can with the sanction of the Corporation co-opt not more than three persons who are not members of the Municipal Corporation. Section 41 provides that subject to the provisions of the Act, the rules and regulations and bye-laws made thereunder the Municipal functions of Delhi shall vest in the Corporation. Section 42 lays down the obligatory functions of the Corporation. Section 43 gives discretionary functions of the Corporation. Section 44 provides that for the efficient performance of its functions, there shall be the following municipal authorities under the Corporation:—

“(a) the Standing Committee;

* * * *

* * *

(e) the Commissioner;

* * * *.”

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According to section 45, the Standing Committee shall consist of fourteen members who shall be elected by the councillors and alderman from themselves. The Standing Committee has to exercise such powers and perform such functions as are specifically conferred or imposed upon it by or under the Act (Section 49). Sections 54 to 59, relate to the appointment, salary and allowances, service regulations and functions of the Commissioner. His appointment is to be made by the Central Government and he is to hold office for a period of five years in the first instance. He is removable by the Central Government from office if at a special meeting of the Corporation a resolution for his removal has been passed by a majority of not less than three-fifths of the total number of members. Even otherwise the Central Government can remove him from office at any time if it appears that he is unable to perform or has been guilty of neglect or misconduct. Section 59 provides—

“Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act other than those pertaining to the Delhi Electric Supply Undertaking or the Delhi Transport Undertaking and of any other Act for the time being in force which confers any power or impose any duty on the Corporation, shall vest in the Commissioner who shall also—

- (a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;
- (b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;

* * * * *

Under section 70, the Corporation may at any time require the Commissioner to produce and furnish the documents, returns, reports, etc., mentioned in clauses (a), (b) and (c) of sub-section (1). Sub-section (2) says that every such requisition shall be complied with by the Commissioner without any unreasonable delay but

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according to the proviso, the Commissioner need not comply with any such requisition if with the previous approval of the Mayor he makes a statement that such compliance would be prejudicial to public interest or to the interest of the Corporation. Chapter VI relates to the municipal officers and other municipal employees and it is common ground that under section 92 the power of appointing Municipal Officers of the category to which the petitioner belongs vests in the Corporation. Section 95 relates to the punishment which can be inflicted on municipal officers and employees by such authority as may be prescribed by the regulations and contains provision analogous to Article 311(2) of the Constitution. Under section 98 the Corporation can make regulations to provide *inter alia* for the procedure to be followed in imposing any penalty under sub-section (1) of section 95, suspension pending departmental enquiries before the imposition of such penalty and the authority by whom such suspension may be ordered; the officer or authority to whom an appeal shall lie under sub-section (4) of that section.

Under clauses (d) and (e) of sub-section (1) of section 98, the Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959, were promulgated. Clauses (b) and (c) of paragraph 2 define the "Appointing Authority" and "Disciplinary Authority" as follows:—

- "(b) 'Appointing Authority' in relation to a municipal officer or other municipal employee means the authority empowered by or under the Act to make appointments to the post which such officer or employee for the time being holds;
- (c) 'Disciplinary Authority' in relation to the imposition of a penalty on a municipal officer or other municipal employee means the authority competent under these regulations to impose on him that penalty;"

It is undisputed that under paragraph 5 of the Regulations which relates to suspension the appropriate authority in the case of the petitioner would be the Commissioner. Clause (2) of paragraph 5 provides that the appropriate authority may place any Municipal Officer under suspension where a disciplinary proceeding against him is contemplated or is pending. According to the proviso, where an order of suspension is made by the Standing Committee in regard

to any of the Municipal Officers specified or referred to in subsection (1) of section 89, the order of suspension has to be confirmed by the Corporation. It may be mentioned that the petitioner is not included among the Municipal Officers specified or referred to in the aforesaid provision. Paragraph 6 contains the nature of the penalties which can be imposed and paragraph 7 provides that the authority specified in column 1 of the schedule may impose on any of the municipal officers or other municipal employees specified there against in column 2, thereof any of the penalties specified there against in column 3, thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in column 4 of the said schedule. Paragraph 8 relates to the procedure for imposing of penalties.

Mr. Hardy does not, and indeed cannot, contest that under the above regulations which have the same force of law as the Act it is the Commissioner who could order suspension of the petitioner pending an enquiry and that the authority competent to impose penalties (i) and (ii) as contained in paragraph 6 is the Deputy Commissioner against whose orders an appeal lies to the Commissioner and with regard to other penalties it is the Corporation against whose orders the appeal would be competent to the Central Government. The scheme of the regulations, therefore, is that where suspension has to be ordered of the class of an officers to which the petitioner belongs it is Commissioner who can order his suspension whereas if any of the penalties is sought to be imposed as contained in paragraph 6 of the regulations that authorities competent to impose that penalty would be different, namely, the Deputy Commissioner in cases of penalties like censure and withholding of increments or promotion and the Corporation in the matter of more serious penalties like reduction in rank, compulsory retirement, removal and dismissal from service. The appellate authorities are also constituted according to the nature of the penalties inflicted. Ordinarily under the law of master and servant and even otherwise as provided by section 16 of the General Clauses Act, 1897, it would be the authority having the power to make the appointment that would be competent to suspend or dismiss any person appointed by itself. Mr. Hardy's argument is that since the appointing authority in the case of the petitioner is the Municipal Corporation under section 92 of the Act, it would be perfectly competent to order his suspension and that the provision which has been made in the regulations conferring that power on the Commissioner does not exclude or take away the power of the Corporation which inheres

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in it not only by virtue of the statutory provisions but even otherwise under the ordinary law of master and servant. He has relied on the observations in *R. P. Kapur v. Union of India* (1), according to which it is well-settled that under the ordinary law of master and servant, the power to suspend the servant arises either from an express term in the contract itself or a statutory provision, governing such contract and that an order of interim suspension could be passed against an employee while enquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. The general principle, therefore, is that an employer can suspend an employee pending an enquiry into his conduct and the authority entitled to appoint a public servant would be entitled to suspend him pending such departmental enquiry. Their Lordships referred to this principle being illustrated by the provision in section 16 of the General Clauses Act, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears.

Now there can be no manner of doubt that under section 16 of the General Clauses Act as also the well-settled law in respect of master and servant to which reference has been made, the Corporation would be competent to suspend the petitioner pending an enquiry into charges of misconduct. This would be the position unless a different intention appears. Similarly the ordinary general law would be subject to any statutory provisions or regulations which may be made in this behalf. Mr. Hardy does not take exception to such an approach but he has canvassed for holding that the provision in the regulation conferring the power to suspend on the Commissioner cannot be regarded to fall within the mischief of the words "unless a different intention appears". His contention is that the Commissioner has certainly been constituted as the appropriate authority for ordering suspension in case of certain Municipal Officers like the petitioner but that does not show that the power of the Corporation of a like nature was intended to be taken away. The petitioner, on the other hand, has relied on the scheme of the Act and the regulations and has urged that the correct view to take would be to read into the regulations the intention and properly so read the Corporation would not have the power to suspend because of the different intention expressed by paragraph 5 of the regulations. It is pointed out that under section 59 of the Act the entire

(1) A.I.R. 1964 S.C. 787.

executive power vests in the Commissioner and that in matters of municipal officers and municipal employees other than certain specified officers the Commissioner has been conferred independent powers of a very wide nature by clause (b) of section 59. He can dispose of all questions relating to the service of the said officers and their pay, privileges, allowances and other conditions of service subject to any regulations that may be made in this behalf. It is, therefore, implicit in section 59(b) that the Commissioner has been empowered to suspend officers like the petitioner. The regulations could take away that power but in the present case the regulations have further expressly conferred that power on him. No doubt thus is left of the intention that he should be the sole repository of that power. This would further rule out the applicability of section 16 of the General Clauses Act owing to the different intention which the law making authority has expressed. The petitioner has relied on the view of Mahajan, J., in the previous writ petition that clause (b) of section 59 is very wide and it definitely includes the power of suspension. It is somewhat surprising that before Mahajan, J., the learned counsel for the petitioner had put forward a contrary view that the Commissioner had no power under section 59 to suspend him. That argument, however, was rejected by the learned Judge who further held that the power which the Commissioner enjoys under section 59 also vests in him under the regulations. It is also noteworthy that Mr. N. C. Chatterjee, who appeared for the Corporation before Mahajan, J., contended that the power of suspension which was inherent in section 59 was not taken away merely by framing of regulation 5 by the Corporation but remained with the Commissioner in spite of it. In other words, the position taken up on behalf of the Corporation before Mahajan, J., was that the Commissioner had the power to suspend not only under section 59 but also under the regulations.

Mr. Hardy has sought to press a view contrary to the one commended by Mr. Chatterjee in the previous writ petition and has suggested that section 59 does not confer the power of suspension on the Commissioner and that the same has been given to him only by the regulations but he agreed that even under the regulations it is not as measure of delegation of the powers of the Corporation that the Commissioner has been invested with that power because the regulations have been framed under section 98 by the Government of India and would have the same force as the provisions of the Act. The crucial question, therefore, is whether in the presence of section 59 of the Act and the regulations the power to suspend can

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still be found to reside in the Corporation by virtue of section 92 of the Act read with section 16 of the General Clauses Act.

In *Hira Devi v. District Board, Shahjahanpur* (2), the District Board had passed a resolution for the dismissal of its Secretary, under section 71 of the U.P. District Board Act, 1922. The second proviso to that section conferred a right of appeal on the Secretary to the State Government against any resolution punishing him within one month from the date of the communication of the resolution and the resolution was not to have effect until the period of one month had expired or until the State Government had passed orders on any appeal preferred by him. The power of suspension under the U.P. Act was conferred by section 90. It was of two categories: (1) suspension as a punishment and (2) suspension pending inquiry or orders. In the case of suspension pending enquiry or orders the only power which was provided was that of suspending any person against whom the power of dismissal might be exercised pending inquiry into his conduct or pending the orders of any authority whose sanction was necessary for his dismissal. While passing the resolution under section 71 for the dismissal of the Secretary, the District Board also passed a resolution for his suspension till the matter of his dismissal was decided under section 71 on an appeal if any preferred to the Government. While upholding the validity of the first resolution relating to the dismissal, it was finally held by their Lordships that the second resolution directing his suspension was illegal and invalid. The following observations, which are to be found at page 365, are pertinent :—

“The defendants were a board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself. The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of sections 71 and 90 of the Act and have to be culled out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections, it would not be legitimate to have resort to general or implied powers under the law of master and servant or under section 16, U.P. General Clauses Act. Even under the terms of section 16 of that Act, the powers which are vested in the authority to suspend or dismiss any person

appointed are to be operative only 'unless a different intention appears' and such different intention is to be found in the enactment of sections 71 and 90 of the Act which codify the powers of dismissal and suspension vested in the Board. It would be an unwarranted extension of the powers of suspension vested in the Board to read, as the High Court purported to do, the power of suspension of the type in question into the words 'the orders of any authority whose sanction is necessary.' "

The petitioner has naturally relied a great deal on the above statement of law and has urged that it can be appositely applied to his case.

There is another line of argument which is founded on the Bench decision of this Court to which I was a party in *Hari Kishan Sharma v. The Punjab State* (3), which has now been affirmed by the Supreme Court in *The State of Punjab and another v. Hari Kishan Sharma* (4). Under section 4 of the Punjab Cinemas (Regulation) Act, 1952, the licensing authority was the District Magistrate. Under the proviso to that section, power could be and was conferred on the Sub-Divisional Officer to grant the licence. Sub-sections (1) and (2) of section 5 laid down the conditions for grant of the license by the licensing authority subject to the control of the Government. The State Government required the licensing authority to forward the application submitted by one Hari Kishan Sharma to it. On the application having been forwarded, it was rejected by the State Government, and the exercise of that power was sought to be justified on the language of section 5(2). It was held that the licensing authority alone had the power to grant the licence and the State Government could only examine the matter if an appeal was taken to it. In the judgment of the Supreme Court which was delivered by Gajendragadkar, C.J., no doubt has been left on the point that when an application for licence is made, it has to be considered by the licensing authority and dealt with under sub-sections (1) and (2) of section 5 of that Act. It has further been held that however wide the power of control given to Government may be, it cannot justify the Government in completely ousting the licensing authority and thus usurping its functions. According to the petitioner the law-making authority in the present case clearly

(3) I.L.R. (1961) 2 Punj. 831.

(4) A.I.R. 1966 S.C. 1081.

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contemplated a suspending authority as distinct from the disciplinary authority or the authority competent to impose various punishments just as in the above case the Legislature contemplated a licensing authority as distinct from the Government.

In my opinion, there is a good deal of substance in the contentions of the petitioner in respect of the authority that was competent to order his suspension pending enquiry. The reasons which have impelled me to come to that conclusion may be summarised in the following manner:—

- (1) Although under section 44 of the Act the Commissioner is an authority under the Corporation, he is the chief executive head and the entire executive power vests in him under section 59. I am in agreement with Mahajan, J., that clause (b) of section 59 owing to the wide sweep of the language employed therein confers the power to suspend officers like the petitioner.
- (2) The Commissioner has further been conferred the power of suspension expressly by the regulations, the scheme of which has already been discussed. In the regulations a careful and precise division of powers has been made between the various authorities. As regards suspension, two authorities have been constituted, namely, the Standing Committee and the Commissioner and admittedly in the case of the petitioner it would be the Commissioner who would be the appropriate authority for ordering his suspension of the nature which was ordered by the Corporation and which has been impugned. The regulations do not—this is not disputed by Mr. Hardy—make the Commissioner a mere delegate of the power of the Corporation in the matter of suspension.
- (3) The Corporation is created by the Act and has been invested with powers which have to be found within the four corners of the statute itself. To borrow the language of their Lordships from *Hira Devi's case* the powers of dismissal and suspension are defined and circumscribed by the provisions of the Act and the regulations and had to be culled out from the express provisions thereof. When express powers have been given to the Commissioner under section 59 and the regulations in the matter of suspension of the petitioner it would not be legitimate to have

resort to general or implied powers under the law of master and servant or under section 16 of the General Clauses Act. At any rate, even under the terms of section 16, a different intention is to be found in section 59 and the regulations which codify the powers and the authorities who can exercise those powers in various matters including suspension.

- (4) The ratio of the decisions in *Hari Kishan Sharma's case* of this Court and of the Supreme Court would be clearly applicable and if by law the power to suspend has been conferred on the Commissioner, it cannot be exercised by the Corporation even though by some stretch of reasoning it can be said that the Corporation has a general overall control over the Commissioner who is an authority under it. The Act and the regulations clearly contemplate different authorities for exercising different powers and the authority that had been constituted for ordering suspension of officers like the petitioner is the Commissioner who alone is entitled to exercise that power.
- (5) The argument of Mr. Hardy that in *Hari Kishan Sharma's case*, the Government was the appellate authority and that was the reason why it was held that it could not assume for itself the powers of the licensing authority cannot be accepted because what prevailed with their Lordships was the basic fact in the scheme of the Act that it was the licensing authority which was solely given the power to deal with applications for licence in the first instance and that basic position could not be changed by the Government.

Once the above conclusion is arrived at it must be held that the resolution of the Corporation, dated 19th July, 1965, suspending the petitioner was *ultra vires* the powers of the Corporation and was invalid and illegal and it will be presently seen to what relief, if any, the petitioner is entitled in respect of that resolution. There is no question, however, of any relief being granted about the resolution, of the Standing Committee, dated 9th July, 1965, recommending his suspension because firstly, such a matter does not require any relief being of a recommendatory nature and secondly, if the resolution of the Corporation itself is held to be *ultra vires* and illegal, the resolution of the Standing Committee *pro tanto* would automatically go with it in the matter of suspension.

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As regards the other three resolutions in respect of which the petitioner has sought relief, the resolution, dated 17th January, 1965 (Annexure V) is as follows :—

“Resolved further that Schedule I of posts carrying a minimum monthly salary of not less than three hundred and fifty rupees as appended to the revised Budget Estimates for the year 1964-65 and Budget Estimates for the year 1965-66 be recommended to the Corporation for sanction”.

The resolution, dated 15th February, 1965 (Annexure VI) may also be reproduced:

“Resolved that Schedule I of posts carrying a minimum monthly salary of not less than three hundred and fifty rupees per mensem as appended to the Revised Budget Estimates for the year 1964-65 and Budget Estimates for the year 1965-66 be sanctioned.”

The resolution, dated 10th June, 1965 (Annexure I), is to the effect:

“Resolved that in exercise of the powers conferred on it under the provisions of section 205(2) of the Delhi Municipal Corporation Act, 1957, the Standing Committee requests the Deputy Chief Auditor to conduct a detailed examination of the office of the Public Relations Officer for the period 1958 to 1964 and place the report before the Committee within a fortnight.”

The petitioner claims that by passing these resolutions an attempt has been made to abolish the post which was held by the petitioner and that the resolution, dated 10th June, 1965, is bad in law because of the reasons given in paragraph 79 of the petition. The case of the petitioner, however, with regard to the passing of these resolutions is based mainly on allegations of lack of good faith and *mala fides* on the part of various persons connected with the Corporation including the members of the Standing Committee. In the written statement filed on behalf of respondents 1 and 5 it is stated *inter alia* in paragraph 70 that the post of Liaison Officer had been abolished and converted into that of Public Relations Officer on 9th June, 1959 but the post was not filled and the petitioner continued under the name and designation of Liaison Officer drawing his pay against the post of Public Relations Officer. This position continued up to the year 1964-65. In the Establishment Schedule I, submitted to the Standing Committee and the Corporation along with the Budget

Estimates of 1965-66, the post of Public Relations Officer, was duly provided for but in dealing with the Budget as a whole, the Standing Committee and the Corporation abolished the post of Public Relations Officer and in its place created a Department for Community Services with several posts but neither the post of Public Relations Officer nor that of the Liaison Officer, was included therein. It is further stated in paragraph 79 that the Standing Committee had the power to get the examination and audit of the office of the Public Relations Officer carried out through the Auditors of the Corporation. As regards the resolutions, dated 17th January, 1965, and 15th February, 1965, it is stated in paragraph 82 that these resolutions were valid, legal and *intra vires*. It has been denied that the resolution of the Standing Committee has been passed *mala fide* or that the resolution, dated 15th February, 1965, is not valid or within the powers of the Corporation. As regards the matters relating to the post of the petitioner in his rejoinder, dated 14th February, 1966, the petitioner has reiterated that the Corporation was motivated by *mala fides*.

The petitioner has pressed before me certain salient features relating to his case based on *mala fides* on the part of Ch. Brahm Perkash and certain other respondents including the members of the Standing Committee but the allegations made by him introduced a host of facts which have been disputed by the respondents and which would require an exhaustive investigation and enquiry into the correctness of those allegations. Surely in a writ petition although an allegation of *mala fides* will ordinarily be enquired into by the Court but it always has the discretion to direct the petitioner to have the matter decided in regular action if such a course is considered necessary and expedient for a proper disposal of the case keeping in view all the facts and circumstances (vide *Surinder Nath Uttam v. The State of Punjab and another* (5)). After taking into consideration the allegations and the facts stated by the petitioner and the replies of the material respondents, I am clearly of the opinion that this is not a fit case in which the question of *mala fides* can be or ought to be decided and that the petitioner should have recourse to a regular action if he wishes to invite decision on matters which are of a highly controversial and prolix nature on which several issues of fact would have to be enquired into requiring elaborate evidence. Moreover, as regards the three resolutions mentioned before of 17th January, 1965, 15th February, 1965

(5) I.L.R. (1965) 2 Punj. 449 (F.B.)=A.I.R. 1965 Punj. 386 (F.B.).

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and 10th June, 1965, the petitioner has not been able to satisfy me how any relief can be granted in a writ petition with regard to them. Even on the question of suspension Mr. Hardy has placed reliance on *Shri K. R. Berry v. Commander O.P. Sharma* (6), a judgment of Shamsher Bahadur, J., in which he has held that an order of suspension which was not passed as a measure of punishment but as an interim measure cannot be made a ground of attack in writ proceedings. The learned Judge relied on the two decisions of the Supreme Court in *T. Cajee v. U. Jormanik Siem* (7) and *R. P. Kapur v. Union of India* (1) for the view that such an order of suspension could not be challenged in a writ petition. I have been unable to find anything in the first case which lends support to the view taken by the learned Judge. In that case it was held that the order of interim suspension was valid subject to the respondent being paid full remuneration unless the same could be legitimately withheld in whole or in part under some statute or rule. In the second case the appeal of Mr. R. P. Kapur was allowed and rule 7 of the All-India Services (Discipline & Appeal) Rules in so far it applied to the members of the Indian Administrative Service was held to be bad to the extent it permitted an authority other than the Government of India to suspend as an interim measure a member of the service. In consequence the order of the Governor of Punjab suspending Mr. Kapur on the ground that a criminal case was pending against him was set aside. The decision which is really apposite is the one reported as *S. Partap Singh v. State of Punjab* (8). There the impugned orders including an order of suspension pending the result of an enquiry were set aside on the ground that they were vitiated by *mala fides* and motivated by an improper purpose. This was done on an appeal in a writ petition which had been dismissed by the High Court. This would show that the order of suspension pending an enquiry of a servant can be set aside if it is contrary to law or if it is actuated by *mala fides*, etc., even in a writ petition. Shamsher Bahadur, J., himself felt that the case decided by him was distinguishable from *S. Partap Singh's case* on the ground that the order of suspension had been passed in accordance with the rules and no *mala fides* could be discerned. The facts in the case decided by the learned Judge were also different and I have no manner of doubt that if an order of suspension has been made by the Corporation when it was neither competent nor empowered to pass that order, it can be set aside in a writ petition.

(6) 1964 P.L.R 1227.

(7) A.I.R. 1961 S.C. 276.

(8) A.I.R. 1964 S.C. 72.

In view of all that has been discussed above the petition is allowed only in this manner that resolution No. 271 passed by the Corporation on 19th July, 1965, accepting the recommendations of the Standing Committee, dated 7th July, 1965, placing the petitioner under suspension is hereby set aside. The petition is dismissed with regard to the other matters covered by the aforesaid resolution or resolutions. As regards the prayer of the petitioner for appropriate writs and directions in the matter of payment of his salary and allowances, I have no doubt that the concerned respondents will make payment to him of whatever is due to him in accordance with law keeping in view the order that has been made by this Court quashing the suspension of the petitioner. In view of the entire circumstances I make no order as to costs.

In view of what has been stated before, the petition under section 476 and 479A, Cr. Procedure Code (Cr. Misc. No. 199-D of 1966), is dismissed.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

KALI RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER—*Respondents*

Civil Writ No. 1035 of 1966.

September 23, 1966

Constitution of India (1950)—Article 226—Petition under—Whether can be made by person having no interest in the subject-matter—Punjab Resumption of Jagirs Act (XXXIX of 1957)—S. 2(3) and 4—“Military Jagir”—By whom can be claimed—Application under section 4—Whether can be thrown out on ground of delay.

Held, that whereas Article 226 of the Constitution has given unfettered jurisdiction to the High Courts to issue appropriate writs, orders or directions in appropriate cases, the person, at whose hands applications for such writs, orders or directions can be entertained, has not been left to the discretion of the Court. Relief under that Article can be claimed only for enforcing or safeguarding against the violations of fundamental rights or other legal rights and it is not permissible for a man in the street to move a High Court under Article 226 of the Constitution by saying that though admittedly he has no personal interest in