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SHIVAJI ATMAJI SAWANT & ANR.

v.

STATE OF MAHARASHTRA AND ORS.

FEBRUARY 14, 1986

B [A.P. SEN AND D.P. MADON, JJ.]

Bombay Police Act, 1951 :

Sections 25 and 27 - Bombay Police - Strike of constabulary - Appellants - Members of police force - Inciting C others to commit violence - Dismissed from service - Charge sheet not served, enquiry not held - 'Reasons' why not practicable to hold enquiry - Served separately - Dismissal order - Whether valid.

The appellants were members of the Bombay Police Force D and office-bearers of the Maharashtra Police Karamchari Sanghtana. They were dismissed from service without issuing any charge-sheet and without holding any inquiry into the acts of alleged misconduct committed by them under sub-ss.(1) and (2) of s. 25 of the Bombay Police Act, 1951 read with cl.(b) of the second proviso to Art. 311(2) of the Constitution. It E was stated that they along with other members of the Bombay Police Force had been instigating others in acts of insubordination and indiscipline and to withdraw from their lawful duties, inciting them to violence any mutiny, joining rioting mobs and participating in arson, looting and other criminal acts, wilfully disobeying orders of superior officers and that F these acts had created a situation in Bombay whereby the normal functioning of the police force had been rendered difficult and impossible and that in view of these facts and circumstances, any attempt to hold a departmental inquiry by serving a written charge-sheet and following the procedure laid down in the Bombay Police (Punishments & Appeal) Rules, G 1956 would be frustrated by the collective action of these persons and it was therefore not practicable to hold such an enquiry. The appellants assailed their dismissal from service in the High Court by petitions under Art. 226 of the Constitution but the High Court declined to interfere. In appeal, it was contended on behalf of the appellants that the impugned H orders of dismissal suffered from a total non-application of

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mind inasmuch as (a) identical orders were passed against 43 other members of the Constabulary and all the orders were cyclostyled; and (b) the reasons for dispensing with the enquiry did not accompany the order of dismissal.

Dismissing the appeals, B

HELD: 1.1 The recording of reasons for dispensing with an inquiry is a condition precedent to the applicability of cl. (b) of the second proviso to Art. 311(2) of the Constitution; and, if such reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. C If the order of dismissal under cl.(b) of the second proviso to Art. 311(2) imposes a penalty without furnishing reasons, it would be bad and would be required to be struck down. [308 D-E; F]

Satyavir Singh and Ors. etc. v. Union of India & Ors., D [1985] 4 S.C.C. 252 and **Union of India & Anr. v. Tulsiram Patel & Ors. connected matters,** [1985] 3 S.C.C. 398, followed.

1.2 In the instant case, however, the impugned orders of dismissal served on each of the appellants itself sets out the reasons why it was not reasonably practicable to hold an E inquiry; and, the "reasons" served separately merely amplified and elaborated what had been stated in the impugned order. There is therefore no substance in the contention that the reasons for dispensing with the inquiry did not accompany the order. [308 G; 309 B; 308 D]

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2.1 Normally, the passing of several cyclostyled orders would, prima facie, imply non-application of mind but this is not a rule of universal application and it would depend upon the facts and circumstances of each case whether the impugned order suffers from such infirmity. [307 E-F]

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2.2 In a situation where the acts alleged were of a large group acting collectively with the common object of coercing the authority, and it is not possible to particularize the acts of each individual member of the group, cyclostyled orders passed against the members of the group would not be vitiated by non-application of mind. [308 A-B] H

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3.1 The appellants were not without remedy against the impugned order of dismissal from service. They had the remedy of an appeal under s. 27 of the Bombay Police Act, which under r. 11 of the Bombay Police (Punishments & Appeal) Rules had to be preferred within two months from the service of the order of dismissal. [310 A-B]

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3.2 Further, they also had the right to prefer a revision to the Inspector-General of Police, Maharashtra under sub-r.(1) of r. 17 within a period of two months as prescribed under sub-r.(2) thereof. [310 C-E]

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3.3 Looking to the circumstances that the appellants had been dismissed from service as a punitive measure for their activating insurrection among the Bombay Police Force, the Court as a special case directed the Inspector-General of Police to entertain a revision under sub-r.(2) of s. 17, although the period of limitation for filing such revision had

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expired, and to condone the delay and hear and dispose of such revision on merits. [310 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4041 of 1982.

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From the Judgement and Order dated 1.12.1982 of the Bombay High Court in W.P. No. 1976 of 1982.

AND

Civil Appeal No. 4363 of 1985.

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From the Judgment and Order dated 13.10.1982 of the Bombay High Court in Writ Petition No. 501 -A of 1982.

V.N. Ganpule for the Appellant in C.A. No. 4041 of 1982.

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V.M. Tarkunde, V.N. Ganpule for the Appellant in C.A. No. 4363 of 1985.

S.B. Bhasme, M.N. Shroff and A.S. Bhasme for the Respondents.

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The Judgment of the Court was delivered by

MADON, J. The Appellant in Civil Appeal No. 4041 of 1982, Shivaji Atmaji Sawant, was a Police Constable in the Bombay City Police Force attached to the Bandra Police Station in Bombay. He was governed by the Bombay Police Act, 1951 (Bombay Act No.XXII of 1951). By an order dated August 22, 1982, passed by the Commissioner of Police, Greater Bombay, he was dismissed from service, without a charge-sheet having been issued to him and without any inquiry being held with respect to the misconduct alleged against him. The said order of dismissal was passed under section 25(1) of the Bombay Police Act read with clause (b) of the second proviso to Article 311(2) of the Constitution of India. The writ petition filed by Sawant challenging the said order of dismissal was dismissed by the Bombay High Court. He has thereupon approached this Court in appeal by way of Special Leave granted by this Court.

The Appellant in Civil Appeal No.4363 of 1985, Namdeo Jairam Velankar, was a Head Constable in Armed Batch No.645 and was posted at Aurangabad. He too was governed by the Bombay Police Act. He was also dismissed in the same way as Sawant by an order dated August 22, 1982, passed by the Superintendent of Police, Aurangabad, under section 25(2) of the Bombay Police Act read with clause (b) of the second proviso to Article 311(2) of the Constitution. He had also filed a writ petition before the Aurangabad Bench of the Bombay High Court which was dismissed and he too has approached this Court in appeal by way of Special Leave granted by this Court.

Section 25 of the Bombay Police Act specifies the officers who are entitled to punish the members of the Bombay Police Force. Under clause (b) of the second proviso to Article 311(2) of the Constitution, an authority empowered to dismiss or remove a civil servant or reduce him in rank is authorized to dispense with the inquiry provided in clause (2) of Article 311, if it is satisfied that for some reason to be recorded by it in writing, it is not reasonably practicable to hold such inquiry. In the case of **Union of India and Anr. v. Tulsiram Patel and other connected matters,** [1985] 3 S.C.C. 398, a Constitution Bench of this Court has considered in great detail the scope and effect of Articles 309, 310 and 311 of the Constitution and particularly of the second proviso to Article 311(2). The conclusions reached by this Court in

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Tulsiram Patel's Case have been summarized in **Satyavir Singh and others etc. v. Union of India and Ors.**, [1985] 4 S.C.C. 252. In view of this decision the only contention raised before us at the hearing of these Appeals was that the impugned orders of dismissal suffered from a total non-application of mind. The facts on the record, however, completely belie this contention and we will now proceed to narrate them.

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Article 33 of the Constitution empowers Parliament by law to determine to what extent any of the rights conferred by Part III of the Constitution (that is, the Fundamental Rights), shall in their application inter alia to the Forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. In pursuance of this power Parliament has enacted the Police Forces (Restriction of Rights) Act, 1966 (Act No.33 of 1966). As shown by the Statement of Objects and Reasons and the long title of the Act, the object of the Act is to provide for the restriction of certain Fundamental Rights in their application to the members of the Forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and maintenance of discipline among them. Under section 1(3), the said Act is to come into force on such date as may be appointed in this behalf by notification in the Official Gazette, in a Union Territory, by the Central Government and in a State, by the Government of that State. It was brought into force in the State of Maharashtra with effect from July 15, 1979, by Notification No. PPF. 0229-PLO-III dated July 10, 1979, published in the Maharashtra Government Gazette dated July 26, 1979, Part IVA at page 502. Clause (a) of section 2 of the said Act defines the expression "member of a police-force" as meaning "any person appointed or enrolled under any enactment specified in the Schedule". Among the enactments so specified is the Bombay Police Act, 1951. Under section 3 of the said Act of 1966, no member of a Police Force is, without the express sanction of the Central Government or of the prescribed authority, to be a member of, or be associated in any way with, any trade union, labour union, political association, or with any class of trade union, labour unions or political associations, or be a member of, or be associated in any way with any other society, institution, association or organization that is not recognized as part of the Force of

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which he is a member or is not of a purely social, recreational or religious nature. Further, a member of a Police Force is prohibited from participating in or addressing any meeting or taking part in any demonstration organized by any body of persons for any political purposes or for such other purposes as may be prescribed by rules made under the said Act. Rule 3 of the Police Forces (Restriction of Rights) Rules, 1966, provides as follows :

> "3. **Additional purposes for which a member of a police-force not to participate in, or address, any meeting, etc.** –
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> No member of a police-force shall participate in, or address any meeting or take part in any demonstration organised by any body of persons –
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> (a) for the purpose of protesting against any of the provisions of the Act of these rules or any other rules made under the Act; or
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> (b) for the purpose of protesting against any disciplinary action taken or proposed to be taken against him or against any other member or members of a police-force; or
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> (c) for any purpose connected with any matter pertaining to his remuneration or other conditions of service or his conditions of work or his living conditions or the remuneration, other conditions of service, conditions of work or living conditions, or any other member or members of a police-force;

Provided that nothing contained in clause (b) shall preclude a member of a police-force from participating in a meeting convened by an association of which he is a member and which has been accorded sanction under sub-section (1) of section 3 of the Act, where such meeting is in pursuance of, or for the furtherance of the object of such association."

Under section 4, any person who contravenes the provisions of section 3 commits an offence and is liable, without prejudice to any other action that may be taken against him,

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to be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs.2000 or with both.

With a view to give members of the Bombay Police Force an opportunity to ventilate their grievances with respect to
B service conditions and allied matters the Government of Maharashtra announced that it would permit the members of the Force to form associations at the State level as well as at Unit level. The authority to grant recognition to such associations was the Inspector General of Police, Maharashtra State. Before any recognition was given, associations were
C formed and office-bearers elected. The association at the State level was the Maharashtra Police Karamchari Sanghtana and at the Greater Bombay level was the Maharashtra Police Karamchari Sanghtana, Greater Bombay. The Inspector-General of Police granted recognition to these associations by his order dated March 20, 1982, on conditions (1) that the members
D should not resort to strike or withhold their services or otherwise delay the performance of their duties in any manner, (2) that the Association should not resort to any coercive method of agitation for obtaining redressal of grievances, and (3) that the Association should not do anything which may affect the efficiency of the Force or undermine its
E discipline.

Sawant is alleged to have taken the lead along with one S.D. Mohite in forming the Greater Bombay Association and starting its activities. It is further alleged that from the inception of the activities of this Association, the principal
F office-bearers and leaders started spreading an atmosphere of indiscipline, culminating in the members of the Police Force, including Sawant, wearing black bands and badges on the Independence Day of 1982, namely, August 15, 1982. Consequently, the State Government suspended the recognition of the said Association for a period of three months. This resulted in
G Bombay in a strike of the police constabulary and widespread rioting, arson, lotting and other acts amounting to mutiny from August 18, 1982. The situation became so serious that on the very day of the outbreak of these incidents, namely, August 18, 1982, military and para-military forces had to be summoned to deal with the members of the Police Force who had
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normalcy to be restored. The events which took place on and from August 18, 1982, are not disputed. In fact, in his Petition for Special Leave to Appeal Sawant has himself described them as "deplorable incidents".

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Three contentions were urged on behalf of Sawant in order to substantiate the contention that the impugned order of dismissal passed against him was without any application of mind. The first contention was that Sawant was arrested in the early hours of August 18, 1982, and, therefore, did not and could not have taken part in the incidents of violence, arson, looting and mutiny which took place on and from that date. Assuming it is so, Sawant is alleged to have been one of the active instigators and leaders who were responsible for the creation of such a serious situation which rendered all normal functioning of the Police Force and normal life in the City of Bombay impossible. As pointed out by this Court in **Satyavir Singh and Ors. v. Union of India and others** (at page 287) it is not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before taking action under clause (b) of the second proviso to Article 311(2). A person who incites others to commit violence is as guilty, if not more so, than the one who indulges in violence, for the one who indulges in violence may not have done so without the instigation of the other. The second contention was that identical orders were passed against forty-three other members of the constabulary and that all these orders, including the one served upon Sawant, were cyclostyled. Where several cyclostyled orders are passed, it would prima facie show non-application of mind but this is not a universal rule and would depend upon the facts and circumstances of each case. In **Tulsiram Patel's Case** cyclostyled orders were served upon several members of the Unit of the Central Industrial Security Force posted at Bokaro with the names of the individual members filled in. Rejecting a similar contention raised in that case, this Court observed (at page 520) :

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> "It was said that the impugned orders did not set out the particular acts done by each of the members of the CIS Force in respect of whom dismissal order was made, and these were merely cyclostyled orders with the names of individual members of the CIS

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Force filled in. Here was a case very much like a case under Section 149 of the Indian Penal Code. The acts alleged were not of any particular individual acting by himself. These were acts of a large group acting collectively with the common object of coercing those in charge of the administration of the CIS Force and the Government in order to obtain recognition for their association and to concede their demands. It is not possible in a situation such as this to particularize the acts of each individual member who participated in the commission of these acts. The participation of each individual may be of greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk."

The third contention was that the reasons for dispensing with the inquiry did not accompany the order. In **Tulsiram Patel's Case** this Court held that the recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso and if such reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. The Court also held that though it was not necessary that the reasons should find a place in the final order imposing penalty, it would be advisable to record them in the final order so as to avoid an allegation that the reasons were not recorded in writing before passing the final order but were subsequently fabricated. What had happened in Sawant's Case was that either along with the order or soon thereafter reasons in writing for dispensing with the inquiry were served upon Sawant. A perusal of the reasons shows that they were recorded later. Were the impugned order of dismissal one which merely imposed a penalty, it would have been bad and would require to be struck down in view of the decisions in **Tulsiram Patel's Case.** The position is, however, different. The impugned order of dismissal itself sets out the reasons why it was not reasonably practicable to hold the inquiry. It is stated in the said order that some members of the Bombay City Police Force, including Sawant, had been instigating others to indulge in acts of insubordination and indiscipline and were instigating them to withdraw from

their lawful duties, inciting them to violence and mutiny, joining rioting mobs and participating in arson, looting and other criminal acts and were willfully disobeying orders of their superior officers and that these acts had created a situation whereby the normal functioning of the Force in Bombay had been rendered difficult and impossible, and that in view of these facts and circumstances, any attempt to hold a departmental inquiry by serving a written charge-sheet and following the procedure laid down in the Bombay Police (Punishments and Appeals) Rules, 1956, would be frustrated by the collective action of those persons and it was, therefore, not practicable to hold such an inquiry. The "reasons" served separately merely amplified and elaborated what had been stated in the impugned order. There is thus no substance in any of the contentions advanced in the case of Sawant and it must be held that clause (b) of the second proviso to Article 311(2) was rightly applied in his case.

We now turn to the case of Velankar. He was the President of the Aurangabad Branch of the said Association. He was dismissed along with four other members of the Force posted at Aurangabad. The order of dismissal in his case sets out in detail the acts of misconduct alleged against him, the situation which was prevailing in Aurangabad and the reasons why it was not reasonably practicable to hold a disciplinary inquiry against him. Briefly summarized, when the violence broke out in Bombay on August 18, 1982, a similar situation was attempted to be brought about in Aurangabad by Velankar and the four others who were dismissed along with him. Velankar is said to have led a procession on August 21, 1982, which procession shouted provocative slogans, demanding the release of these policemen in Bombay who had been arrested and demanding their reinstatement and revocation of orders of suspension passed against others in Bombay. Apart from these acts being in contravention of clause (b) of Rule 3 of the Police Forces (Restriction of Rights) Rules, 1966, swift action was necessary were the history of Bombay not to be repeated in Aurangabad. The authorities could not be expected to wait until houses and shops in Aurangabad were looted and set on fire before taking steps to put down the threatened insurrection. In these circumstances, it cannot be said that in the case of Velankar clause (b) of the second proviso to Article 311 (2) was wrongly applied.

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It is contended that both these Appellants are innocent of the misconduct charged against them. If so, they are not without any remedy. Under section 27 of the Bombay Police Act, 1951, an appeal lies against an order of penalty imposed upon a member of the Police Force to such officer as the State Government may specify by general or special order. The B appellate authorities have been specified in Schedule II to the Bombay Police (Punishments and Appeals) rules, 1956. Under Rule 11, an appeal is to be filed within two months of the date on which the Appellant was informed of the order appealed against. The said Rule 11 confers upon the appellate authority, for good reasons shown, to extend the term for filing C the appeal by six months. Rule 17 confers revisional jurisdiction upon the Inspector-General of Polcie. Under sub-rule (1) of Rule 17, the Inspector-General of Police may, of his own motion or otherwise, call for and examine the record of any case in which an order, whether an original order or an order in appeal, inflicting any punishment has been made by D any authority subordinate to him in the exercise of any power conferred on such authority by the said Rules and in which an appeal lies to him or an authority subordinate to him but such appeal has not been made in accordance with the provisions of the said Rules or if such appeal has been made, after the appeal is decided by the appellate authority. Under sub-rule E (2) of Rule 17, an application for revision is to be made within two months of the date on which the applicant was informed of the order complained against. The Inspector-General is, however, given the power, for good cause shown, to relax that period.

F Assuming for the sake of argument that Sawant and Velankar were not guilty of the charges levelled against them, they have a departmental remedy provided by the said Rules. The period for filing an appeal has, however, expired and even the time for extending that period has also expired. The Appellants can, however, approach the Inspector-General of G Police in revision and the ends of justice would be met if we direct the Inspector-General of Police to entertain such applications for revision by relaxing the period of limitation and hearing such applications on the merits.

We may also mention that by a Circular No. PSA 0283/POL-H 5A dated July 5, 1984, the Government of Maharashtra, on humanitarian grounds as a part of the rehabilitation programme

of police personnel dismissed from service or whose services were terminated in the wake of the police agitation which took place in August 1982, has decided that they would be considered for absorption in security jobs such as watchmen etc. under the Maharashtra State Electricity Board, Maharashtra State Road Transport Corporation, Maharashtra Agro-Industries Development Corporation, Agricultural Universities, Research Stations, State Warehousing Corporation, etc., and that wherever necessary, the age limits would be relaxed in respect of these ex-policemen for making their appointments which would be treated as fresh appointments.

In the result, we dismiss both these Appeals, but direct that in case either of these two Appellants file an application for revision to the Inspector-General of Police, Maharashtra State, by April 15, 1986, the Inspector-General of Police shall condone the delay and hear and dispose of the said application on the merits. The Appellant in each of these Appeals may also, either without filing any application for revision or after such application fails, apply to take advantage of the said Circular No. PSA 0283/POL5A dated July 5, 1984, issued by the Government of Maharashtra. All interim orders, if any, passed in these two Appeals will stand vacated.

The parties will bear and pay their own costs of these two Appeals.

A.P.J. Appeals dismissed.