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M.P. STATE

v.

PRADEEP KUMAR GUPTA
(Criminal Appeal No. 992 of 2007)

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MAY 18, 2011

[ASOK KUMAR GANGULY AND DEEPAK VERMA, JJ.]

Madhya Pradesh Municipality Act, 1961 – s. 86 – Sanction for prosecution of a public servant – Respondent-employee, an engineer in Municipal Corporation – Punishment imposed on him in the form of withdrawal of two increments – Sanction for prosecution of respondent granted by the State Government – Validity of – Held: Respondent was appointed by the State Government and remained under the control of the State Government throughout his service – State Government besides being the Appointing Authority was also the Authority to impose punishment and remove the respondent – Consequently, in terms of s. 19 of the PC Act, 1988, the State Government was competent to grant sanction to prosecute the respondent – Thus, High Court erred in holding that the grant of sanction for prosecution by the State Government was invalid – Madhya Pradesh Municipal Service (Executive) Rules, 1973 – rr. 17 and 32 – Prevention of Corruption Act, 1988 – s. 19.

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Respondent-public servant was appointed by the State Government. He was posted as an Engineer in the Municipal Corporation. In the course of employment, the penalty of withdrawing of two increments was imposed on the respondent by the State Government. The State Government granted sanction to prosecute the respondent. In a revision, the High Court held that sanction for prosecution granted to the respondent was invalid and quashed the same. It was held that the

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respondent could be removed from the post by the Mayor-in-Council under the relevant provisions of the Madhya Pradesh Municipal Corporation Act. Therefore, the appellant filed the instant appeal. A

Allowing the appeal, the Court B

HELD: The respondent having been appointed under Section 86 of the Madhya Pradesh Municipality Act, 1961 has been appointed by the State Government and remains under the control of the State Government throughout his service. It is clear from Rule 32 of the Madhya Pradesh Municipal Service (Executive) Rules, 1973 that the State Government is the Appointing Authority and the State Government can impose on the members of the State Service penalties mentioned in clause (i) to (vi) of such Rule. Therefore, the State Government being the Appointing Authority and being the Authority to impose punishment on the employee is also the Authority which can remove an employee from the service. It is clear from Section 19 of the Prevention of Corruption Act, 1988 that the Authority who is competent to remove the person concerned is competent to grant sanction. The High Court, without considering these aspects of the Act and Rules, came to an erroneous finding. Thus, the order of the High Court is set aside. [Paras 10, 13, 14, 17] [886-A, G-H; 887-A; 888-B] C D E F

Ashok Bajjal vs. M.P. Government 1998 Cri. L.J. 3511 –distinguished.

State of Tamil Nadu vs. T. Thulasingham and Ors. AIR 1975 Supreme Court 1314 – referred to. G

Case Law Reference:

1998 Cri. L.J. 3511 Distinguished. Para 3
AIR 1975 Supreme Court 1314 Referred to. Para 15 H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 992 of 2007.

B From the Judgment & Order dated 17.12.2004 of the High
Court of Judicature of M.P. Bench at Indore in Criminal
Revision No. 380 of 2003.

S.K. Dubey, Vikas Bansal, Vibha Datta Makhija for the
Appellant.

Jitendra Mohan Sharma for the Respondent.

C The Judgment of the Court was delivered by

D A.K. GANGULY, J. 1. This appeal is filed at the instance
of the State impugning the order of the High Court dated
17.12.2004 whereby the High Court in a revision filed before it
was pleased to held that sanction for prosecution which was
granted to the respondent, Sh. Pradeep Kumar Gupta was
invalid and High Court was pleased to quash the same.

E 2. In coming to the said finding, the High Court, inter alia,
held that Sh. Pradeep Kumar Gupta, (hereinafter called the
respondent), was posted as an Engineer in Municipal
Corporation of Ujjain and was a public servant and can be
removed from the said post by the Mayor-in-Council under the
relevant provisions of the Madhya Pradesh Municipal
F Corporation Act and the sanction for prosecution granted by
the State Government is invalid and incompetent.

G 3. In support of the said finding, the High Court, inter alia,
relied on a judgment of *Ashok Baijal Vs. M.P. Government*
reported as 1998 CrI. L.J. 3511.

H 4. We have heard the counsel appearing for the parties.
We are of the view that the conclusions reached by the High
Court are not warranted either in facts or in law for the reasons
discussed herein-under.

5. From the order dated 4.10.1983 of the Government of Madhya Pradesh Local Self Government, it is clear that the respondent was appointed under Section 86(1) of the Madhya Pradesh Municipality Act and such appointment was made by the State Government in terms of Rule 17 of the Madhya Pradesh Municipal Service (Executive) Rules, 1973. It is thus clear that the respondent was appointed by the State Government.

6. The learned counsel for the appellant has also drawn the attention of this Court to other materials on record from which it appears that the respondent, after such appointment, was deputed by order dated 9.11.99 of M.P. Local Self Government in the Municipal Corporation, Khandwa in place of Municipality of Ujjain.

7. Our attention is also drawn to the fact that in the course of his employment, the respondent suffered a penalty of withholding of two increments and the same was also imposed by the Government. The said order of punishment was filed in the trial court by the respondent himself. These are admitted facts of the case.

8. These facts were also available before the High Court, but unfortunately, the High Court has not at all considered these facts.

9. Now, coming to the legal question, it appears that Section 86 of the M.P. Municipalities Act, 1961 (hereinafter referred to as the said Act) provides for constitution of State Municipal Services. In Section 86 it is also made clear that such services to be constituted by the State Government shall make rules in respect of the recruitment, qualification, appointment, promotion, etc. and also for dismissal, removal, conduct, departmental punishment under Section 86(2) of the Act. Section 86(4) also provides that the State Government may transfer any member of the said municipal service from one municipal council to another municipal council.

A 10. It is, therefore, clear that the respondent having been
appointed under Section 86 of the said Act, has been appointed
by the State Government and remains under the control of the
State Government throughout his service. The relevant rule in
B (Executive) Rules, 1973. Under Rule 2(b) of the said Rules,
Appointing Authority has been defined as follows:

(b) "Appointing Authority" means State Government in
respect to Select Grades, Class I, Class II and Class III
C Chief Municipal Officers

11. Similarly, under Rule 2(i) service has been defined as
follows:

(i) "Service" means the Municipal Service for the State
D constituted under sub-section (i) of Section 86 of the Act.

12. Rule 32 of the said Rule provides as follows:

32. Authorities who may impose penalties – (1) Subject
to the provisions of the Act and these rules the penalties
E mentioned in clauses (i) to (ii) of Rule 31 may be imposed
on a member of the service by the [appointing authority or
Divisional Commissioner or Director].

(2) Subject to the provisions of the Act and these rules, the
F penalties mentioned in clauses (iv) to (vi) of Rule 31 shall
not be imposed on a member of the service except by the
appointing authority and in consultation with the Public
Service Commission.

13. It is clear from the aforesaid Rules that the State
G Government is the Appointing Authority and the State
Government can impose on the members of the State Service
penalties mentioned in clause (i) to (vi) of such Rule. Therefore,
State Government being the Appointing Authority and being the
Authority to impose punishment on the employee is also the
H Authority who can remove an employee from the service.

14. That being the position, it is clear from the provisions of Section 19 of the Prevention of Corruption Act, 1988 that the Authority who is competent to remove the person concerned is competent to grant sanction. Unfortunately, the High Court, without considering these aspects of the Act and Rules, relied only on the judgment of *Ashok Bajjal* (supra) in coming to an erroneous finding. Provision of Section 19(1) of Prevention of Corruption Act, 1988 is set out hereunder:

19. Previous sanction necessary for prosecution –

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

15. Similar views have been expressed in the case of *State of Tamil Nadu Vs. T. Thulasingham* and others reported in AIR 1975 Supreme Court 1314.

16. We are, however, not called upon to decide the correctness of the decision rendered in *Ashok Bajjal* case (supra). We further make it clear that the decision is *Ashok Bajjal* case (supra) is not attracted to the facts and circumstances of this case. However, we do not express any

A opinion on the correctness of the proposition laid down in *Ashok Bajjal* case (supra).

3 17. This appeal is allowed, the order of the High Court is set aside and the trial of the case of the respondent may proceed in accordance with law.

N.J.

Appeal allowed.