

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Prem Chand Jain, J.

KHUSHAL CHAND,—Appellant

versus

PUNJAB STATE ETC.,—Respondents.

Letters Patent Appeal No. 338 of 1970

October 6, 1970

The Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 3(9), 3(10) and 20—Market Committee suspending an employee during the pendency of disciplinary action being taken against him—Marketing Board's power of control and superintendence under section 3(9)—Whether includes power to interfere with such action of the Market Committee—Board—Whether can direct the Committee not to take a particular interim action against its servants.

Held, that sub-section 9 of section 3 and section 20 of the Punjab Agricultural Produce Markets Act 1961, have to be read together. From reading them together, it is obvious that the appointment of an employee by the Market Committee has to be made with the approval of the Marketing Board but after such appointment, power to control and to punish the employee is with the Committee. This power includes disciplinary action against the employee, which also includes order of suspension pending enquiry. Where the Committee fails to take a disciplinary action against a servant, the Chairman of the Board can direct the Committee to hold an enquiry, and where the facts found do so justify, to direct to dismiss the person concerned. Power of superintendence and control, however, does not include any interference with the action of the Committee where it desires to take a disciplinary action or is taking a disciplinary action against an employee. Hence the Board by virtue of the power of control given to it under sub-section 9 of section 3 of the Act cannot give directions to the Committee not to take a particular interim action against its servant when it proposes to conduct an enquiry for the misconduct of such a servant. (Para 7)

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment, dated 29th May, 1970, passed by Hon'ble Mr. Justice A. D. Koshal, in Civil Writ No. 805 of 1970.

D. N. AWASTHY AND K. L. SACHDEV, ADVOCATES, for the appellant.

ANAND SWAROOP, S. M. ASHRI, KULDIP SINGH AND R. S. MONGIA, ADVOCATES, for the respondents.

JUDGMENT

HARBANS SINGH, C. J.—(1) This Letters Patent appeal arises out of Civil Writ No. 805 of 1970 filed by Khushal Chand appellant, challenging the notification, dated 10th March, 1970, by which the Punjab Government removed him from his office as the Chairman of the Market Committee, Jalalabad, district Ferozepur. This writ petition was heard along with another writ petition (C.W. 668 of 1970) filed by the Market Committee, Jalalabad, challenging the notice, dated 20th January, 1970, requiring the Market Committee to reinstate one Shri Piara Lal, Mandi Supervisor, on pain of action for supersession of the Market Committee under section 35 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act), and both these writ petitions were dismissed. The Market Committee did not challenge the decision in the writ petition filed by it, whereas Khushal Chand has filed this appeal under clause 10 of the Letters Patent.

(2) It would be necessary to give the facts of this case in rather detail. The Market Committee, Jalalabad (hereinafter referred to as the Committee) was superseded and an Administrator was appointed to manage its affairs till the election of the Committee. On 17th October, 1968, Ram Niwas, Secretary of the Committee, brought to the notice of the Administrator (District Agricultural Officer, Ferozepur) by a telegram (Annexure 'A') the fact that Piara Lal, Mandi Supervisor, had assumed wrongful custody of records and that this Piara Lal was suspected of misappropriation of funds. Piara Lal was directed by the Administrator,—*vide* Annexure 'B', on that very date, to hand over all the records, stores, etc., to the Secretary. Thereafter, the Senior Auditor made a report, dated 14th November, 1968, to the effect that there were clear cases of misappropriation. The last line of this report was: "The audit has been suspended for two days as the record was not easily made available."

(3) It appears that the Administrator was siding with Piara Lal and was not taking the action required against him, and in fact Piara Lal had not handed over all the records, etc., to the Secretary of the Committee. On this, on 23rd December, 1968, the Secretary of the Committee,—*vide* Annexure 'D', sent a detailed report to the Secretary, State Agricultural Marketing Board, Chandigarh (hereinafter referred to as the Board) giving specific facts in the matter

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of misappropriation of the funds, and forwarded its copy to the Administrator of the Committee. On 17th January, 1969, the Administrator himself suggested as follows:—

“— — — Further investigation into these cases is not possible until and unless Sh. Payare Lal, Mandi Supervisor of the Committee, is shifted to some other Committee by way of transfer because against this official there is *prima facie* suspicion

On 22nd January, 1969,—*vide* Annexure 'F', the Secretary of the Committee again wrote to the Administrator saying that the Administrator was suppressing certain facts and that no action was being taken for transfer of the records from Piara Lal. On 7th February, 1969,—*vide* Annexure 'G', the Administrator suspended Piara Lal for the first time. Eighth and 9th February were holidays, and on 11th February, 1969, the Administrator made a report to the Board that certain charges, dealt with by him in the report, had not been proved. It is interesting to note that the election of the new Committee had meanwhile taken place in the month of December, 1969, and two days after making this report, the Administrator handed over the charge to the newly elected Market Committee. Soon thereafter, i.e., on 18th February, 1969,—*vide* Annexure 'H', Secretary of the Board wrote to the Chairman of the Committee that Piara Lal should be reinstated, as recommended by the Administrator. He further went on to say that enquiry against Piara Lal would be made by the Senior Marketing Inspector, Jullundur. This was followed by another letter, Annexure R.2/3, dated 22nd March, 1969, from the Secretary of the Board to the Chairman of the Committee, insisting on the reinstatement of Piara Lal. Khushal Chand, Chairman of the Committee, put this matter in a meeting of the Committee on 28th March, 1969, in which the Committee passed a resolution unanimously, except for the dissenting vote of one man that the Chairman along with other members should see the Secretary and Chairman of the Board about this matter before any action is taken on the directions of the Secretary about Piara Lal. It appears that the Chairman and some other members did meet the Secretary of the Board but it is not clear as to what was the result, though from the minutes of the subsequent meeting it appears that the impression gathered by the Chairman was that Piara Lal need not be reinstated. After this meeting, the next letter received from the Secretary of the Board by the Chairman of the Committee is Annexure R.2/4,

dated 30th May, 1969, directing the Chairman to reinstate Piara Lal within four days failing which the Chairman was threatened to be removed under section 15 of the Act. Within less than a week of the receipt of this letter, the Chairman of the Committee put the whole matter before the Committee on 7th June, 1969. This is clear from Annexure 'J' at page 103 of the paper book. This shows that the advice of the Secretary of the Committee was as follows:—

“During the course of investigation he (Piara Lal) should be kept under suspension as there are charges of corruption against him. There is likelihood of interruption in the investigation in his presence. It is necessary to bring it to notice that after taking into custody the record, after the Administrator's rule, many more cases have come into notice against the said official. More proofs have been collected in support of previous charges.....”

The Committee decided, this time unanimously—

- (i) to form a sub-committee to enquire into the charges against Piara Lal ;
- (ii) “that the suspension of the above official who is placed under suspension under orders of the Administrator, dated 7th February, 1969, should remain as the charges of corruption against him are serious after investigation into the charges, and before he is exonerated, it will be against the public interest to reinstate him and (his) presence in the office will also interrupt the investigation.”

In this resolution it was also mentioned as under:—

“— — — — in the light of earlier decision of the Committee, dated 28th March, 1969, the Chairman, Paramjit Singh and Shri Mehtab Singh, Vice-Chairman met the Secretary of the Board and they have told the Committee that Secretary of the Board and Shri Saighal Administrative Officer have cleared to them that the Committee is fully competent to investigate and take action. The Board will not interfere and issue direction in this respect in future. Therefore, there is no necessity for further action on the telegram and letters received from the Secretary of the Board regarding Sh. Payare Lal and these should be filed. A copy of the above decision should

be sent under registered cover to the Secretary of the Board in reply of letter received from him.”

From the above it is clear that—

- (i) Piara Lal had been suspended by the Administrator ;
- (ii) the Secretary of the Committee had reported that after the regime of the Administrator, when the books of account were taken over, a number of other cases of misappropriation had come to light, which were of serious nature ;
- (iii) the Committee was definitely of the opinion that these charges have to be enquired into and had formed a sub-committee to do so; and
- (iv) the members of the Committee were unanimously of the view that in the circumstances of the case it would not be in public interest to reinstate the man, allow him to work and deal with affairs of the Committee till such time that the enquiry was finished and he was exonerated.

(4) It appears that the Secretary of the Board wrote to the Secretary of the Committee on 5th September, 1969 (Annexure K/1) enquiring if Piara Lal had been reinstated. This was followed by another letter, dated 16th September, 1969, enquiring from the Secretary of the Committee as to why Piara Lal was not reinstated (see Annexure L/1). Annexure R.2/1 is a letter, dated 23rd September, 1969, apparently in reply to the letters, dated 5th and 16th of September, 1969, by the Chairman of the Committee to the Chairman of the Board explaining that the question of reinstatement was put before the Committee on 7th June, 1969, and the Committee decided not to reinstate and that this decision was reiterated unanimously on 16th September, 1969. He ends this letter as follows:—

“Any how, in spite of the above charges of the audit note and others, your goodself, if deemed proper in the public interest to reinstate him, fresh instructions may kindly be given, so that the Committee should take action accordingly.”

Apparently this letter was sent by the Board to the Government. On 12th January, 1970, a letter (Annexure M/1) is sent by the Board

to the Committee referring to a letter of the Secretary of the Committee, to the following effect:—

“— — — — it is pointed out that thorough investigation be made in the complaint against Shri Pyare Lal, Mandi Supervisor, Jalalabad and the defaulter be punished. After the completion of investigation, the office of the Board may be informed.”

On 15th January, 1970,—*vide* Annexure R.2/2, Under-Secretary to Punjab Government wrote to the Secretary of the Board intimating as follows:—

“After considering the case, the Government have decided that Shri Pyare Lal be reinstated forthwith.”

On this, on 20th January, 1970, Secretary of the Board wrote to the Chairman of the Committee, directing that Piara Lal should be reinstated immediately, failing which the Committee will be superseded under section 35 of the Act. It was against this order that the Committee filed the writ mentioned above. Meanwhile on the same date a notice, Annexure Q/1, was sent to the Chairman of the Committee (Khushal Chand) to show cause why the Government should not remove him under section 15 of the Act. He was asked to furnish an explanation within the stipulated period, which, however, was not mentioned in the notice. Annexures ‘P’ and ‘Q’ are the two explanations sent by Khushal Chand on 3rd and 4th February, 1970. In Annexure ‘Q’, apart from other things, he stated as follows:—

“— — — — It appears that there is contest between the Market Committee as a whole and the Board on the other hand. I am being made scapegoatI plead again that I am prepared to abide by the lawful orders provided the resolution of the Market Committee is either in accordance with your direction or the said resolution is set aside or varied according to law.

I only trust that there will be no contest between your direction and resolution of the Committee. If, however, your goodself feel that the Market Committee as such has not carried out your valid direction then it is the entire Market Committee, not the undersigned at all, responsible for all.”

(5) Without bothering to see that the direction issued by the Board and that issued by the Committee were consistent, the Chairman of the Committee was removed,—*vide* order, dated 10th March, 1970, against which order Khushal Chand, Chairman of the Committee, filed a writ petition, which was dismissed and against that order of dismissal, he has come up in appeal.

(6) The provisions of the Punjab Agricultural Produce Markets Act, 1961, which are relevant for the purpose of this case, are as follows:—

“S. 3(1) —————
 —————

(8) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, it may suspend the Board and, till such time as a new Board is constituted, make such arrangements for the exercise of the functions of the Board as it may think fit.

Provided that the Board shall be constituted within six months from the date of its suspension.

(9) The Board shall exercise superintendence and control over the Committees.

(10) The State Government or the Chairman or the Secretary of the Board or any other officer of the Board authorised in this behalf by the Board may call for any information or return relating to agricultural produce from a Committee or a dealer or a godown-keeper or other functionaries and shall have the power to inspect the records and accounts of a committee and accounts of any dealer, godown-keeper or other functionaries for that purpose.

(11) The Chairman of the Board may transfer the Secretary or any employee dealing with the accounts of one Committee to another Committee within the same Region and exercise such other powers and discharge such other duties as may be prescribed :

Provided that any increase or decrease of emoluments of a transferred employee shall be referred to the State Government whose decision on such reference shall be final.

S. 20. (1) Every Committee shall have a person as its Secretary, appointed by the Board as its servant and lent to the Committee subject to such terms and conditions as the Board may prescribe.

(2) A Committee may, with the previous approval of the Chairman of the Board, employ such other officers and servants as may be necessary for the management of the market and may pay such officers and servants salaries as fixed by the Board for different cadres and shall have power to control and punish them:

Provided that where the basic pay of an employee is less than eighty rupees the previous approval of the Chairman of the Board for the appointment will not be necessary :

Provided further that if after examining the records obtained from the Committee or otherwise the Chairman of the Board is satisfied that any officer or servant of the Committee is negligent in the discharge of his duties, the Committee shall on the requirement of the Chairman of the Board suspend or otherwise punish him, and if the Chairman of the Board is satisfied that he is unfit for employment, the Committee shall dismiss him or terminate his services.

(3) — — — — —

(4) — — — — —

(5) — — — — —

(6) The powers conferred by this section on a Committee shall be exercised subject to such rules as may be made in this behalf by the State Government."

Section 33 of the Act deals with power of the Board to call information, inspect, enforce attendance and to suspend action, etc., of the Committees. Admittedly to the present action of the Board, section 33 has no application. It was so held by the learned Single Judge and that matter was not challenged before us by either party.

(7) The main contention on behalf of the State and the Board before the learned Single Judge was that sub-section (9) of section 3 of the Act gives general power of superintendence and control over the Committees and that this power of superintendence and control is not limited only to the matters mentioned in sub-section (10). Even if this be admitted to be correct, yet there is no manner of doubt that section 20 of the Act gives specific power to the Committee in respect of appointments and the Committee has power "to control and punish" such servants. Admittedly this section and sub-section (9) of section 3 have to be read together. Under sub-section (1) of section 20, Secretary of the Committee has to be appointed by the Board and the person so appointed has to be lent to the Committee. Apart from this, under sub-section (2) of the said section, all other officers and servants can be appointed by the Committee but with the previous approval of the Board. The only case where such an approval is not necessary is where the employee is paid less than Rs. 80 as the basic pay. Another power given to the Board is that where the Chairman of the Board is satisfied, after examining the records of the Committee, etc., that any officer or servant of the Committee is negligent in the discharge of his duties, then the Committee, on the requirement of the Chairman of the Board, shall suspend or otherwise punish such officer or servant, and if the Chairman of the Board is satisfied that a particular employee is unfit for employment, then the Committee shall dismiss him. Thus apart from the general supervision of the Board, the Board has been given specific power to direct the Committee to take disciplinary action against a servant and to dismiss him if the Chairman of the Board is satisfied about his being unfit for employment. The present case is converse. Here the Committee is anxious to take action against its servant for alleged serious cases of misappropriation and misconduct. The Board also is not taking the position that no such enquiry be held. As stated above, in its letter (Annexure 'M'), dated 12th January, 1970, the Secretary of the Board desired the Committee to have "a thorough enquiry" conducted and to punish the delinquent employee. But strangely enough the Board is trying to interfere and in a way obstruct such a "thorough enquiry" by insisting that the person against whom enquiry is to be made in respect of serious charges of misappropriation should first of all be reinstated. It appears that the Board once having taken up this position is standing on its prestige and is not giving any attention to the various points made by the Committee in its unanimous resolutions. The

question for determination is: whether the Board by virtue of the power of control given to it under sub-section (9) of section 3 of the Act can give directions to the Committee not to take a particular interim action against its servant when it proposes to conduct an enquiry for the misconduct of such a servant. As already stated, if the Committee fails to take an action against a delinquent employee, specific powers have been given to the Board to direct the Committee to do so. Here the Committee wants to hold an enquiry and the Board is agreeable that a thorough enquiry be conducted, but whereas the Committee wants to take interim action of keeping the employee suspended, the Board directs that he should be reinstated. If we read sub-section (9) of section 3 and section 20 of the Act together, it is obvious that what is provided is as follows:—

- (a) The appointment has to be made with the approval of the Board ;
- (b) After such appointment, power to control and to punish is with the Committee. It was not denied that this power to control and punish includes disciplinary action against an employee, which also includes order of suspension pending enquiry ; and
- (c) Where the Committee fails to take a disciplinary action against a servant, the Chairman of the Board can direct the Committee to hold an enquiry, and where the facts found do so justify, to direct to dismiss the person concerned.

Power of superintendence and control, however, does not include any interference with the action of the Committee where it desires to take a disciplinary action or is taking a disciplinary action against an employee. The only possible exception may be of ensuring that the enquiry which is being conducted by the Committee, is not prolonged so as to defeat the very object of the enquiry. But that is not the type of case here. After considering the entire matter, we have no doubt in our mind that the interference of the type that was made by the Board in the Committee taking disciplinary action against its servant by insisting that he should first be reinstated before an enquiry is started against him, was not justified or provided under the provisions of the law.

(8) Apart from this, it is further clear that the Chairman of the Committee was placed in a very difficult position, on the one hand the Board insisted that the Chairman of the Committee should reinstate Piara Lal, which matter when brought to the notice of the Committee, it unequivocally and unanimously decided that the circumstances of the case demand that he should remain suspended. Thus it was impossible for the Chairman of the Committee to disobey the Committee and to obey the Board, and he brought this difficulty to the notice of the Board. When this matter was brought to the notice of the Board, it was necessary for the Board to take steps to see that the matter was clarified. If the State Government felt that the action of the Committee in deciding that its servant, accused of misappropriation should remain under suspension, was against public interest,—though it is difficult to see how such a conclusion could have ever been arrived at by the State Government—action could have been taken under section 33 of the Act by suspending the resolution. If that had been done and the Chairman of the Committee had been informed of this, then it could have been argued that he had disobeyed the order of the Board and there could have been some semblance of justification for the removal of the Chairman of the Committee, because irrespective of the fact whether such an order passed by the Board was legal or illegal, he could have been said to have disobeyed the order. In the circumstances of the present case, however, the Chairman of the Committee has not deliberately disobeyed any order of the Board, because there was a contrary order of the Committee which was equally binding on him. The contention of the Chairman of the Committee, as mentioned in his explanation (Annexure 'Q') that if at all it was the Committee which was responsible, was perfectly correct.

(9) Whatever view be taken of the case, the removal of the Chairman of the Committee is absolutely unjustified and illegal.

(10) In view of above this appeal is accepted and the impugned order of removal, dated 10th March, 1970, is hereby quashed. The appellants will have their costs in this appeal as well as of the writ petition.

P. C. JAIN, J.—I agree.

N. K. S.