Disciplinary Proceedings—natural justice—*State of Uttar Pradesh* v. *Mohammad Nooh*

In *The State of Uttar Pradesh* v. *Mohammad Nooh*,[1] while holding in effect that the respondent suffered a legal wrong when dismissed in pursuance of a report of an enquiry officer acting both as a presiding judge and as a witness, the Supreme Court denied him relief on the ground of jursidictional infirmity of the High Court under Article 226 of the Constitution.

The facts of the case are the following. The respondent, a Police Head Constable, was charge-sheeted for forging a letter. After preliminary investigations, the District Superintendent of Police was appointed to conduct the enquiry. During the enquiry, one of the prosecution witnesses turned hostile to the department. In his anxiety to keep up the chain of evidence, the enquiry officer stepped down from his seat, gave evidence in favour of the prosecution, got it recorded by a higher authority, and resumed again his role of enquiry officer. The respondent was found guilty and was dismissed by an order dated April 20, 1948. His appeal to the Deputy Inspector-General of Police was dismissed on June 7, 1949. The respondent then filed a revision application to the Inspector-General of Police which was also dismissed on April 22, 1950.

In an application under Article 226 of the Constitution, the High Court of Allahabad quashed the proceedings on the ground that the rules of natural justice and fair play had been violated in that the enquiry officer had continued to preside over the trial even after he placed on record his own testimony as against that of another witness. The High Court rejected the preliminary objection raised by the State that the High Court had no power under Article 226 to deal with the order of dismissal that was passed before the commencement of the present Constitution. The High Court took the view that though the dismissal order was passed before the commencement of the Constitution the dismissal by the Inspector-General of Police of the revision petition filed by the respondent was post-constitutional and as such the High Court could validly exercise its writ jurisdiction as regards such matters.

On appeal by the State, the Supreme Court agreed with the High Court on the finding that there was gross violation of natural justice and that the conduct of the enquiry officer evidenced

1. [1958] S.C.R. 595.

considerable bias against the respondent. "If it shocks our notions of judicial propriety and fair play, as indeed it does", observed the Supreme Court, "it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion".[2] The Court, however, allowed the appeal by the State on the ground that as the order of dismissal was passed before the commencement of the Constitution the High Court was not competent to exercise its newly acquired jurisdiction under Article 226 of the Constitution to quash a pre-constitutional dismissal order.

It was contended on behalf of the respondent that, on the analogy of decrees in civil suits, the dismissal order of April 20, 1948, merged in the revision order of April 22, 1950, and as the latter order was passed after the Constitution came into force, the High Court could validly exercise its jurisdiction over that matter under Article 226[3]. The Supreme Court rejected this argument on two grounds. First, that the departmental proceedings could hardly be equated with any propriety with decrees made in a civil suit, "because the departmental tribunals of the first instance or on appeal or revision are not regular courts manned by persons trained in law although they may have the trappings of the courts of law".[4] Secondly, that the merger doctrine is of limited application even to civil decrees in that it is invoked only for the purpose of computing the period of limitation.

It is submitted that the first explanation given by the Court does not necessarily warrant the conclusion that the merger doctrine would be ill-suited for departmental proceedings. Disciplinary proceedings and judicial proceedings *do* have certain striking similarities, such as provision for appeals and revision. It is, therefore, incumbent on the Court to delineate how the differences between the two processes, despite the obvious similarities, could be accountable for the application of the merger doctrine in the case of judicial proceedings and its non-application to disciplinary proceedings. That the civil courts are manned by persons trained in law while persons concerned in the disciplinary proceedings are not so trained in law is absolutely irrelevant to the consideration as to why the doctrine of merger is not applicable to the departmental proceedings while it is so applicable to judicial proceedings. Surely the

2. [1958] S.C.R. 595 at p. 601.
3. The High Court accepted this argument. See, [1958] S.C.R. 595 at p. 611.
4. [1958] S.C.R. 595 at p. 611.

doctrine of merger in civil suits does not owe its origin to the fact that the civil courts are manned by persons trained in law. The doctrine is relevant in civil suits to ascertain the interrelationship between the civil decree and appeals and revisions against such a decree. So far as that interrelationship is concerned, it is fairly present in the departmental proceedings as well.

The second explanation given by the court, namely, that the merger doctrine is invoked in civil suits only for the purpose of computing the period of limitation, is equally unimpressive. The doctrine was invoked in this case not for any wider application but for a limited purpose only, namely, to decide as to what point of time a given transaction would be deemed to be alive. The decision on this point is in no way dissimilar to the computation of time for limitation purposes. It is, therefore, submitted that neither of these two explanations makes a convincing, much less a conclusive, case for the exclusion of merger doctrine to disciplinary proceedings.

The doctrine of merger apart, the Court ought to have taken into consideration the nature of the transaction in question. The disciplinary proceedings taken against the respondent could not be considered to have been closed with the dismissal order. Within the administrative hiearchy he had a right of appeal and revision. Dismissal order could not, therefore, stamp the finality on the fate of the government servant. Disciplinary orders issued against the government servant, the right of the government servant to appeal against such order, to pray for revision, to apply memorials—all these form part of an integral transaction. Each one is final so far as it goes, but cannot claim finality to the totality of the transaction. The monolithic nature of the disciplinary proceedings commencing from the charge-sheet to memorials will be evident from the reading of Art. 320(3) (*c*) of the Constitution which speaks of "disciplinary matters....including memorials or petitions relating to such matter". It is, therefore, extremely difficult to agree with the Court when it observed that "The order of dismissal having been passed before the Constitution and rights having been accrued to the appellant State and liabilities having attached to the respondent before the Constitution came into force, the subsequent conferment of jurisdiction and power on the High Court can have no retrospective operation on such rights and operation."[5] The rights and liabilities following from the dismissal order are only tentatively final and liable to be varied on appeal or revision. The Court was not, therefore, justified in drawing

5. [1958] S.C.R. 595 at p. 612.

legal conclusions on the assumption that such dismissal order had finally vested rights in the State and imposed obligations on the government servant concerned.

The Court had pronounced against the reprehensive character of the enquiry conducted against the respondent. There was considerable time lag between the High Court judgment giving relief to the respondent and the decision of the Supreme Court.[6] Consequently the respondent would be disentitled to institute a fresh suit because of the time bar. In view of all these considerations the Supreme Court could have exercised its inherent jurisdiction under Art. 136 of the Constitution as well as Order XLV, R. 5 of the Supreme Court Rules, 1950,[7] for giving relief to the respondent who had an admittedly unassailable case on merits, instead of being "constrained, not without regret, to accept the appeal"[8] on what the dissenting Judge, Mr. Justice Vivian Bose, had roundly condemned as, technical grounds.

Mr. Justice Vivian Bose dissented from the majority. While agreeing with the majority that Art. 226 does not have retrospective operation, he declined to agree that it was so in this case. His Lordship observed that justice should be administered "in a common-sense liberal way and be broad-based on human values rather than on narrow and restricted considerations hedged round with hair-splitting technicalities".[9] Applying this test, he observed: "The question to my mind is not whether there has been merger but whether those proceedings can, on any broad and commonsense view, be regarded as still pending *for the purposes of* Art. 226. If they would be so regarded when all is done after the Constitution (and about that

6. The High Court decided the case on March 10, 1952, and the Supreme Court pronounced its judgment on September 30, 1957. That is, more than five years elapsed during which period the respondent was presumably in the service.

7. Order XLV, R. 5 of the Supreme Court Rules, 1950: "Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court".
On various occasions the Supreme Court acted on the view that a wrong choice as to the particular provision regarding jurisdiction would not necessarilly be fatal to the maintainability of an action if it were maintainable under some other provision. Thus, for instance, the Court exercised its special powers under Article 136 of the Constitution where a certificate of fitness granted by the High Court under Art. 134 (1) (c) was found defective. *Baladin* v. *State of Uttar Pradesh*, A.I.R. 1956 S.C. 181 ; *Harapada Dey* v. *State of West Bengal*, A.I.R. 1956 S.C. 157.

8. [1948] S.C.R. 595 at p. 622.

9. [1958] S.C.R. 595 at p. 613.

I have no doubt), what conceivable justification is there for holding that they cannot in this case just because a part of the process had started before it ?"[10]

An important question that emerges out of this case is: What exactly is the effect of decisions of this kind on the Executive ? In the *Nooh* case the Supreme Court laid down two distinct and mutually exclusive propositions: first, that the combination of enquiry officer and witness is bad and secondly, that the High Court cannot validly exercise its writ jurisdiction under Article 226 with regard to matters that are closed at the commencement of the Constitution. As a result of the second proposition, the dismissal order that was quashed by the High Court would be restored. But what is the effect of the first proposition on such a restored dismissal order ? The Court held that a dismissal order based on irregular enquriy, such as the one under review, was bad. Is it not incumbent on the Executive to respect the finding of the Supreme Court that the dismissal of the respondent was bad ?

Padma Seth

Constitutional law—Non Ferrous Metals Order—Whether Article 19 (6) envisages 'prohibition' also.

In *Narendra Kumar* v. *Union of India*,[1] the Supreme Court has handed down a decision of great moment. The case arose out of the plea of unconstitutionality raised against the Non-Ferrous Metals (Control) Order, 1958, promulgated by the Central Government under sec. 3 of the Essential Commodities Act, 1955.

Under the Non-Ferrous Metals (Control) Order, 1958[2] an importer *i.e.*, one who imports any non-ferrous metal into India, *viz.*, copper, lead, tin and zinc,[3] is required to notify to the Controller the quantity of non-ferrous metal imported or cleared by him after April 3, 1938.[4] He has to maintain such books, accounts etc. as the Controller may specify. He has to produce any books etc. as required by the Controller or an officer authorised by him and furnish information required by the Controller.[5] Powers of search, seizure, inspection and entry have been given to the Controller or an officer authorised by him in that behalf.[6] The Order prohibits sale or

10. [1958] S.C.R. 595 at pp. 614-615.
1. Judgment delivered in December 1959 ; reported in A.I.R. 1960 S.C. 430
2. As existing on December 3, 1959.
3. Cls. 2(b) & (c).
4. Cl. 5.
5. Cl. 6.