SUSPENSION OF A CIVIL SERVANT UNDER THE COURT'S DIRECTION

THE POWER to suspend a civil servant pending departmental inquiry proceedings vests in the government as in the case of other employments. This power is purely administrative in nature and there is no legal requirement to hear a civil servant before his suspension since such administrative action has not been considered a punishment[1] attracting the principles of natural justice.[2] Such a power was always implied.[3] It is well settled that a writ court has power to direct an administrative authority to exercise its discretionary power if it had failed to do so.[4] No court, however, has the power to direct an administrative authority to exercise its discretion in a particular manner.[5] If an authority competent to suspend a civil servant, (*i*) has decided not to suspend him, or (*ii*) has taken no decision, or (*iii*) is in the process of taking a decision, can a court, to enforce equality before law for one civil servant, direct the competent authority to suspend another even though the former did not make any such prayer and the latter was not even before the court in the case? This is what actually happened in *E.S. Reddi* v. *Chief Secretary, Govt. of Andhra Pradesh.*[6] In this case, A.P. Sen J. (speaking on behalf of himself and B.C. Ray J.) not only dismissed an application of a civil servant who had questioned the court's earlier order directing his suspension but also strongly deprecated the conduct of the applicant because, according to the court, he had "made reckless allegations and cast aspersions on the Court". The judge also lashed out on the conduct of the senior advocate, who argued the case on behalf of the applicant, by expressing "disapproval of the manner in which arguments were advanced" by him "with undue vehemence and unwarranted passion, reflecting identification of interests beyond established conventions but were of degrees not usual of enlightened senior counsel to adopt."[7]

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1. See *R.P. Kapur* v. *Union of India*, A.I.R. 1964 S.C. 787; *Balwantrai Ratilal* v. *State of Maharashtra*, A.I.R. 1968 S.C. 800; H.M. Seervai, *Constitutional Law of India*, vol. II, pp. 2586-87 (3rd ed. 1984).

2. The requirement of notice, enquiry and hearing prescribed under article 311(2) of the Constitution of India is applicable only in case of a dismissal, removal or reduction in rank and not for any other action such as suspension. See M.P. Jain, *Indian Constitutional Law* 777 (4th ed. 1987); M. Rama Jois, *Services Under the State* 329 (1987).

3. See section 16 the General Clauses Act 1897, and rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965.

4. Such a failure would amount to an error of jurisdiction: *Syed Yakoob* v. *K.S. Radhakrishnan*, A.I.R. 1964 S.C. 477.

5. S.A. de Smith, *Judicial Review of Administrative Action* 298-322 (4th ed. 1980).

6. A.I.R. 1987 S.C. 1550.

7. *Id.* at 1553. It would be significant to mention here that in *The Comptroller & Auditor General of India* v. *K.S. Jagannathan*, A.I.R. 1987 S.C. 537, Madon J. had held that a writ

In this case, some senior officers of the Indian Administrative Service were allegedly guilty of defalcation of a huge amount of Rs. 1.50 *crores*, while occupying senior managerial positions on deputation, in the Andhra Pradesh Mining Corporation in respect of the contract given to M/s. Deccan Construction Co. for the excavation and removal of overburdens at Mangampet Barytes Project of the corporation. The appellant, Reddi, an I.A.S. officer of Andhra Pradesh cadre, who served in the corporation at the relevant time as vice-chairman-cum-managing director, was suspended by the state government for his involvement in the matter pending contemplated departmental enquiry under rule 13 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules 1963. The applicant T.V. Choudhary, who had worked as general manager (planning and production) in the corporation at the relevant time and was equally involved in the charge, was merely transferred to another corporation as managing director. S.M. Rao Choudhary who had worked as managing director in the corporation was also not suspended. For prosecution of the two other officers, namely R. Parthasarathy and P. Abraham, the state government had sought in May 1984 the requisite sanction of the Central Government and the State of Maharashtra, respectively, under section 6(1)(*a*) of the Prevention of Corruption Act 1947.

On the face of it, it appears quite strange and illogical that the state government should have singled out only the appellant for being suspended leaving out all other officers who were equally involved and guilty in the charge and against whom the state Anti-corruption Bureau had registered a case for having committed offences punishable under section 120*B* read with section 420 of the Indian Penal Code and section 5(1) of the Prevention of Corruption Act as its preliminary report revealed a *prima facie* case against all of them. It is significant to note that the appellant was suspended on 11 February 1985 as the government considered that his continuance in the office would prejudice the investigation and not be in the public interest. The applicant, on the other hand, was merely transferred from that state government corporation to another, on the recommendation of the Anti-corruption Bureau "to facilitate the proper conduct of the investigation." One does not find any real difference in the substance of the grounds on which different actions were taken. If proper investigation was likely to be hampered by their continuance in the corporation, either all of them should have been suspended or transferred. But according to the government's wisdom, that was not done. Aggrieved by such discriminatory treatment, the appellant challenged his suspension in the

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of *mandamus* or any other order or direction could be issued by the court, *inter alia*, where the government or a public authority had exercised discretion in such a manner as to frustrate the object of conferring that discretion or the policy for implementing which that discretion had been conferred. He expressed this view to reject the argument that a High Court could not issue a writ of *mandamus* to direct a public authority to exercise its discretion in a particular manner.

High Court of Andhra Pradesh against whose decision he came to the Supreme Court by way of a special leave petition. He impugned his suspension on the ground that the same was wholly *mala fide*, arbitrary, irrational and violative of article 14 of the Constitution.

Sen and Ray JJ., after a perusal of the state government's letter of May 1984, by which it sought the sanction of the Central and Maharashtra Governments for prosecution of two of the officers and also the report of the Anti-corruption Bureau dated 23 March 1986, in their order dated 5 May 1986, held the view that "it cannot be said that the charges levelled against the petitioner (appellant) are groundless". They were, however, surprised that only the appellant had been singled out for suspension pending enquiry and not other co-accused. They, therefore, directed the counsel for the state government to convey the concern expressed by the court and further observed that "if the State Government does not pass any order placing the other officers under suspension it may become necessary for the Court to revoke the suspension of the petitioner at the next hearing." One may pause for a moment here to find out the reason as to why the court threatened to revoke the appellant's suspension at the next hearing only if other officers were not suspended till then? Who prayed for such an order of suspension against other officers? The appellant had challenged only his suspension on the ground of discrimination and arbitrariness but he never asked the court to give him justice by suspending other officers who were co-accused with him. When the court was convinced that the appellant had been discriminated without any reasonable classification, it had no option but to strike down the suspension order passed against him even though there were grounds justifying this. It could not threaten to do that only if others were not suspended till the next date of hearing. Had it quashed the appellant's suspension, there was nothing to prevent the state government from considering the matter afresh and suspending all or none of the officers. The controversy must have ended at that level. Even otherwise, there was no justification for the appellant's continued suspension on the date of the court's order because at that time, the ground of suspension had disappeared as the final report of investigation had already been submitted by the Anti-corruption Bureau and it was only to facilitate proper investigation that he had been suspended. The purpose of suspension and its ground had been achieved.

The court did not think it proper to quash the impugned suspension order passed against the appellant as, in its opinion, the charges levelled against him were not groundless. It, therefore, decided to maintain the rule of law and give justice to the appellant by ordering suspension of other guilty officers. Even till the date of the next hearing, the government had not suspended other officers and the court did not act on its order dated 5 May 1986 quashing the appellant's suspension. Instead, it passed an order on 11 August 1986, which was the date of hearing, directing " that the State Government will pass necessary orders for suspen-

sion of the delinquent officers as early as possible; in any event not later than four weeks from today." This it did even though these other officers were neither parties before the court nor were they given any notice or hearing by it.

T.V. Choudhary, one of those officers whose suspension was ordered by the court, felt aggrieved and moved an application before it. R. Parthasarathy also did so but later withdrew the application on the advice of the court. In his application, Choudhary submitted that the court's order, (*i*) was illegal as it compelled a statutory authority to exercise its statutory discretion in a particular manner which was not permissible, and (*ii*) had been passed without affording him an opportunity of hearing and "presumably without considering the relevant provisions of law, case law and the parameters of judicial power."

The court seemed quite satisfied with the result of its order dated 11 August 1986 which ultimately paved the way for the appellant's case becoming infructuous as, according to it, other co-accused were to be placed under suspension by the state government's order dated 6 September 1986. The special leave petition was therefore dismissed. The court also tried to pursuade both applicants, Choudhary and Parthasarathy, to withdraw their applications and make departmental appeal/representation against the suspension. Parthasarathy withdrew but not Choudhary. After hearing long arguments, the court dismissed Choudhary's application, promising reasons to be given later for dismissal, with heavy cost of Rs. 5,000 and deprecated the conduct of the applicant and his counsel who was a senior advocate of the Supreme Court. The reasons which utlimately followed did not at all touch the grounds raised by Choudhary in challenging the court's order. There is nothing to indicate whether the court's impugned order was, (*i*) arbitrary and illegal being passed without complying with the principles of natural justice; or (*ii*) based on the relevant provisions of law; or (*iii*) whether the court had power to direct a statutory authority to exercise its statutory discretion in a particular manner. The court confined its attention only to remind the senior counsel, who occupied a position akin to that of a Queen's counsel in England and acted as a model to the junior members of the legal profession, of his duties towards it. The court found the averments made by him to be highly objectionable making unfounded allegations and uncalled for aspersions, and expressed its great sense of anguish and heaviness of heart. The averments irked the judges so much that the merits of the contentions were overshadowed and therefore ignored by them.

It is, however, significant to note that there does not seem to be anything objectionable in the averments. They are of the same degree as normal averments challenging the order of one court before another. The significant aspect of this was unfortunately this—the order passed by two judges of the highest court was challenged before the same court and the matter came to be decided by the same judges again. It is unthinkable

that a judge like any other mortal would take very kindly to a challenge thrown before him against his own action. This seems to be the crux of the entire matter. There is absolutely no doubt that the legality of an order passed by an administrative or quasi-judicial body, tribunal or court is being successfully challenged every day in the court on the ground that the impugned order violated the principles of natural justice. But if a person feels aggrieved by an order passed by the Supreme Court, as this case indicates, he has no remedy, not even a right to know the reasons for a particular order. If he cannot challenge the order of the highest court before it, where else can he seek relief? When the Supreme Court directed the suspension of officers, how could a departmental authority in exercise of its appellate or revisional power dare to revoke the order? Would not such revocation raise more complications, even contempt proceedings?

One may recall here two recent decisions of Sen and Ray JJ. regarding the requirement of recording reasons. In *V.V. Saraf* v. *New Education Institute*,[8] B.C. Ray J. had rightly indicated the necessity for a court including a writ court to record reasons while disposing of a writ petition in order to enable the litigants, more particularly the aggrieved party, to know the reasons which weighed with it, in determining the questions of fact and law raised in the writ petition or in the action brought before the court. This was imperative for the fair and equitable administration of justice. The requirement of recording reasons in deciding cases or applications affecting rights of parties was also a mandatory one to be fulfilled in consonance with the principles of natural justice. He further held that it was no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like dismissed or rejected will be made without passing a reasoned order. The court pointed out that fair play and justice demanded that justice must not only be done but must be seen to have been done. Unfortunately, this salutary principle does not seem to have been applied while dismissing Choudhary's application.

The view taken in *Ram Chander* v. *Union of India*[9] is to the same effect. In that case, A.P. Sen J. emphasised the necessity of an appellate authority to consider each and every aspect of the matter prescribed under the rules before disposing of a departmental appeal. Why this rule should not be applicable in case of decisions of a court, and that too, of the highest court? Even if a party in a case had not succeeded in his claim, he should have the satisfaction of knowing that the court had considered every aspect of the matter before giving its decision. Regrettably, this was not done in the present case.

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8. A.I.R. 1986 S.C. 2105. This judgment was delivered by Ray J. on behalf of himself and A.P. Sen J.

9. A.I.R. 1986 S.C. 1173; see also *R.P. Bhatt* v. *Union of India*, A.I.R. 1986 S.C. 1040; S.N. Singh, "Administrative Law", XXII *A.S.I.L.* 652 at 695-96 (1986).

One sad aspect of this case was that the court by its own order created a situation which ultimately resulted in rendering the appellant's petition infructuous and then dismissed it. The basic question, therefore, was whether this was justified? This case also leaves many questions unanswered: Was the court's order of 11 August 1986, directing suspension, in tune with its earlier order of 5 May 1986 by which it had threatened to quash the appellant's suspension order? Was the court's later order in tune with the appellant's prayer? Did the appellant or any other person ask for equal justice by suspension of other co-accused? Why did the court volunteer to direct action against those who were not before it? Can equality before law be enforced by this kind of compensatory justice? Can a court, in exercise of its writ jurisdiction, direct an administrative authority to exercise its discretion in a particular manner as was done in the present case? Was the conduct of the senior counsel really objectionable?

This case in fact did not raise any question of professional ethics and etiquette. A counsel is an officer of the court and therefore he is not a mouthpiece of his client. If there was a clash between the duties of the counsel towards his client with those owed by him to the court, the latter overrode the former in the interest of administration of justice. The counsel must not mislead the court or cast aspersion on the other party without sufficient basis. He must not withhold authorities or documents which may be against the interest of his client but which the law or standards of his profession require him to produce. He must disregard the most specific instructions of his client if they conflict with his duty to the court.[10] The court reminded the senior counsel of that sense of detachment and non-identification. But the basic question in this case was whether the senior counsel was really guilty of anything. If so, the proper course was not to remind him of his duty but to punish him in accordance with law. That was not in fact warranted as the averments made by him seem in no way to be objectionable or indicate that he had misrepresented to the court or cast aspersions on the other party without any basis.

It would be difficult to say that judges even at the highest level of the judicial system are infallible. Their decisions may not be correct. What then was the proper course for an aggrieved person? If the Supreme Court passes a judgment, could it have made a difference for the counsel to file a separate writ petition in the Supreme Court to challenge the court's order instead of filing merely an application in the original case itself ? The order of the court in this case was unprecedented. The judicial organ of the state took upon itself a task assigned to the executive organ. The court cannot and should not have dictated to the executive to suspend a civil servant. The words of Frankfurther J. in *Snowden* v.

10. See the observations of Lord Reid in *Rondel* v. *Worsley* (1967) 3 All E.R. 993 and Lord Denning in *Rondel* v. *W.*, (1966) 3 All E.R. 657.

Hughes[11] are most noteworthy:

> If the highest court of a state should candidly deny to one litigant a rule of law which it concededly would apply to all other litigants in similar situations, could it escape condemnation as an unjust discrimination and therefore a denial of the equal protection of the laws?

The above observation was made with reference to the Fourteenth Amendment of the United States Constitution which guarantees "equal protection of the laws." They are applicable with equal vigour for interpreting article 14 of the Constitution. The filing of a writ petition before the Supreme Court under article 32 will, however, meet with an initial hurdle of maintainability. The majority of the Supreme Court in *Naresh* v. *State of Maharashtra*,[12] had held that judiciary was not 'state' within the meaning of that term under article 12. If a person was aggrieved by an order of a High Court or lower court, the proper remedy for him was to challenge its decision in appeal to a higher court. How can this decision hold good when a person wishes to challenge a decision/order of the Supreme Court? There is no question of appeal against such an order. The remedy of review is highly inadequate. A time has, therefore, come when it has become necessary for the Supreme Court to reconsider the position of the judiciary under article 12 and play an activist's role as in a few other areas by allowing writ petitions against the decisions of that court before itself.

Before concluding, it would be pertinent to take note of the later developments of the case which indicate a disturbing feature. It is learnt that despite the court's order dated 11 August 1986, the concerned officers were not suspended even though the state government had sanctioned the prosecution of the appellant and that of Choudhary on October 30 1987 and 6 September 1987 under section 197 of the Code of Criminal Procedure 1973. Two other indicted officers, Abraham and Parthasarathy, were in the meantime promoted as secretaries and no chargesheet was filed against them. Instead, the Andhra Pradesh Legislative Assembly's Committee set up on 18 November 1985 reported on 6 April 1987 virtually acquitting those two officers. Thus, the legislature usurped the adjudicatory powers of the courts. The matter has once again been raised before the Supreme Court which has issued notice to the Attorney General to assist it in the matter.[13] It goes without saying that had the court, instead of directing the suspension of other officers, quashed the appellant's suspension, the present controversy may not have cropped up again.

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11. 321 U.S. 1 at 16 (1943); see also *A. Backus Jr. & Sons* v. *Fort Street Union Depot Co.*, 169 U.S. 567 (1897).

12. A.I.R. 1967 S.C. 1. For more details and views, see H.M. Seervai, *Constitutional Law of India*, vol. I, pp. 225-32 (3rd ed. 1983).

13. *The Hindustan Times*, 4 November 1987 (Delhi).

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