

CASE NO.:
Appeal (civil) 2456 of 1998

PETITIONER:
State of Gujarat and Anr.

RESPONDENT:
Akshay Arutlal Thakkar

DATE OF JUDGMENT: 17/01/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted in SLP(C) Nos. 10865-10874 of 1998.

These appeals are directed against judgments rendered by different Division Benches of the Gujarat High Court holding that the orders of disengagement of the respondents who were working as Home Guards and Home Guards Commandants were without legal sanction. The orders of engagement of the respondents were passed in purported exercise of powers conferred under Section 2 of the Bombay Home Guards Act, 1947 (in short the 'Act'). Subsequently being of the view that the respondents' activities were in violation of the guidelines contained in Government Resolution No. HGD/1078/5355/F dated 3.9.1997 of the Home Department, the orders of disengagement were passed. Akshay Arutlal Thakkar-the respondent in Civil Appeal No. 2456 of 1998 filed a writ application challenging the order of disengagement which was dismissed by learned Single Judge. The Letters Patent Appeal filed by him was allowed. The respondents in the connected Civil Appeals had filed writ applications which were allowed by a Division Bench of the Gujarat High Court. It was held that the act of the Bombay Home Guards Rules, 1953 (in short the 'Rules') did not empower the Government to direct termination of the services of any member of the Home Guard or all the members of the Home Guards as was sought to be done by the impugned decision of the Government on 2nd December, 1995. Reliance was placed on a decision of this Court in Anirudhsinhji Karansinhji Jadeja and Anr. v. State of Gujarat, [1995] 5 SCC 302 for accepting the present respondents' stand.

The Division bench by the impugned judgment in Civil Appeal No. 2456 of 1998 followed the earlier decision of the Division bench and allowed the Appeal, setting aside the learned single judge's order.

Learned counsel for the Appellants-State and its functionary question the correctness of the judgments on the ground that the High Court has not taken note of the relevant provisions of the Act and the Rules.

Learned counsel for the respondents on the other hand supported the judgments of the High Court impugned in these appeals.

In order to appreciate rival submission a few provisions of the Act and Rules need to be noted; they are Sections 2, 6B(1-A) of the Act, and rules 2(2), 2(3), 2(6), 9(a), 11 & 12 of the Rules.

"2(1) The State Government shall constitute for each of the areas specified in sub-section (3) of section 1 and for each of the areas notified under the said sub-section (3) a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to protection of persons, the security of the property and the public safety

as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

(1A). In respect of the Saurashtra area and the Vidarbha region, the Home Guards raised or constituted, immediately before the commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958, shall be deemed to be constituted under sub-section (1).

(2) The State Government shall appoint a commandant of each of the Home Guards constituted under sub-section (1).

(3) The State Government shall also appoint a commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State of Gujarat.

6B. (1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant shall also have the authority to dismiss any member of the Home Guards on ground of conduct which has led to his conviction on a criminal charge. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to post under his immediate control.

(IA): Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant, the services of such members are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

Rules

"2(2) "Commandant" means a Commandant of Home Guards appointed under Section 2.

2(3) "Commandant General" means the Commandant General appointed under Section 2.

2(6) "member of Home Guards" means a member appointed under Section 3.

9-A. Conditions subject to which powers of discharge may be exercised. No member of the Home Guards shall be discharged under sub-section (I-A) of section 6-B unless the Commandant or the Commandant General, as the case may be, is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organization.

11. Organization-In addition to the Commandant General, the Home Guards constituted for each area shall consist of a Commandant, a Second-in-Command, an Adjutant, Senior Divisional Commanders, such staff Officers as the Commandant may consider necessary, Divisional Commanders, Company Commanders, Senior Platoon Commanders, Platoon Commanders, Sergeant Majors, Quarter Master Sergeants, Platoon Sergeants, Section Leaders, Assistant Sections Leaders and Sections consisting of twelve Home Guards. Three sections shall form a Platoon, three Platoons a Company and three Companies a Division.

12. Power of the Commandant General and Commandants - (1) The Commandant-General shall exercise general supervision and control over the working of all Commandants in the State and Co-ordinate the work of the Home Guards all over the State. He shall be directly responsible to the State

Government for the efficient working, discipline, administration and training of the organization.

(2) Subject to the supervision and control of the Commandant General, each Commandant shall exercise supervision and control over the working of the Home Guards under his command. He shall be responsible to the Commandant General and the State Government for the deficient working, discipline, administration and training of the Home Guards under his command.

(3) Subject to the supervision and control of the Commandant General and the Commandant, any Officer of the Home Guards authorized by the Commandant in this behalf may exercise the powers conferred by section 4 of the Commandant in such circumstances as the Commandant may specify."

Bare reading of Section 2(2) makes it clear that the State Government is the appointing authority. The State Government appoints a Commandant of each of the Home Guards constituted on sub-section (1). Sub-section (3) deals with appointment of a Commandant General of the Home Guards in whom the general supervision and control of the Home Guards throughout the State of Gujarat is vested. Rule 8 provides for the term of office. Rule 9-A deals with the condition subject to which powers of discharge are to be exercised. Reading of Section 5 makes the position clear as regards powers, privileges and the protection of the members of the Home Guards. Therefore, the appointing authority so far as the Commandants and the Commandant General are concerned is the State Government. The Commandants have the power to appoint the Home Guards. Therefore, the State Government is the superior authority in the matter of appointment.

Learned counsel for the State submitted that the orders passed by the authorities were not in a sense one of termination. Therefore, the action of the Commandant/Commandant General, if any, discharging a person from duty cannot be said to be without authority of law. Principles regarding the appointment of District Commandant and Home Guards is contained in the Notification dated 17.4.1993, which are as follows:

1. The age limit for the appointment of District Commandant should be 35 to 50 years.
2. First selection shall be given to the candidate whose minimum educational qualification is up to the level of graduation.
3. Candidate should neither have permit for liquor nor should he be punished under any offence of prohibition, abolition of untouchability Act or Indian Penal Code.
4. Candidate shall underwrite that he shall neither be a member of any political party nor shall he be led by any communal institute or political party nor shall he be involved in any activity of this force in political or communal activities.
5. He should have at least rendered his services for three years as Taluka Home Guards Officer and five years as Home Guard. However, the senior most officer from among the Honorary staff officers at district level will be given first selection.
6. A Person who is a recipient of any of the medals given any by the president, Home Guards or Civil defence, will be given priority.
7. The person who have got training of Home Guards/N.C.C./Military or Police and also the persons who have retired in the rank of captain/Dy. S.P. shall be given priority vis.vis others.
8. As the honorary post of District Commandant is equivalent to the gazetted officer, Class-I, hence the appointment shall be made by the

selection committee. The Selection Committee shall comprise commandant General, Home Guards, Deputy Secretary, Home Department and Deputy Superintendent of Police of the concerned range of State of Gujarat.

9. The persons who may be appointed shall have to undergo the training of administrative as well as account work as may be decided by the Government.

10. After the appointment person concerned shall have to stay at District Head Quarters.

11. The tenure of the appointment shall be of five years and therefore, if the further order of appointment is not issued, he shall be treated as suo motu relieved from his post at that time instant without any notice and he shall have to hand over the charge to the immediate senior officer working under him.

12. On the completion of his tenure for the post of District Commandant or in case he is relieved prior to that, he shall have to promptly hand over the charge to other immediate senior. He shall underwrite that he shall not file any suit in any court against the fresh orders of new appointments.

The guidelines 4 and 5 are relevant for the purpose of this case. Guideline 5 makes it clear that only a person who rendered services for a particular period as Taluka Home Guards Officer is eligible for appointment as District Commandant. The post of District Commandant is honorary post. However, it is equivalent to the gazetted officer, Class-I and the appointment is to be made by a Selection Committee consisting of the designated officers. It is found that in terms of guideline 4, an undertaking is given that the person selected is not to be member of the political party and shall not led by any communal institute and political party and nor shall he involve in any political or communal activities. As the authorities found that the respondents were in fact acting at variance with the undertaking given, their disengagement was felt necessary. View taken in the impugned judgments, therefore, cannot be maintained and the impugned judgments are set aside. The view expressed by the Division Bench of the High Court in special Civil Application No. 3447 of 1996 dated 23.1.1998 Lateben Ramniklal Shah and Ors. v. State of Gujarat and Ors., taking the contrary view is the correct one.

As rightly contended by learned counsel for the appellant-State, the order impugned in the writ petition was one of disengagement because the respondents did not act in terms of the undertaking given. As the services rendered by the respondents were essentially honorary no civil consequences were involved. Section 6B(1-A) empowers the Commandant to discharge any member of Home Guards at any time if the opinion of the Commandant the services of such member are no longer required. The provision does necessarily refer to the discharge of a member from the Home Guards. The respondents in the instant case were not sought to be discharged as members of the Home Guards. Under the Notification in question, the discharge was from duties as District Commandant, Home Guards.

The appeals are allowed. There will be no order as to costs.