

PETITIONER:
MUNICIPAL BOARD, KANNAUJ

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH, & ORS.

DATE OF JUDGMENT 12/08/1971

BENCH:
PALEKAR, D.G.
BENCH:
PALEKAR, D.G.
SIKRI, S.M. (CJ)
RAY, A.N.

CITATION:
1971 AIR 2147 1972 SCR (1) 193
1972 SCC (3) 345

ACT:
U. P. Municipalities Act, 1916-Section 34(1-B), scope of.

HEADNOTE:

The Executive Officer of the Municipal Board, Kannauj (U.P.) dismissed 74 striking employees. Some of the employees appealed against the order of dismissal and most of them were, reinstated. The others did not appeal and the dismissal order stood in their cases.

After a year, the State Govt. purporting to act under s. 34 (1-B) of, the U.P. Municipalities Act, passed an order prohibiting the execution or further execution of the order of dismissal passed by the Executive Officer on the ground that r. 5 of the U. P. Municipal Board Servants (Enquiry punishment and termination of service) Rules were not followed and the dismissed employees were not heard and so the alleged order was illegal and improper. Section 34(1-B) of the U.P. Municipalities Act, inter alia, provides that the State Govt. may by order 'prohibit the execution or further execution of a resolution or order', passed by a Board, 'if in its opinion such resolution or order is prejudicial to the public interest' or has been passed 'in abuse of powers or in flagrant breach of provision of any law in force', and 'may prohibit continuance by any person or any act in pursuance of such resolution or order.'

The Municipal Board challenged the order of the State Government in a writ petition; but the High Court dismissed the petition.

In appeal to this Court the Board contended that the provisions of s. 34 (1-B) were incapable of application to an order of dismissal. Allowing the appeal,

HELD: The State Government has no power to cancel or set aside an order which exhausts itself after it has been passed or made. Where the resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution or order of the Board or its officer there remained nothing of which execution could be prohibited. The sub-section only empowers the State Government to prevent something being done in futuro. [200A-E]

Shujaat Ullah Khan v. State of U.P. & Ors, 1966 A.L.J. 499,

referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 42 of 1968.
Appeal by special leave from the judgment and order dated July 21, 1967 of the Allahabad High Court in Special Appeal No. 457 of 1967.

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J. P. Goyal and G. N. Wantoo, for the appellant.

O. P. Rana, for respondents Nos. 1 and 2.

H. K. Pari and S. K. Dhingra, for respondents Nos. 3, 9, 13, 15, 16, 25, 31 to 35, 38, 39, 42 to 50, 53 to 56, 58, 59, 60 to 62, 65 to 67, 69 to 71, 73 and 76.

The Judgment of the Court was delivered by Palekar, J. This appeal by special leave against the decision of the appellate Bench of the Allahabad High Court involves the question of the legality and validity of an order dated 12th May, 1965 passed by the State Government purporting to act under section 34(1-B) of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as "the Act"). The impugned order is as follows

"U.P. Government

Department of Municipal Board,
Serial No. 1725 GI IIP 1964/64

12-5-65

NOTIFICATION

The then Executive Officer of Municipal Board, Kannauj dismissed 74 sweepers of Municipal Board Kannauj from 9th April, 1964 under section 76 of U.P. Municipalities Act, 1916.

The dismissal of the above sweepers was illegal and improper because the procedure prescribed in Rule 5 of the Uttar Pradesh Municipal Karamchari (Janch, Dand tatha Seva Samapti) Niyamawali [U.P. Municipal Boards Servants (Enquiry, Punishment and Termination of Service Rules)] was not followed and they were not given any opportunity of being heard and the opinion of the State Government is that the above order of 9th April, 1964 by the present Executive Officer Municipal Board Kannauj is adverse to public interest and the order has been made by seriously defying the rules of Uttar Pradesh Municipal Karamchari Janch Dand tatha Seva Samapti Niyamawali [U.P. Municipal Boards Servants (Enquiry, Punishment and Termination of Service Rules)].

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So, the Governor of Uttar Pradesh in exercise of his power under section 34 sub-section 1-B of the U.P. Municipalities Act, 1916 (U.P. Act No. 11, 1916) prohibits the execution of the above order of 9th April 1964 and any act done by any person in pursuance of that order and the continuance of that order.

By order

PRAN NATH KAPOOR

Secretary."

This order was challenged in a writ petition before the High Court by the Municipal Board, Kannauj as being illegal and invalid on several grounds.

The substance of the allegations in the petition by the Municipal Board was that, on account of certain disputes between the Board and the sweeper-employees of the Board,

there was a sudden strike by the latter on 7th April, 1964. As many as 74 sweepers struck work without notice. By reason of the strike, insanitary conditions developed in the town endangering public health. The Board had, therefore, to act quickly as in an emergency to recruit sweepers to do the job; but it was difficult to recruit new men unless continuous employment was given to them and, hence, on 8th April, 1964, the Board arranged to have it announced by beat of drum in the town that, unless the striking employees resumed duties by the evening of 9th April, 1964, they were liable to be dismissed. The strikers did not join duties by the evening of 9th April, 1964 and, therefore, the Executive Officer of the Board dismissed the 74 strikers who were made parties to the petition. It was admitted that the procedure laid down by Rule 5(1) of the Uttar Pradesh Municipal Boards Servants (Inquiry, Punishment and Termination of Service) Rules (hereinafter referred to as "the Rules") was not adopted before taking disciplinary action by way of dismissal; but the Board justified its action by reference to the proviso to Rule 5(1) which stated that the provisions of sub-rule 5(1) shall not apply where the person concerned had absconded and where, for reasons to be recorded in writing, it was impracticable to communicate with him.

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After the dismissal of the 74 employees on 9th April, 1964 some of the employees appealed against the order of dismissal and most of them were reinstated. The others did not appeal and, therefore, the order of dismissal stood in their case. New recruits were appointed in their place. Later, i.e., more than a year after the order of dismissal, the State Government, purporting to act under section 34(1-B) of the Act, passed the above order prohibiting the execution or further execution of the order of dismissal passed by the Executive Officer. It was contended that no such order under S. 34(1-B) of the Act could be validly made by the State Government.

The State Government, which was respondent No. 1 to the petition, supported its order and contended that the order had been passed in the public interest as, in its opinion, the order of the Executive Officer was illegal and arbitrary and had the effect of throwing a large body of employees out of employment making them suffer privation and misery on account of the continuing operation of the order which was illegally passed. The employee-respondents, on the other hand, denied the more substantial allegations in the petition. They alleged that, as a matter of fact, the employees had not gone on strike and, therefore there was no question of their abstaining from doing their duties either on the 7th, 8th or the 9th of April, 1964. There was no question also of any insanitary conditions developing in the town and there was no good reason at all for passing an order of dismissal of all the employees in a body. They further alleged that the order had been passed out of sheer spite in order to teach them a lesson.

The High Court did not, obviously, undertake an inquiry into the disputed facts. What was, however, relevant for its decision was whether, in case the State Government honestly formed the opinion that the order of the Executive Officer was prejudicial to the public interest or was in flagrant breach of a provision of any law-in this case, rule 5(1) of the- Rules, the order prohibiting the execution or further execution of the order would be valid. The learned single Judge, who considered the petition in the first instance, and the Appellate Bench held that it was open to the State

Government, on its own inquiry, to form

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the opinion that the order passed by the Executive Officer dismissing a large body of employees was against public interest and in violation of the law in force and, consequently, the order passed by the State Government under s. 34 (1 -B) of the Act was a valid order. On that view of the matter, the Board's petition was dismissed by the High Court and, hence, the present appeal.

The only point of substance urged by the Board before this Court was that the provisions of section 34(1-B) of the Act were incapable of application to an order of dismissal. The contention was that, when an order of dismissal is passed, the order operates by its own force and no further steps are necessary to implement such an order. It was submitted that the sub-section applied only to those cases where the resolution of the Board or order required some steps to be taken to effectuate the resolution or the order and not when the resolution or order was effective by its own force. In other words, where on the passing of the resolution or order it exhausted itself, the State Government could hardly "prohibit the execution or further execution" of that resolution or order; and, therefore, where the State Government interfered by prohibiting the execution or further execution of the resolution or order, it really intended to cancel or set aside the resolution or order which, in the submission of the petitioner, was beyond the powers of the State Government. It appears to us that there is considerable force in this submission.

Section 34 is in that part of Chapter 11 of the Act which deals with the subject "Control of Board". The marginal note to the section is "Power of the State Government or the Prescribed Authority or the District Magistrate to prohibit execution of or further execution of resolution or order of the Board". Sub-sections (1) and (1-A) deal with the powers, of the Prescribed Authority and the District Magistrate in this respect. Sub-section (1-B) deals with the powers of the State Government and is as follows :-

" (1-B). The State Government may, of its own motion or on report or complaint received by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a board or a committee of a

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board or a joint committee or any officer or servant of a board or of a joint committee, if in its opinion such resolution or order is prejudicial to the public interest, or has been passed or made in abuse of powers or in flagrant breach of any provision of any law for the time being in force, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order."

It should be noted that the words underlined above were inserted by an amendment which came into force on 30th November, 1964, that is to say much after the order of dismissal by the Executive Officer had been passed, though before the order of the State Government dated 12th May, 1965. Before the amendment, the State Government could pass the order of prohibition of execution only when, in its opinion, the resolution or order was prejudicial to the public interest; but, after the amendment, such an order could also be made by the State Government if, in its

opinion, the resolution or order was made in- abuse of powers or in flagrant breach of any provision of any law for the time being in force. It was contended on behalf of the Board that it was not competent for the State Government in this case to make the order on the ground that the order of dismissal was in flagrant breach of a provision of the law for the time being in force. But that point is only of academic interest, because the order itself shows that it had been passed also on the ground that the order of dismissal was prejudicial to the public interest. We assume, therefore, that the State Government was satisfied that the order of dismissal passed by the Executive Officer was prejudicial to the public interest. The question, however, is whether, after the order of dismissal had been passed on the 9th April, 1964, the State Government had the power virtually to set aside or cancel the order under the cover of purporting "to prohibit the execution or further execution of that order." In our opinion, that sub-section does not clothe the State Government with such a power. The resolution of the Board or the order of a duly authorised officer of the Board is not liable to be cancelled or set aside under this section. All that could be done under it is to prohibit the execution or further execution of the resolution or order, or the doing or cont-

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inuation by any person of any act in pursuance of or under cover of such resolution or order. Where the resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution or order of the Board or of its Officer, as in the present case, there is really nothing to prohibit. It was contended on behalf of the State that, when the State Government was empowered to order prohibition of the execution of the resolution or order, it was virtually empowered to set aside or cancel the order and, in support of this view, a reference was made to sub-section (4) of that section which provides that it shall be the duty of the Board, if so required by the authority making the order under sub-section (1-B) to take any action which it would have been entitled to take, if the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything in pursuance of the resolution or order. If the object of the provision was to clothe the State Government with the power to cancel or set aside the resolution of the Board or order, it would have simply said so without resorting to the circumlocution "prohibit the execution or further execution of the resolution or order". We do not, therefore, think that sub-s. (1-B) read with sub S. (4) applies to any resolution or order which exhausts itself after it is passed or made. That is the view taken by a learned Judge of the Allahabad High Court in *Shujaat Ullah Khan v. State of U.P. & Others.*(1) In that case, a resolution was passed by the Board exonerating Shujaat Ullah Khan, who was the Executive Officer of the Board, from certain charges that had been framed against him. The State Government, thereupon, purporting to act under section 34(1-B) of the Act, quashed the Board's resolution on the ground that it was illegal, not having been passed by 2/3rds of the members constituting the Board and was otherwise prejudicial to the public interest. This, order of the State Government was challenged by Shujaat Ullah Khan on several grounds, one of them being that no order under s. 34(1-B) could be passed, because the resolution of the Board had been fully implemented and nothing remained to be executed in respect

(1) 1966 A.L.J. 499.

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there of. This contention was accepted by the learned Judge who observed as follows

"It is clear that the only order that can be passed by the State Government under this sub-section is a prohibitory order to prevent something being done in the future. It is not open to the Government, acting under this sub-section, to give any positive direction such as has been given in the present case, where the Government has ordered the Board to reconsider its report and to make a further enquiry and take a fresh decision. The resolution passed by the Board, exonerating the Executive Officer and dropping the charges against him, exhausted itself as soon as it was passed, for the charges were straightaway dropped and the Executive Officer stood exonerated. There remained nothing to be done in the future and there was nothing left for execution or further execution that could be prohibited by the State Government under sec. 34(1-B)."

In our opinion, that reasoning equally applies to the present case. The order of dismissal was self-operative and nothing remained for execution or further execution which could be prohibited by the State Government under that section. On that ground alone, the order passed by the State Government will have to be set aside.

It was next contended on behalf of the employee respondents' that there was really no effective order of dismissal, because that order had not been communicated to the employees. We asked the learned counsel whether this contention was taken earlier either in the reply-filed by them to the petition or in the arguments before the High Court. He was not able to show that this had been done. On the other hand, reference was made by the learned counsel for the petitioner to an order passed by the Executive Officer on 9th April, 1964, for communication of the order of dismissal to the sweepers and also to the letter dated 8th May 1965 written by the President of the Board to the District Magistrate which is appended to the petition as Annexure 'C'. This letter says that the orders of dismissal had been communicated to the sweepers

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on 10th April, 1964. Moreover, we have on record a letter written by and on behalf of the sweepers to the Secretary, Local Self Government Department, U.P., which clearly goes to show that the sweepers had come to know that they had been dismissed from service. This letter was received in the office of the Secretariat on 21st April, 1964 which only shows that the sweepers must have been communicated the order of dismissal much earlier. We also know that many sweepers had filed appeals. In any case, since the contention is put forward for the first time now in this Court and involves consideration of facts, it cannot be permitted to be raised.

In the result the appeal is allowed and the order of the State Government dated 12th May, 1965 is quashed. There shall be no order as to costs.

S.C.

Appeal

allowed.

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JUDIS