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NAGPUR IMPROVEMENT TRUST

v.

YADAORAO JAGANNATH KUMBHARA AND 10 ORS.

AUGUST 13, 1999.

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[S. SAGHIR AHMAD AND G.B. PATTANAİK, JJ.]

Service Law:

C *Appointments to the post of Assistant Engineers—Made by Nagpur Improvement Trust—Resolution of Trust confirmed by State Government—Not found invalid—Notification in 1937 authorising Trust to make appointments—Challenge to the appointment made by Trust—Held, the appointments are valid—Nagpur Improvement Trust Act, 1936.*

D *Nagpur Improvement Trust Act, 1936—Sections 21, 22, 89 (1) (c)—Provision requiring State to frame rules—For appointment to posts requiring professional skill—No rules made—Notification in 1937 enabling Trust to make appointments to certain posts—Whether Trust can make appointments in the absence of statutory rules—Held, yes—As long as there is no rule the administrative and executive instructions operate in the field.*

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The respondents 3 & 5 filed a writ petition before the High Court, challenging the promotions made by the Appellant to the post of Assistant Engineer on the ground that there being no statutory rules providing the criteria for promotion the appointments are made on the whims of the appellant and it cannot be sustained. The appellant contended before the High

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Court that when the State Government has not framed any rules, then the Board on whom the control and management entirely vests can make appointment and it cannot be interfered with by the High Court. The High Court allowed the Writ Petition and held that under Section 21 of the Nagpur Improvement Trust Act, 1936, it is the mandatory duty of the State Government to frame rules prescribing conditions under which appointments

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can be made to the post under the Trust requiring professional skill and in the absence of such rules the Trust is not empowered to make any appointment to such posts.

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On appeal before this Court, the appellant contended that the view taken by the High court in interpreting the provisions of the Trust Act is

wholly unsustainable and such interpretation will create an administrative chaos in managing the affairs of the Trust, that in the service jurisprudence it is an accepted rule that in the absence of any statutory rules the administrative instructions operate in the field, that therefore as long as there is no rule the Board would be empowered to make appointments to different posts and such decisions cannot be interfered with, that there has been no finding by the High Court that the resolution of the Board providing criteria for appointment to the post of Assistant Engineer and the appointments are for extraneous consideration or have been malafidely taken and that therefore the High Court should not have interfered with the appointments in exercise of jurisdiction under Article 226 of the Constitution of India. The appellant also produced a notification under Section 89(1)(c) of the Act of 1936 issued in 1937 which clearly indicated that except for the posts of Executive Officer, Trust Engineer and Valuation Officer the power of Trust under Section 22 of the Act to appoint persons to posts requiring professional skill remain unaffected.

The respondents contended that so long as no rules have been framed by the State Government under Section 21 of the Act it was not possible for the Trust to make any appointment to different posts and therefore the High Court was fully justified in quashing such appointments.

Allowing the Appeal, the Court

HELD : 1. In view of the provisions of the Act, the conclusion is irresistible that the State Government exercises effective control over the affairs of the Board including in the matter of appointments to different posts, if made by the Board under its resolution. The State Government is required to make rules prescribing the conditions under which members of the staff requiring professional skill could be appointed by the Trust. But when the State Government has not made any such rules even if the rules can be held to be of mandatory nature as has been held by the High Court, then it is difficult to comprehend that the Board is denuded of its general power of appointing and promoting people to different posts as provided under Section 22 of the Act. If the view of the High Court under impugned Judgment is taken to be correct then all appointments to different posts ever since 1936 have to be held to be invalid inasmuch as no rules have been framed by the State Government in exercise of the power under Section 21 of the Act. The notification issued in 1937 supports the conclusion that Trust Board would appoint persons to posts requiring professional skill by evolving principle or by specific resolution. [458-G-H; 459-A-B, E, G]

A 2. While interpreting the provisions of Section 21 of the Act the High Court lost sight of the general principle of service jurisprudence that in the absence of any statutory rules governing the service conditions of the employees, the executive instructions and/or decisions taken administratively would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions. In this view of the matter and concededly, no rules having been framed by the State Government in exercise of power under Section 21 of the Act, the Trust/Board was fully empowered to take administrative decisions in the matter of appointments and promotions to different posts including the posts requiring professional skill and consequently the resolution of the Board taken in accordance with sub-section (2) of Section 22 of the Act deciding to promote the employees to the post of Assistant Engineer cannot be said to be invalid or inoperative. The view of the High Court that the appointments made to the posts of Assistant Engineer are invalid in law is erroneous.

[459-B-C-D-E]

D 3. Notwithstanding power having been conferred upon the State Government to issue appointments direction on getting the copy of resolution by the Board, no such direction having been given, it must be assumed that the State Government also never found the resolution promoting respondent Nos. 3 and 5 to the post of Assistant Engineer to be invalid in any manner. In this view of the matter, that part of the direction quashing the appointments made in favour of the respondents 3 and 5 before the High Court is set aside. The appointments of those two respondents to the post of Assistant Engineer made by the Board by its resolution is valid in law. [4560-D-E]

F [The Court observed that until rules are framed by the State Government there would be no fetter on the power of the Board to make appointments in accordance with law by taking appropriate decisions. But this conclusion, the court observed, does not in any manner dilute the direction of the High Court to the State Government to frame rules under Section 21 of the Act.]

[460-E, G]

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 21-21A of 1992.

From the Judgment and Order dated 22.11.90 of the Bombay High Court in W.P. Nos. 1945 of 1989 and 781 of 1988.

H R. Masodkar for S.C. Patel for the Appellant.

Ram S. Lambat and (A.K. Sanghi) (NP) for the Respondents. A

The Judgment of the Court was delivered by

PATTANAİK, J. These appeals by the Nagpur Improvement Trust are directed against the judgment of the Division Bench, Bombay High Court in Writ Petition No. 781 of 1988 and Writ Petition No. 1945 of 1989. By the said judgment under challenge, the High Court has quashed the promotion of the private respondents to the post of Assistant Engineer (Civil), *inter-alia*, on the ground that there has been no rules framed by the State Government to promote people in the technical line and in the absence of such rule, it is not possible for the Trust/Board to appoint people either on the basis of any decision of the Board or under any executive instructions evolved by the Board. B C

The private respondents moved the High Court under Article 226 of the Constitution alleging that the posts of Engineering Supervisor and Assistant Engineer under the Board are required to be filled up by promotion from among the Junior Engineers. It was also alleged that the Trust had issued an advertisement in the year 1981 inviting applications for the post of Assistant Engineer laying down Degree in Civil Engineering with three years' experience as the eligibility criteria. This eligibility clause was later on dispensed with by subsequent advertisement dated 1st of August 1982 and people could be appointed with sufficient experience. It was alleged that there being no statutory rules providing the criteria for promotion, appointments are being made on the whims of the Trust and such appointments, therefore, need not be sustained. A further grievance had been made that the Draughtsmen who were not eligible to be promoted to the post of Assistant Engineer, the Trust by its resolution dated 30th of December 1986 equated the post of Draughtsman with the Engineering Supervisor and made them eligible for promotion and such resolution was motivated one, designed to confer benefit to some particular persons and as such should be quashed by the High Court. The Trust/Board entered appearance in the High Court and took the stand that when the State Government has not framed any rules in exercise of power under Section 21 of the Act, then the Trust/Board on whom the control and management entirely vests can certainly make appointments and promotions to different posts and as such appointments *bona fide*ly made cannot be interfered with by the High Court. The High Court, however, on consideration of the submissions made by the rival parties came to the conclusion that under Section 21 of the Act, it is the mandatory duty of the State Government D E F G H

A to frame rules prescribing conditions under which appointments can be made to the post under the Trust requiring professional skill and in the absence of such rules, the Trust is not empowered to make any appointment to such posts. Since admittedly, no rules have been framed, the appointments to the post of Assistant Engineer made by the Trust are invalid and accordingly such appointments were quashed.

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Learned counsel appearing for the appellant - Trust/Board contends that the view taken by the High Court in interpreting the provisions of the Trust Act is wholly unsustainable and such interpretation will create an administrative chaos in managing the affairs of the Trust. He, however,

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contended that in the service jurisprudence, it is an accepted rule that in the absence of any statutory rules, the administrative instructions operate in the field and, therefore, so long as there has been no rule framed by the State Government in exercise of power under Section 21 of the Act, the Trust/Board would be fully empowered to make appointments to different posts by the decision of the Board and such decisions cannot be found fault with. The

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learned counsel further contended that there has been no finding by the High Court that the resolution of the Board providing criteria for appointment to the post of Assistant Engineer and the ultimate decision of the Board appointing Assistant Engineer are either for an extraneous consideration or have been malafidely taken and in that view of the matter, such decision

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should operate and the appointments made pursuant to such decision should not have been interfered with by the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

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Learned counsel for the respondents on the other hand argued with vehemence that so long as no rules have been framed by the State Government under Section 21 of the Act, it was not possible for the Trust/Board to make any appointment to different posts and, therefore, the High Court was fully justified in quashing such appointments.

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To appreciate the correctness of the rival submissions, it would be necessary to examine the relevant provisions of the Trust Act and to find out whether the conclusion arrived at by the High Court is in accordance with law. The Nagpur Improvement Trust Act, 1936 is in operation ever since its promulgation and has been operative in the field for more than 60 years. Section 21 of the Act conferring the power on the State Government to frame rules, reads thus:

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“21(1) Subject to rules as the [State] Government may make prescribing

the conditions under which members of the staff appointed by the Trust to offices requiring professional skill may be appointed, suspended or dismissed, the Trust may from time to time fix the number and salaries of such permanent servants as it may think necessary and proper to assist in carrying out the purposes of this Act:

Provided that the Trust may, with the previous sanction of the [State] Government appoint a person possessing professional skill on a short term contract for a period not exceeding five years.

- (2) The Chairman may in cases of emergency appoint such temporary servants as may in his opinion be required for the purposes of this Act, and may direct that the salaries of such temporary servants fixed as the emergency may require shall be paid from the Trust fund:

Provided that

- (i) He shall not act under this sub-section in contravention of any order of the Trust prohibiting the employment of temporary servants for any particular work, and
- (ii) every appointment made under this sub-section shall be reported at the next following meeting of the Trust."

Section 22 conferring the power on the Chairman of the Board in certain cases and in the Trust/Board itself in some other cases is quoted herein below in extenso:

"22. Subject to the provisions of Section 21 and to any rules for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Trust, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

- (a) in the case of officers and servants whose monthly salary does not exceed one hundred and fifty rupees, in the Chairman, and
- (b) in other cases, in the Trust;

Provided that any officer or servant in receipt of a monthly salary exceeding fifty rupees who is reduced, suspended, or dismissed by

A the Chairman may appeal to the Trust, whose decision shall be final.”

The management of the Trust itself vests on the Trust/Board. Various provisions in the Act, however, make it clear that the State Government exercises effective control over the affairs of the Trust/Board. The control which the State Government exercises over the affairs of the Trust/Board is

B apparent from the provisions of Section 25 itself, which reads as under:

“25. (1) The Chairman shall forward to the [State] Government a copy of the minutes of the proceedings of each meeting of the Trust within ten days from the date on which the minutes of the proceedings of such meeting were signed, as prescribed in clause (g) of sub-section

C (1) of Section 16.

(2) If the [State] Government so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Trust for consideration at any meeting.

D (3) The [State] Government may require the Chairman to furnish with

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Trust, or

E (b) a report on any such matter, or

(c) a copy of any document in the charge of the Chairman.

The Chairman shall comply with every such requisition without unreasonable delay.”

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Even under Section 24(c) of the Act, if the State Government is of the opinion that the duties imposed on the Trust has not been performed or has been performed in an imperfect manner, then the State Government may direct the Trust to make arrangements for the proper performance of the duties or to take such measure as may be specified by the State Government. In view

G of the aforesaid provisions in the Act, the conclusion is irresistible that the State Government exercises effective control over the affairs of the Board including in the matter of appointments to different posts, if made by the Board under its resolution. It is, no doubt, true that under Section 21 of the Act, the State Government is required to make rules prescribing the conditions

H under which members of the staff requiring professional skill could be appointed

by the Trust. But when the State Government has not made any such rules even if the rules can be held to be of mandatory nature as has been held by the High Court, then it is difficult to comprehend that the Board is denuded of its general power of appointing and promoting people to different posts as provided under Section 22 of the Act. If the view of the High Court under the impugned judgment is taken to be correct then all appointments to different posts ever since 1936 have to be held to be invalid inasmuch as no rules have been framed by the State Government in exercise of the power under Section 21 of the Act. While interpreting the provisions of Section 21 of the Act, the High Court has lost sight of the general principle of service jurisprudence that in the absence of any statutory rules governing the service conditions of the employees, the executive instructions and/or decisions taken administratively would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions. In this view of the matter and concededly, no rules having been framed by the State Government in exercise of power under Section 21 of the Act, the Trust/Board was fully empowered to take administrative decisions in the matter of appointments and promotions to different posts including the posts requiring professional skill and consequently the resolution of the Board taken in accordance with sub-section (2) of Section 22 of the Act deciding to promote the employees to the post of Assistant Engineer cannot be said to be invalid or inoperative. The High Court, therefore, in our view fell in error to hold that the appointments made to the posts of Assistant Engineer are invalid in law.

It was also brought to our notice that by notification dated 3rd August 1937, a rule had been framed in exercise of power under Section 89(1)(c) of the Nagpur Improvement Trust Act which clearly indicated that except for the post of Executive Officer, Trust Engineer, Valuation Officer, the power of Trust under Section 22 to appoint persons to posts requiring professional skill remain unaffected. The said notification is quoted in extenso:-

“No. 7600-1302-M-XIII.-In exercise of the powers conferred by clause (c) of sub-section (1) of Section 89 of the Nagpur Improvement Trust Act, 1936 (C.P. Act XXXVI of 1936), the Governor of the Central Provinces and Berar is pleased to make the following rules as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed: -

RULES

1. In the case of the officers specified below no post shall be

A created or abolished, and no alteration in the emoluments thereof shall be made without the approval of the Provincial Government, and every appointment to or dismissal from any of the undermentioned posts shall be subject to confirmation by the Provincial Government:-

B (1) Executive Officer.

(2) Trust Engineer.

(3) Valuation Officer.

C 2. Subject to the provisions of Section 22 of the Act, the power of appointment to dismissal from, and fixation of the emoluments of all other posts requiring professional skill shall be vested in the Trust.”

D The aforesaid notification fully supports our earlier conclusion that Trust Board would appoint persons to posts requiring professional skill by evolving principle or by specific resolution. Besides, notwithstanding power having been conferred upon the State Government to issue appointments direction on getting the copy of resolution by the Board, no such direction having been given, it must be assumed that the State Government also never found the resolution promoting respondent Nos. 3 and 5 to the post of Assistant Engineer to be invalid in any manner. In this view of the matter, the part of the direction quashing the appointments made in favour of the respondents 3 and 5 before the High Court is set aside and we hold that the appointments of those two respondents to the post of Assistant Engineer made by the Board by its resolution is valid in law. The direction of the High Court to the State Government to frame rules in exercise of power under Section 21 of the Act, however, is not being interfered with and is upheld. We make it clear that until rules are framed by the State Government there would be no fetter on the power of the Board to make appointments in accordance with law by taking appropriate decisions. But this conclusion of ours does not, in any manner, dilute the direction of the High Court to State Government to frame rules under Section 21 of the Act. The appeals are accordingly allowed to the extent indicated above. There will be no order as to costs.

VM.

Appeals allowed.