

(1991) 11 KAR CK 0046
In the Karnataka High Court
Case No : W.A. No"s. 390 and 808 of 1991

C.K. Venkatasubba Rao

APPELLANT

Vs

B.K. Ranganath and State of Karnataka

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Karnataka Lokayukta Act, 1984 — Section 26
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 6

Citation : (1991) ILR (Kar) 4395 : (1992) 1 KarLJ 455

Hon'ble Judges : S.P. Bharucha, C.J;S.A. Hakeem, J

Bench : Division Bench

Advocate : S.V. Narasimhan, for S.V. Raghavachar, for the Appellant; P.P. Muthanna, General and Somayaji, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, C.J.—These two Appeals arise upon the same Judgment and Order and it is convenient to dispose them of together.

2. The facts that we state relate to Writ Appeal No. 390 of 1991. Those of the other Writ Appeal are similar. It appears that one C.K.

Venkataramanappa, resident of Nagawara, Bangalore-560 015, had lodged a complaint with the State Vigilance Commission against the

appellant, who was the Village Accountant of the Nagawara Group Panchayat, to the effect that the appellant was demanding Rs. 150/- as illegal

gratification to show an official favour, viz., the change of "katha" in respect of his brother M. Varadaraju. A trap was laid on 10th January 1986.

The appellant demanded Rs. 150/- from Venkataramanappa and accepted the same as illegal gratification. On 15th January 1986 the Karnataka

Lok Ayukta Act, 1984 ("the said Act" for short) came into force. On 22nd

September 1986 the Upa Lok Ayukta passed an order u/s 14 of the said Act. It recorded the fact of the trap laid as aforesaid and stated thus:

By the operation of Section 26 of the Karnataka Lokayukta Act, 1984, investigation of this case against the AGO Sri Venkatasubba Rao stood

transferred to me. Upon a consideration of the entire facts and circumstances, including the explanation offered by the AGO in the course of the

investigation, I am satisfied that the AGO Sri Venkatasubba Rao has committed criminal offence, punishable u/s 161 I.P.C. and Section 5(1)(d)

read with 5(2) of the Prevention of Corruption Act. In exercise of my powers u/s 14 of the Karnataka Lokayukta Act, I order that the AGO Sri

Venkatasubba Rao be prosecuted in a Court of Law. As provided in Section 14 of the Act, the sanction to prosecute him shall be deemed to have

been granted by the appropriate authority. Initiation of the prosecution is hereby ordered.

3. The appellant filed the Writ Petition for a declaration that Section 14 of the said Act was ultra vires the Constitution of India and for quashing the

Upa Lok Ayukta's order dated 22nd September 1986. It contended that Section 14 was violative of Articles 14 and 16 of the Constitution and

that public servants in the State were discriminated against and treated differently in the matter of according sanction for prosecution. In respect of

complaints received for investigation u/s 7 of the said Act, the Lok Ayukta or Upa Lok Ayukta accorded sanction to prosecute on the basis of

their satisfaction based upon material made available during the course of investigation, whereas in other cases relating to public servants the

investigating authority was different and the sanction had to be accorded by the authority competent under the provisions of Section 6 of the

Prevention of Corruption Act, 1947. The Lok Ayukta and Upa Lok Ayukta had no discretion in the matter of according sanction as the

investigation was conducted by the police under the said Act. The protection given to a public servant under Article 311(1) which enjoined that it

was only the Competent Authority who could remove him from service was taken away by Section 14 and it was therefore violative of Article 14.

The petition also submitted that Section 14 was outside the legislative competence of the State Legislature.

4. The learned Single Judge found no merit in the contentions raised on behalf of

the petitioner and dismissed the Writ Petition.

5. Section 9 of the said Act provides that any person may make a complaint to the Lok Ayukta or Upa Lok Ayukta in the manner therein stated.

The Lok Ayukta and Upa Lok Ayukta are empowered to make such preliminary enquiry as they deem fit and, where they propose to conduct an

investigation, they are required to forward a copy of the complaint to the delinquent public servant and to afford him an opportunity to offer his

comments therein. Section 11 deals with the manner in which evidence may be recorded. Section 12 requires the Lok Ayukta and Upa Lok

Ayukta to make a report after investigation of a complaint. Section 14 reads thus:

14. Initiation of prosecution - If after investigation into any complaint the Lokayukta or an Upa Lok Ayukta is satisfied that the public servant has

committed any criminal offence and that he should be prosecuted in a Court of law for such offence, then, he may pass an order to that effect and

initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then, notwithstanding

anything contained in any law, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order.

6. Section 6 of the Prevention of Corruption Act, 1947 provides, so far as is relevant, that no Court shall take cognizance of the offences therein

stated under the Indian Penal Code alleged to have been committed by a public servant except with the previous sanction of the authority

competent to remove that public servant from his office.

7. It was submitted by learned Counsel for the appellants that, u/s 6 of the Prevention of Corruption Act, sanction to prosecute a public servant

may or may not be granted whereas it was automatic under the provisions of Section 14 of the said Act This submission does not seem to us to be

tenable having regard to the phraseology of Section 14. The Lok Ayukta or Upa Lok Ayukta has to be satisfied: (a) that the public servant has

committed a criminal offence, and (b) that he should be prosecuted for the same. Satisfaction in regard to the commission of the offence does not,

therefore, automatically lead to sanction. Further, even after being satisfied on both counts the sanction ""may"" be accorded. The Lok Ayukta and

Upa Lok Ayukta have, therefore, discretion not to accord sanction for prosecution even though satisfied that a criminal offence has been

committed. Needless to say, the discretion would have to be very judiciously exercised.

8. In his representation to the Lok Ayukta or Upa Lok Ayukta it would be permissible for the delinquent Government servant to bring on record

his unblemished service record and submit that for that reason he should not be prosecuted just as that unblemished service record might prevail

upon the Appropriate Authority under the Prevention of Corruption Act to decline to accord sanction for prosecution.

9. It was submitted that the Karnataka State Legislature had no legislative competence to enact Section 14 of the Act. It is difficult to uphold this

contention because, clearly, this provision as also the Prevention of Corruption Act fall within the scope of Entries 1 and 2 of the Third

(Concurrent) List of Schedule VII of the Constitution, and Presidential sanction has been obtained for the said Act, which is later in point of time.

Article 254(2) makes provision in this behalf and reads thus:

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision

repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the

Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law

adding to, amending, varying or repealing the law so made by the Legislature of the State:

Our attention was invited to the dissenting Judgment in the case of Vijay Kumar Sharma and others Vs. State of Karnataka and others, and to this

observation therein:

(xi) The assent of the President of India under Article 254(2) given to a State Law/provision, provisions therein accord only operational validity

though repugnant to the Central Law but by subsequent law made by the Parliament or amendment/ modification, variation or repeal by an Act of

Parliament renders the State Law void. The previous assent given by the President does not blow life into a void law.

We do not see how this observation, in a dissenting Judgment, can carry the

matter any further.

Our attention was also invited to paragraph 47 of the Judgment of the Supreme Court in State of Jammu and Kashmir Vs. M.S. Farooqi and

Others, It reads thus:

47. From the perusal of the provisions of the two statutory laws, namely, the All India Services (Discipline and Appeal) Rules 1955, and the

Jammu and Kashmir Government Servants' Prevention of Corruption (Commission) Act, 1962, it is impossible to escape from the conclusion that

the two cannot go together. The impugned Act provides for additional punishments not provided in the Discipline and Appeal Rules. It also

provides for suspension and infliction of some punishments. It seems to us that in so far as the Commission Act deals with the infliction of

disciplinary punishments it is repugnant to the Discipline and Appeal Rules. Parliament has occupied the field and given clear indication that this was

the only manner in which any disciplinary action should be taken against the members of the All India Services. In so far as the Commission Act

deals with a preliminary enquiry for the purposes of enabling any prosecution to be launched it may be within the legislative competence of the

Jammu and Kashmir and not repugnant to the provisions of the Discipline and Appeal Rules. But as the provisions dealing with investigation for

possible criminal prosecution are inextricably intertwined with the provisions dealing with infliction of disciplinary punishment the whole Act must be

read down so as to leave the members of the All India Service outside its purview.

It is difficult to apply what is there stated to the case before us.

In the result, we uphold the Judgment and Order of the learned single Judge and dismiss the Appeals.

Each party shall bear and pay its own costs.