

(1957) 01 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 209 of 1956

C.N. Chellappan Pillai

APPELLANT

Vs

State of Travancore-Cochin

RESPONDENT

Date of Decision : 03-01-1957

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(4), 309
Government Servants Conduct Rules, 1950 — Rule 80, 81

Citation : AIR 1957 Ker 43 : (1957) 1 LLJ 634

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant;
Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioners are non-gazetted servants of the Government of the State and members of the Travancore-Cochin Ministerial Staff Union. The Union was formed on 12-9-1955 and Ext. A is a printed copy of its bye-laws. According to para. 3 of the affidavit in support of the petition "there are at present 26 Branch Offices for the Union throughout the State and over three thousand members in all".

2. Bye-law No, 5 deals with the Working Committee of the Union and reads as follows;

(The Judgment after quoting the Bye-law in Malayalam proceeded further.)

3. Rule 80 of the Government Servants' Conduct Rules, 1950, (Ext. C) provides that "no Government servant shall be a "member, representative, or officer of any association representing or purporting to represent Government servants or any class of such servants unless such association satisfies the conditions mentioned therein. Condition (a) specified in the said rule is:

"Membership of the association shall be confined to distinct class of Government

servants and shall be open to all Government servants of that class"

and Rule 81 reads as follows:

"No Government servant shall be a member of any Service Association which has not been recognised by Government or of which the recognition has been withdrawn."

4. Ext. B is a communication to the Union dated 6-4-1956 in reply to its request for "recognition":

"Under Rule 80 (a) of the Government Servants' Conduct Rules, membership of a Service Association shall be confined to Government servants. Necessarily, the office-bearers of the Association have also to be Government servants. Article 5 of the Union bye-laws is therefore defective. It should specify that membership of the working committee should be confined to Government servants. The Union cannot be recognised unless the above modification is made";

and Ext. D is a Circular issued by the Government on 25-5-1956:

"Rule 80 (a) of the Government Servants' Conduct Rules states that the membership of a Service Association shall be confined to distinct class of Government servants and shall be open to all Government servants of that class. Since membership of a Service Association is open to Government servants only, office-bearers of the Association have necessarily to be Government servants. Hence it is irregular for a Service Association to appoint outsiders to function as office-bearers of the Association;

It has come to the notice of Government that certain Associations with non-officials as office-bearers are functioning in the State. Such Associations are not eligible for recognition by Government under the provisions of the Government Servants' Conduct Rules. Recognition granted to any such Association should be withdrawn forthwith unless the position is rectified within a fortnight. Departments of the Secretariat and the Heads of Departments will take action accordingly."

5. in para, 6 of the affidavit in support of the petition it is stated:

"The President of the Travancore-Cochin Ministerial Staff Union is a non-official. Under the bye-laws governing the Union there is provision for the co-option of a competent legal adviser to the working committee and any member of the working committee is competent to be the President of the Union. As such the constitution of the Union permit a non-official being the President of the Union" and the prayer in the petition is "to call up the records relating to the Government Circular No. D. Dis. 12781/56/Public, dated 25-5-1956 (Ext. D) and quash the same by a writ of certiorari and further declare that Rr. 80 fa) and 81 of the Government Servants' Conduct Rules, published by Notification No. S--3 7729/49/CS dated 22-2-1950 (Ext. C) as unconstitutional and further to direct the Government by a writ of mandamus or other appropriate writ, direction or

order to give recognition to the Travancore-Cochin Ministerial Staff Union"

on the following, grounds:

"1. The refusal to give recognition to the Union is violation of the petitioners' fundamental rights under Article 19(1)(c) of the Constitution.

2. The rule-making power of Government under Article 309 of the Constitution cannot be invoked to abridge fundamental rights.

3. Rules 80 (a) and 81 of the Government Servants' Conduct Rules violate Article 19(1)(c) of the Constitution. The restriction imposed is unreasonable and is not saved by Article 19(4).

4. The restrictions imposed on the Constitution of the Union and the qualifications of its office-bearers in the instant case is discriminatory and opposed to Article 14 of the Constitution in so far as there are other Unions of Government servants in the State with persons who are not Government servants as Presidents and office-bearers, which have been recognised by Government.

5. In other words, Unions of employees in non-Governmental organisations there is no similar ban, A differential treatment regarding Unions of Government servants will be ultra vires."

6. Grounds 4 and 5 are based on Article 14 of the Constitution.

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

The learned Government Pleader points out that Ext. D is applicable to all Government servants governed by the Government Servants' Conduct Rules (Ext. C) and submits, quite correctly, that no question of discrimination arises for consideration.

7. The only question therefore that arises for consideration is whether Rules 80 (a) and 81 of the Government Servants' Conduct Rules violate Article 19(1)(c) of the Constitution. Article 19(1)(c) provides that all citizens shall have the right "to form associations or unions"" and Article 19(4);

"Nothing in Sub-clause (c) of the said Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

It is not contended that the rules in controversy can be sustained on the basis of Article 19(4) of the Constitution.

8. The Government Servants' Conduct Rules (Ext: C) are not statutory rules and can be considered only as part of the contract of service under which the employees of the Government discharge their functions as Government servants.

In Chief Supdt., Central Telegraph Office, Calcutta v. Krishna Chandra, 60 CWN 24 (A) (on appeal from Krishna Chandra v. Chief Supdt., Central Telegraph Office, Calcutta, (S) AIR 1955 Cal 76) (B), it was contended on behalf of the appellant, the Chief Superintendent, Central Telegraph Office, Calcutta, that all "questions of fundamental rights were irrelevant, inasmuch as Government servants qua Government servants, had no fundamental rights" Cliakravartti, C. J., said:

"The last argument was put on two grounds: it was said that the Constitution itself had committed the service of Government servants to the pleasure of the President, restricted only as to the manner in which disciplinary action in respect of some of the graver penalties was to be taken; and it was said, in the second place, that, in any event, when a citizen of India accepted some service tendered by Government, carrying certain conditions with it, he must be deemed to have elected to have foregone such of his fundamental rights as might be inconsistent with such conditions.

It can hardly be gainsaid that the last contention, which apparently was not urged before the learned trial Judge is one of the utmost importance, affecting, as it does, hundreds and thousands of citizens of India employed in Government service. Some day the question will undoubtedly have to be decided. It however appears to us that we are not called upon to decide it on the present occasion."

9. I do not propose to consider in this Judgment the first of the two grounds urged in support of the contention that Government servants qua Government servants have no fundamental rights guaranteed under the Constitution. The second of the two grounds alone will be dealt with in the paragraphs that follow.

10. The validity of the second ground will depend on whether it is possible for a citizen of India to waive or modify by the terms of his contract of service with the Government the fundamental rights guaranteed to him by the Constitution of India. In Ramkishan Mithanlal Sharma Vs. The State of Bombay, Mahajan, C. J., said:

"In our opinion, the doctrine of waiver enunciated by some American Judges on construing the American Constitution cannot be introduced in our Constitution without a fuller discussion of the matter"

and;

"without finally expressing an opinion on this question we are not for the moment convinced that this theory has any relevancy in construing the fundamental rights conferred by Part III of our Constitution. We think that the rights described as fundamental rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity.

These fundamental rights have not been put in the - Constitution merely for

individual benefit, though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of consequential policy. Reference to some of the Articles, "inter alia", Articles 15(1) 20 and 21 makes the proposition quite plain. A citizen cannot get discrimination by telling the State "You can discriminate", or get convicted "by waiving the protection given under Arts. 20 and 21".

I propose to assume without deciding that it is not possible to sustain a contract of Government service if it says that all (or any) of the fundamental rights are waived by him and that he shall seek no redress on the basis of those rights.

11. The case before me is by no means a case of waiver, complete or absolute, but only of the imposition of certain restrictions, as part of the contract of service. In such a case the question, as I see it, on which the validity of the contract will depend is not whether restrictions have been imposed but whether the restriction imposed can be considered as reasonable or not.

In other words, I take the view that restrictions on the fundamental rights guaranteed to a citizen can be imposed in a contract of Government service provided such restrictions satisfy the tests of reasonableness and do not make a nullity of the rights conferred. Judged by that standard Rules, 80 (a) and 81 appear to be eminently reasonable and I must uphold them as valid.

12. Article 309 of the Constitution provides that the recruitment and conditions of service of the persons serving the Union or a State shall be subject to the provisions of the Constitution and I am in entire agreement with Sinha, J., when he says in *Fakir Chandra v. State of Madras* AIR 1954 Gal 568 (D), that;

"If a man merely binds himself to be governed by the general rules and regulations of Government service, he must be taken to be bound by those terms that are legal. In so far as that law offends against the Constitution, it is void."

The question still remains: Will a reasonable restriction on the fundamental rights imposed by a contract of Government service be ultra vires of the Constitution? My answer, as already stated, is "no" and it follows that this petition should be dismissed.

13. Apart from the decisions already mentioned my attention was drawn to the following cases as well: *S. Ramakrishnaiah Vs. The President, District Board, Nellore and Others*, and *Shital Prasad and Others Vs. Deputy Accountant General (S.R.) Accountant General Office, Allahabad and Others*, I do not see anything against the view I have taken in the reasoning adopted in those decisions and I do not consider it necessary to discuss them in this judgment.

14. The petition fails and is hereby dismissed; but in the circumstances of the case without any order as to costs.