

(1957) 08 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No"s. 80 and 81 of 1956

Divakaran Nair

APPELLANT

Vs

State of Travancore-Cochin

RESPONDENT

Date of Decision : 27-08-1957

Acts Referred:

Constitution of India, 1950 — Article 13(2), 19(1), 19(4), 226
Government Servants Conduct Rules, 1973 — Rule 1, 80, 81, 82

Citation : AIR 1958 Ker 283 : (1958) 2 LLJ 77

Hon'ble Judges : Varadaraja Iyengar, J; T.K. Joseph, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Varadaraja Iyengar, J.—These two petitions under Article 226 of the Constitution have been Bled on behalf individually, of two Service Associations of Government servants against the same Respondent State, and seek to canvass the validity of a directive issued in the form of a Circular, forbidding both the Associations from retaining a non-official, who happened to be the same, as their President. In view of the importance of the question involved, they were referred by one of us, before whom they came on in the first instance, to a Division Bench. The petitions were heard together and are being disposed of by this single judgment.

2. Of these petitions O. P. 80 is filed by the Secretary of the Government School Teachers" Federation which was formed on 14-1-1955. The Federation is composed of three constituent units. Primary School Teachers" Association, Secondary School Teachers" Association and Graduate Teachers" Association, each of which elect 25 representatives who together constitute the General Body of the Federation. From the very inception Sri G. Chandrasekhara Pillai, Advocate, had been elected as the President of the Federation and had been functioning as such. O. P. 81, the other petition herein, is by the Secretary of the

Travancore-Cochin Primary Teachers" Association with its Head Office at Kadambanad.

As originally constituted no non-official was to be admitted into the Association, but subsequently in the Annual Conference held on 7-2-1953 the constitution was amended so as to admit non-officials also and in exercise of such power, the Association elected Sri G. Chandrasekhara Pillai as its president for the year. He had been continuing as president ever since, having been re-elected year after year. While so the Associations received the following communication:

"GOVERNMENT OF TRAVANCORE-COCHIN

No. D. Dis. 12781/66/Public

Public Department, (Services) Trivandrum, 25-5-1956,

CIRCULAR

Subject: Service Associations with, non-officials as office-bearers -- Legality of.

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 Service 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 Secretariate and the Heads of Departments will take action accordingly.

(By order of His Highness the Rajpramukh) Sd/- Assistant Secretary."

3. The main grounds of attack relied on in the two petitions were (i) that Rule 80 (a) of the Government Servants" Conduct Rules, did not on proper construction, contemplate the prohibition of non-officials from being office bearers of Service Associations and therefore the threat of withdrawal of recognition (under Rule 82) as if for violation of a condition thereof did not arise. Alternatively and assuming that the construction contended for was wrong, the Rule 80 (a) was violative of the fundamental right to form associations guaranteed under Article 19(1)(c) and therefore was hit by Article 13(2) of the Constitution and (ii) that Government, having once recognised and acted on the basis of the Associations election of President for some time, must be held estopped from questioning the propriety of the choice for the future. The prayer was therefore made for issue of a writ of certiorari or other appropriate writ or direction quashing the circular

order dated 25-5-1956.

4. The petitions were resisted by the Respondent-State on the footing that Rule 80 (a) even as it stood, did prohibit non-Government servants from being office-bearers or Presidents of Service Associations. Besides, the Government Servants' Conduct Rules constituted the terms and conditions of service of Government Servants and it was not open to them so long as they continued to be such, to question the validity of the Rules. In any event, they imposed only reasonable restrictions on the right to form associations, and could not therefore be said to be opposed to Article 19(1)(c) of the Constitution. The plea of estoppel was also denied. (5) It will be convenient at this stage to extract the relevant Government Servants' Conduct Rules. Rule 80 says:

"Membership of Service Associations -- 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 following conditions, viz. (a) Membership of the association shall be confined to distinct class of Government servants and shall be open to all Government servants of that class."

Clauses (b) to (d) are omitted as they are unnecessary.

"81. 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."

"82. Government shall withdraw the recognition granted to any association if it violates any of the conditions prescribed for its recognition or if it resorts to any strike or activities calculated to paralyse or embarrass Government or for any other reason."

6. The first question that arises for consideration therefore is one of construction. Sri T. K. Narayana Pillai (P) learned counsel for the petitioners urged in this connection that the President of an Association need not necessarily be a member thereof and may be chosen from outside with a view to obtain efficient guidance and sound leadership. The only limitation under the general portion of Rule 80, according to learned counsel was that the Association should represent or purport to represent Government servants or any class of them.

No doubt, Government servants could not be office bearers of Service Associations which admitted outsiders as members but that did not mean that outsiders could not be Presidents of Associations where the membership was restricted to Government servants and especially so, when there was no specific prohibition concerning it. This argument cannot be said to be, without force, though ordinarily the management of the affairs of an Association is entrusted to a Committee of the members thereof.

But assuming that the wording of the Rule as it stands, may admit of that interpretation, it cannot be said that the Government were wanting in authority

to qualify the Rule to the extent contended for on their behalf. For the opening Rule 1 of the Government Servants' Conduct Rules has provided "Government to reserve to themselves the power to add to, modify or cancel these rules." And then it will be a question of mere irregularity to have acted without previous notice of the amendment.

Even otherwise it will amount only to adoption of a wrong interpretation of particular Rule. In either case a writ motion of the kind herein may not lie. We therefore overrule the contention raised by the petitioners Associations, that there had been no violation in fact, of a condition of their recognition by the Government and the Circular was on that ground invalid,

7. The next and more important question is whether the Government Servants' Conduct Rules 80 to 82 are violative of the fundamental right to form an Association guaranteed by Article 19(1)(c) of the Constitution and have therefore to be struck down as illegal and ultra vires. This precise question came up for consideration in a recent case before this Court, C.N. Chellappan Pillai Vs. State of Travancore-Cochin, The petitioners there, were the Government of T.C Ministerial Staff Union whose bye-laws authorised the co-option of competent legal officer (not a Government servant, member of the Union) to their Working Committee and further the election of any member of the Working Committee as President of the Union.

For exercise of such power however, Government refused to recognise the Union and the question was whether Rules 80 (a) and 81 of the Government Servants' Conduct Rules which were sought to be put into force were ultra vires and void as beyond the powers of the Government, employers. M. S. Menon J., in disposing of the matter observed:

"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

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 restrictions 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 test 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."

Indeed the same principle had been stated by the learned Judge in the earlier case V.C. Chacko Vs. State of Travancore Cochin, which involved the validity of Rule 63 of the Government Servants' Conduct Rules, aimed specifically against

the discussion of the policy or action of Government by their servants. But learned counsel for the petitioners contends strenuously that there was no justification for the distinction drawn by the learned Judge between a complete or absolute waiver on the one side and the imposition of restrictions however reasonable, on the other side concerning a fundamental right, albeit under a contract of employment.

If the former was forbidden as the learned Judge was willing to assume, then the latter must be held to be equally forbidden. And learned counsel relied on the passage in *Behram Khurshed Pesikaka Vs. The State of Bombay*, also referred to by the learned Judge, where Mahajan, C. J. though not finally deciding the matter, was inclined to say:

"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....."

Learned counsel says that reasonable restrictions are already contemplated by Article 19, Clause (4), in the interest of public order or morality and it was unnecessary, indeed impossible, to go beyond that test and so judged Government must be held to have acted in excess of their authority.

8. There is no doubt that the Government Servant's Conduct Rules restrict the activities of one segment of the population while permitting them to the remainder. But the obvious reasons for the distinction is the objective of the State to provide a sound public service and the fact that the Government as an employer can and must frequently impose restrictions regulations regarding its employees which are not applicable to the public at large. And so long as such restrictions find regulations are not arbitrary and bear a reasonable relation to legitimate ends to be attained no question as to their constitutionality can arise.

It is much the same test that was stated by Menon, J., in the two cases in 1957 *K. L. T.* cited above. So considered the Rules 80(a), 81 and 82 in question here cannot be complained against. We must add that learned Government Pleader was prepared to justify the Rules even on the narrow ground of public order and morality. But it is unnecessary so to limit ourselves.

9. In *K. Sethumadhava Rao Vs. Collector of South Arcot Dt. Cuddalore*, the question arose whether the Government could not take disciplinary action against a member of the Revenue Subordinate service for selling tickets for a dramatic performance in aid of an Association without the previous sanction of the head of the department, in contravention of Rule 6 of the Madras

Government Servants" Conduct Rules which prohibited the same.

Refuting the contention raised on behalf of the Government servant that the right to collect funds by all lawful means was incidental to the right to form an association guaranteed by Article 19(1)(c) of the Constitution which will otherwise be rendered illusory, Rajagopalan J., held that no such right was included and its exclusion did not also imply a praclienl deprivation of the fundamental right of the Government servant to join the Association.

With equal logic, it could be said here that the fundamental right to form an association of Government servants did not imply the further right to choose an outsider as its President. Nor did such limitation involve a total impairment of the fundamental right concerned.

10. There is yet another aspect of the case, viz., that the Government servant forming members of the Service Associations herein, have no constitutional right to any appointment under the Government. The appointments are if at all, subject only to the Government" Servants" Conduct Rules. How then can they be heard to contend as incidental to the exercise of discretion in their favour under Article 226 of the Constitution, that the Rules in question are unconstitutional? See K. Sethumadhava Rao Vs. Collector of South Arcot Dt. Cuddalore, above referred to. For as Holmes J., observed in *Me Auliffe v. New Bedford* (1892) 155 Mass 216 (E), where a service rule against soliciting monies for any political purpose was challenged by a policeman :

"The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as idleness, by the implied terms of his contract. The servant cannot complain as he takes the employment on the terms which are offered him."

See extract in the Annotations to *United Public Workers of America v. Mitchell* (1946) 91 Law Edn 754 at pp. 791-792 (F). Much to the same effect is the observation of Minton J., in *Adler v. Board of Education, New York* (1952) 342 US 485 (G), about persons seeking employment or employed in the Public Schools.

"It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. It is equally clear that they have no right to work for the State in the school system on their own terms. They may work for school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech of assembly? We think not."

See the extract in 1957 KLT 13 at p. 16: *V.C. Chacko Vs. State of Travancore Cochin*, above referred to.

11. Learned counsel for the petitioners referred to *S. Ramakrishnaiah Vs. The*

President, District Board, Nellore and Others, . But that case only held that the fundamental right of freedom of association cannot be made subject to the discretionary control of the Administrative or Executive Authority which can grant or withhold permission to exercise such right, at its discretion. Reference was also made to Shital Prasad and Others Vs. Deputy Accountant General (S.R.) Accountant General Office, Allahabad and Others, where the question arose as to the validity of Rule 23 of the Government Servants' Conduct Rules which forbid Government servants from taking part in or assisting in any way the political movement in India or relating to Indian affairs and it was held that the mere formation of an Union along with outsiders either as members or office bearers cannot be said to be an activity which was prohibited by the rule concerned.

But we are not concerned with that question either. Similarly the reference to Krishna Chandra v. Chief Supelt., Central Telegraph, (S) AIR 1955 Cal 76 (J), where Sinha J., held that Rule 20 (1) of the Government Servants' Conduct Rules 1926 (India) was too vague when it prohibited criticism by Government servants "capable of embarrassing" Government's relation with the people or other States and as such was in conflict with the fundamental right guaranteed under Article 19(1)(a) of the Constitution. But it is noteworthy that the learned Judge himself observed, while referring to his prior decision in. Fakir Chandra Chiki Vs. S. Chakravarti and Others, which involved a question under Article 311.

"It was however not my intention to hold that a citizen could under no circumstances enter into-any contract with Government, waiving or modifying any of his fundamental rights conferred by Part HI of the Constitution. In many cases, contracts of service do put substantial restriction upon such fundamental rights. For example, it is usual to stipulate that an officer should not leave the limits of a certain town or district or headquarters, without the prior leave of his superiors. An absolute prohibition of movement might offend against the I. P. C., but there does not seem to be any objection to the kind of restriction mentioned above, although it may be said to affect the provisions of Article 19(1)(d) of the Constitution."

It follows therefore that the imposition by Government of the conditions as herein restricting the choice of the personnel for the office of President in a Service Association of their employees cannot be said to be unconstitutional in any sense.

12. The question of estoppel raised in the petition was not seriously pressed. Even otherwise we do not think there is any substance in that contention.

13. The petitions therefore fail and they are accordingly dismissed. We do not however make any order as to costs.