

(1984) 06 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 4388 of 1981

K.V. Gnanasambandam

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Constitution of India, 1950 — Article 309
Prevention of Corruption Act, 1947 — Section 5(1)

Citation : (1984) 06 MAD CK 0012

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : P.M. Sundaram and G. Subramaniam, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. The petitioner, who is now working as the Principal Police Training College, Madras, seeks to quash the very charge in respect of which the

Departmental Enquiry No. 31/1980 was proposed by the respondents and also seeks a consequential relief to forbear the respondents from

proceeding with the said enquiry.

2. Several grounds are urged at the instance of the petitioner to support the reliefs claimed. One among them is that when the Tamil Nadu Civil

Services (Disciplinary Proceedings Tribunal) Rules 1955 hereinafter referred to as the Rules were framed by the Government of Tamil Nadu in

exercise of the powers conferred by the proviso to Art. 309 of the Constitution of India, S. 5(1)(e) was not in the Prevention of Corruption Act,

1947 and that, therefore, the respondents are not entitled to proceed against the petitioner in respect of the charge, which, according to the

petitioner, falls within the ambit of S. 5(1)(e). After S. 5(1)(e) was incorporated

in the Central enactment, the Prevention of Corruption Act, 1947, by virtue of Amendment Act 40 of 1964, there was no consequential amendment to the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955, hereinafter referred to as the Rules.

3. The learned Government Advocate pointed out that the petition is premature in that only a charge has been framed and that after the enquiry is

over, it might be, the petitioner is exonerated and that therefore there may not be any need for quashing this charge. This preliminary objection was

countered by Mr. G. Subramaniam, learned counsel for the petitioner, relying upon the ruling of the Supreme Court in Nasir Ahmad Vs. Assistant

Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, . Further, the learned counsel pointed out that if the respondents are

not entitled to proceed against the petitioner in respect of S. 5(1)(e) of the Prevention of Corruption Act, read with R. 4(1)(a) of the rules, it would

follow that the respondents have no jurisdiction to proceed against the petitioner for the charges that are levelled against him. In Nasir Ahmad Vs.

Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, the facts are that S. 7 of the Administration of Evacuee

Property Act 1950 required the custodian to form an opinion that the property in question is evacuee property within the meaning of the Act

before any action under that section is taken. Also, under R. 6 the Custodian has to be satisfied from information in his possession or otherwise

that the property is prima facie evacuee property before a notice is issued. It was found that the authority concerned did not apply his mind to the

relevant material before issuing the notice u/s 7, the consequential notice was held to be not valid.

In this case, at the time when the rules were framed by the Tamil Nadu Government, S. 5(1)(e) was not in the Prevention of Corruption Act, 1947.

It is necessary to point out that S. 5(1)(e) was introduced in the Prevention of Corruption Act 1964. Thereafter, the rules were not amended so as

to include S. 5(1)(e) of the Prevention of Corruption Act. According to the learned counsel for the petitioner, unless the rules were amended

subsequent to the incorporation of S. 5(1)(e) in the Prevention of Corruption Act, in law the Tamil Nadu State is not entitled to rely upon S. 5(1)

(e) as forming part of the rules by virtue of "the definition of corruption" in rule

2(a) of the Rules and to take disciplinary proceedings against the petitioner u/s 5(1)(e).

4. Before examining this position, it is convenient to advert to the arguments advanced by the learned Advocate General that the charges as framed would fall within S. 5(1)(a) to (d). It is, therefore, necessary to recapitulate Sections 5(1)(a) to (d) of the Act. So far as S. 5(1)(e) is concerned, it should be proved that the delinquent officer or any person on his behalf is in possession or has at any time during the period of his office been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income and according to the learned Advocate General the possession of property or resources disproportionate to the known sources of the petitioner's income would also impress the misconduct envisaged u/s 5(1)(a) to (d). To make it clear, any illegal gratification obtained by the delinquent officer during his term of office could form part of such resources or property disproportionate to the petitioner's known sources of income. Therefore, though the charge as framed might fall with S. 5(1)(e), still the respondents, can validly proceed against the petitioner in the departmental enquiry on the ground that the petitioner is guilty of either of the provisions of S. 5(1)(a) to (d). I am unable to agree. For, in my view, every one of the sub-section covers a specific field. There can be no overlapping by any one of the sub-sections. Further, if really in respect of the possession of property or having resources disproportionate to the delinquent officer's own sources of income, it was possible for the respondents to proceed against the petitioner under either of the sub-sections viz, S. 5(1)(a) to (d), S. 5(1)(e) is wholly unnecessary. The fact that S. 5(1)(e) was introduced later would indisputably indicate that the field covered by this sub-section was not covered by any of the preceding subsections.

Above all, if a charge should be framed, it should be specific and should refer to a particular section or sub-section. The principal charge is charge

No. 1 while the rest are connected with charge No. 1. Charge 1 reads thus :

That actuated by corrupt motive and in abuse of your official position and authority while you (accused officer) were working as Deputy

Superintendent of Police in several places. Vice Principal, P.T.C. Vellore, Assistant Commissioner of Police, Madras, Deputy Assistant Inspector

General of Police, Madras, Additional Superintendent of Police and Superintendent of Police in several stations, you (AO) had accumulated

properties (assets) to the value of Rs. 41,573.41, rounded to Rs. 41,573/-, as detailed below during the check period 12-9-60 to 1-8-76 which is

found to be disproportionate to the known source of your legitimate income and you (AO) had failed to account for the disproportionate assets

satisfactorily." The charge sheet does not make any reference to any particular-section or sub-section thereof. This apart from a plain reading of

the above charge, there cannot be any two opinions that the said charge would fall within the area covered by S. 5(1)(e). Further, as the charge

reads, it is too difficult to bring the same within any one of the sub-sections of S. 5(a) to (d). Though there is no reference to the particular section

or sub-section in the charge, am to reiterate that on the wordings of the charge, it would plainly mean that the petitioner is sought to be proceeded

against u/s 5(1)(e) of the Prevention of Corruption Act read with R. 4(1)(a) of the rules.

5. Now, reverting to the petitioner's argument, I find that the petitioner's contention is supported by the authority of the Supreme Court in B.

Shama Rao Vs. The Union Territory of Pondicherry, . The facts in that case are as follows :

The administration of Pondicherry became vested in the Government of India on 16th August 1962, by virtue of de jure transfer. The Pondicherry

Administration Act, XLII of 1962, constituted that territory as a separate centrally - administered unit and under the Union Territories Act XX of

1963, a Legislative Assembly was set up for that area. The Assembly under that Act acquired the power of enacting laws in respect of items in

Lists II and III of Schedule VII of the Constitution. The Assembly thereafter passed the Pondicherry General Sales-tax Act (X of 1965) which

was published on 3rd June 1965 after receiving the President's assent on 25th May 1965. Section 1(2) of the Act provided that the Act would

come into force on such date as the Government may by notification appoint. S. 2(1) provided that : "The Madras General Sales tax Act (I of

1959) as in force in the State of Madras immediately before the commencement of this Act shall be extended to and come into force in the Union

of Pondicherry subject to" The Pondicherry Government issued a notification dated 1st March 1966 bringing into force the Madras Act as

from 1st April 1966. In the meantime the Madras Act was amended and the Madras Act as amended up to 1st April 1966 was brought into force

under the said notification. The validity of the Act was challenged by the petitioner.

After the filing of the writ petition, the Pondicherry Legislature passed the Pondicherry General Sales Tax (Amendment) Act (XLIII of 1966)

which received the assent of the President on 2nd November 1966, and was published on 7th November 1966. The Amendment Act altered S.

1(2) of the principal Act so as to read as follows : "It shall come into force on the 1st day of April 1966". S. 2(1) of the Principal Act was likewise

amended and instead of the words "commencement of this Act" words "1st day of April 1966" were substituted.

It is not necessary for the present purpose to notice the other ratio rendered by the Supreme Court with reference to legislation issued by the

Pondicherry Government on 1-3-1966. Ultimately it was held that the principal Act was still-born the attempt to revive that which was void ab

initio was frustrated and such an Act could have no efficacy. In this case, the Rules came into force on 1-1-1955, It is relevant to point out that the

Rules were not subsequently amended. Nonetheless the petitioner is sought to be proceeded against u/s 5(1)(a) of the Prevention of Corruption

Act read with S. 4(1)(a) and 2(a) of the Rules. Rule 2(a) of the Rules furnishes the definition of "corruption". "Corruption" shall have the same

meaning as criminal misconduct of a public servant u/s 5(1) of the Prevention of Corruption Act of 1947 (Central Act II of 1947). On the date

when the Rules came into force, the rule framing authority could have had in mind only the Rules that were in existence in the Prevention of

Corruption Act, 1947 i.e., S. 5(1)(a) to (d). It is well settled that the State Legislature can adopt the enactment of another Legislature either whole

or a part of a provision therein. The material factor is whether the legislature applied its mind when it so adopted the enactment of another

legislature. On the same analogy, unless the rule making authority had applied its mind afresh and amended Rule 2(a) of the Rules, it cannot be said

that the Legislature had applied its mind afresh and decided to adopt S. 5(1)(e) of the Prevention of Corruption Act 1947, as amended in 1964 in

the rules. I had already pointed out that there was no amendment to the rules subsequent to the amendment of the Prevention of Corruption Act in

1964, when S. 5(1)(e) was introduced for the first time. In other words, though the respondents are entitled to adopt a provision or enactment as a whole passed by the Central Legislature when it framed the rules, it is not entitled to rely upon the amendments made to the Central Act subsequent thereto. To enforce S. 5(1)(e) of the Prevention of Corruption Act, on the "strength of amendment made subsequent to the framing of the Rules would be clearly one of non-application of the mind and refusal to Discharge the function entrusted to the legislature when instructed to constitute it In short, it is abdication of legislative function. In my view, the Supreme Court ruling applies on all fours to the present case. Therefore, applying the said ratio, I must hold that rule 5(1)(e) will have no efficacy; it is as though it does not form part of the rules.

6. The learned Advocate General brought to my notice the following decisions :

1. The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, .
2. The State of Madhya Pradesh Vs. M.V. Narasimhan, ;
3. Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another,
4. Natesa Reddiar and Another Vs. Saradhambal and Others, and
5. Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, . The argument advanced by the learned Advocate-General

is that there is a difference between the legislation by reference and a legislation by incorporation. I do not think that this principle is really useful in

settling the problem that is agitated before me. Before I should advert to this factor, I may immediately point out that the decision relied on by the

learned counsel for the petitioner i.e., B. Shama Rao Vs. The Union Territory of Pondicherry, was not dissented by the Supreme Court in its later

decision. Indeed, the decision was approved but was held that it should be understood on the facts in that case. Further, even in the Collector of

Customs, Madras v. Nathella Sampathu Chetti, (1962) 3 SCR 786 : 1962 I Cri LJ 364 the ratio laid down by the Privy Council in AIR 1931 149

(Privy Council) was not dissented. On the other hand, after quoting the relevant passage from the Privy Council decision, the Supreme Court

observed as follows :-

It was for this, among, other reasons, that the Judicial Committee held that rights of appeal created by amendments effected to the Land

Acquisition Act subsequent to the enactment of the Local Act were not attracted to the incorporated provisions in the "Local Act".

I will have to lay emphasis on the significance attached to "Local Act". It is useful to extract the passage in the Privy Council case and quoted by

the Supreme Court :

But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State and their Lordships

are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of

1911. It was not part of the Land Acquisition Act, when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is

there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at

least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local Code.

Nor again, does Act XIX of 1921, contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to

be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than

incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for

itself at length the provisions which it was desired to adopt.

It is pertinent to note that in the Privy Council case the "Local Act" in dealing with the acquisition of land for the purpose designated by it make

previous acquisitions under the Land Acquisition Act (Central) and the provisions of the Land Acquisition Act were subjected to numerous

ambiguities which were set out in the schedule and in fact, the local Act was held to be an enactment of special Act for the acquisition for the said

purpose. As a matter of fact, in the passage extracted above, it is seen that the Privy Council rejected the contention on behalf of the Secretary of

state that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911, but held that it

was not part of the Land Acquisition Act when the local Act was passed nor in adopting the provisions of the Land Acquisition Act is there

anything to suggest that the Bengal Legislature intended to bind themselves to

any future additions which might be made to that Act. Again in

Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, , the ratio laid down in B. Shama Rao Vs. The Union Territory

of Pondicherry, is referred is worthwhile extracting the passage quoted therein :-

We think that the principle of the ruling in B. Shama Rao Vs. The Union Territory of Pondicherry, , viz, (Shama Rao) must be confined to the

facts of the case. It is doubtful where there is any general principle which precludes either Parliament or a State legislature from adopting a law and

the future amendments to the law passed respectively by a State Legislature or Parliament and incorporating them in its legislation. At any rate

there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of provision and its future amendments

and that for a special reason or purpose.

It is thus seen from the quotation that the doubts as to whether the ruling laid down in B. Shama Rao Vs. The Union Territory of Pondicherry, may

be applicable to either a Parliament or a State Legislature from adopting a law and also the future amendments to the law passed respectively by

Parliament or a State Legislature. By way of clarification I must point out that it might be that either the State Legislature or the Central

Government as the case may be is entitled to incorporate a provision in one enactment into another enactment so as to include the amendments to

be made in future to that former enactment. However, when any legislature were to adopt a provision or the whole Act of another legislature or of

Central Government, the amendments made subsequent thereto to such adopted provision or enactment would not automatically form part of

borrowed enactment. Indeed, even in Natesa Reddiar and Another Vs. Saradhambal and Others, the ratio in B. Shama Rao Vs. The Union

Territory of Pondicherry, was quoted. In paragraph 8 of the judgment, the learned Judge, who made the leading judgment, quoted the ratio in B.

Shama Rao Vs. The Union Territory of Pondicherry, but held that -

We do not see how the principle laid down in that decision will apply here. While passing the Tamil Nadu Act XXVI of 1947, the Provincial

Legislature did not adopt either expressly or by necessary implication the future amendments to be made to the Central Act by the Central

legislature.

Even in *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, the distinction between the legislation by

reference and the legislation by incorporation alone is reiterated.

7. In *The State of Madhya Pradesh Vs. M.V. Narasimhan*, the principle laid down is :-

Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the

subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following

cases : (a) where the subsequent Act and the previous Act are supplemental to each other; (b) where the two Acts are in pari materia; (c) where

the amendment in the previous Act also, would render the subsequent Act wholly unworkable and ineffectual; and (d) where the amendment of the

previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act : *Ram Sarup Vs. Munshi and Others*,

referred.

A reference to all the cases quoted by the learned Advocate General will show that the two enactments are by the same legislature either the State

Legislature or the Parliament. It did not deal with a case where two legislations were by two different legislatures. It may be useful to refer to the

decision in the *Collector, of Customs, Madras v. Nathella Sampathu Chetti* (1962) 3 SCR 786 : 1962 (1) Cri LJ 364 relied on by the learned

Advocate General in this context At page 832 (of SCR) (at P. 382-83 of Cri LJ) the Supreme Court had stated that in the case, however, of a

reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one, "referred to" is that set out in S. 8(1) of

the General Clauses Act. S. 8(1) provides

Where this Act, or any other Central Act or Regulation made after the commencement of this Act, repeals and reenacts, with or without

modification, any provisions of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall

unless a different intention appears, be construed as references to the provision so re-enacted.

This will also show that the principle, viz, legislation by reference or legislation by incorporation has relevance to a case where the two enactments

are by the same legislature.

8. As long as there is a direct authority in B. Shama Rao Vs. The Union Territory of Pondicherry, , and as long as other citations relied on by

learned Advocate-General had not considered this question I cannot but follow the principle laid down by the abovesaid Supreme Court case as I

am bound by it. The resultant position is, that S. 5(1)(e) of the Prevention of Corruption Act could not be availed of by the respondents.

Otherwise, it would amount to abdication of the legislative competence in favour of the Parliament. It would therefore follow that the petitioner

cannot be charged u/s 5(1)(e) of the Prevention of Corruption Act.

9. If the respondents cannot proceed against the petitioner u/s 5(1)(e) of the said Act, no useful purpose will be served by the respondents holding

an enquiry, for, the defect is so fundamental as would vitiate the whole enquiry. Thus the objection by the learned Government advocate that the

petition is premature or that it cannot be contended that the respondents had no jurisdiction to proceed against the petitioner, for, the charges

framed cannot be accepted.

10. My above approach is enough to allow the writ petition. Consequently, I am not adverting to any of the other grounds raised by the petitioner.

11. In the result, the writ petition is allowed, rule nisi is made absolute and I make no order as to costs.

12. Petition allowed.