

(1951) 01 AP CK 0003
In the Andhra Pradesh High Court

Mohamed Abdul Raoof and Others

APPELLANT

Vs

State of Hyderabad

RESPONDENT

Date of Decision : 03-01-1951

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1951 AP 50 : (1951) CriLJ 273

Hon'ble Judges : Suryanarayana Rao, J;Shripat Rao, J;Mohamed Ansari, J

Bench : Full Bench

Judgement

1. These are transfer applications by eight accused who are being prosecuted along with ten others in the Court of the Special Tribunal No. IV, Hyderabad for offences of criminal conspiracy, promoting class hatred, robbery, dacoity, mischief by fire, murder, grievous hurt, punishable u/s 77B, 83 and Sections 243; 266, 328, 330 and 368, read with SB. 66 and 77B, Hyderabad Penal Code and for contravening Rr, 37, 67 and 58, Defence of Hyderabad Rules read with Rule 112 of the same Rules. The applications were filed u/s 494, Hyderabad Criminal P.C., corresponding to Section 526, Indian Criminal P.C., but some of the applicants have also invoked the aid of Articles 226 and 227 of the Constitution of India.

2. A Pull Bench of this High Court has, in an earlier stage of this case, held in *Abdur Rahim v. State of Hyderabad*, criminal cases Nos. 14 to 20 of 1950 on 13-11-1950; AIR 1951 Hyd 11 F.B.) that the Special Tribunals Regulation under which the Special Tribunal No. IV has been constituted is valid with certain deletions.

3. In our opinion, Article 227 of the Constitution is applicable to the Court of the Special Tribunal and the powers of superintendence conferred on the High Court are sufficiently wide to include the principles laid down in Section 494, Hyderabad Criminal P.C. and to empower us to deal with these applications. It is, therefore, unnecessary to give any finding as to the applicability of Section 494 or of Article 226 of the Constitution.

4. As regards the law governing these applications numerous authorities have been cited before us by both sides. We feel it unnecessary to discuss them in detail. We may, however, state the salient principles of law applicable to these applications.

5. Where the accused has a reasonable apprehension that a fair and impartial trial or enquiry cannot be had, or where the ends of justice make it expedient, a transfer should be ordered. It is of paramount importance that parties arraigned before the Courts should have confidence in the impartiality of the Courts. It is the duty of the High Court at all events to clear away everything which might reasonably engender suspicion and distrust in the Court and so to promote and maintain in the public a feeling of confidence in the administration of justice, which is so essential for social order and security. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. It is not any and every apprehension in the mind of the accused that can be a ground for transfer but it should be a reasonable apprehension, i. e., an apprehension which the High Court considers it reasonable for the accused as a reasonable person to entertain in the circumstances of the case.

6. On the merits, the applicants have not made any personal reflections of bias or prejudice on the part of any member of the Tribunal, They urge, however, that by reason of certain opinions expressed by the present members of the Tribunal in the two earlier cases, bearing Criminal Cases Nos. 1 and 2 of 1368F., respectively called the Shoebullah Khan Murder Case and the Bibinagar Dacoity Case, as regards the aims, objects, ideology and activities of the Majlis Ittehad-UI-Muslimeen and the Razakar Organisation and the connection of the then Government and Government Officers and sympathisers with them, they have a reasonable apprehension that a fair and impartial trial cannot be had before the same members of the Tribunal.

7. We will consider now how far the allegations of the applicants are borne out by the challan in this case and the opinions expressed by the Tribunal in the two previous cases.

8. The charge in the present case is as follows:

The Majlis Ittehad-UI-Muslimeen was started in 1928 as a sectarian organisation with the object of achieving the supremacy of the Muslims in Hyderabad State. The Central Organisation built up a State- wide branch organisation in the districts and taluqas and in 1937 organised a volunteer corps called the Razakars, Syed Kasim Razvi became the President of the Majlis Ittebad-UI-Muslimeen for the first time in December 1946 and continued as President till September 1948. He used this organisation as a means to achieve, the objectives of himself and the members of the Central Working Committee and the Central Committee of Action, namely, the creation of an Independent Islamic State with a Muslim majority, in view of the intended transfer of power to the

Indians in India. The Razakar Organisation was strengthened considerably by a campaign of vigorous recruitment. They were given military training with fire-arms and uniforms. They paraded and marched in flagrant violation of the Anti-Uniform Order of 1949F., and Military Evolutions Order of 1354 F., issued under Rules 57 and 68, Defence of Hyderabad Rules. The Razakars, in short, became an illegal private militant body ready to carry out the orders of Majlis Ittebad-UI-Muslimeen. Kasim Razvi and the executive of the Majlis Ittehad-UI-Muslimeen with the avowed object of creating an Independent Muslim majority Islamic State, started a campaign of speeches, vituperative and vitriolic in tone, anti-Hindu in content, to foment communal hatred and disturb public tranquillity and decided with the co-operation of the Depressed Classes under a pact entered into with B. S. Venkat Rao their leader, to drive the caste Hindus out of Hyderabad State and settle imported Muslims in their place and on their lands. In order to have a Government in sympathy with their objectives and activities, Kasim Razvi and his Working Committee and Committee of Action succeeded in compelling two successive Prime Ministers of Hyderabad, Sir Mirza Ismail and the Nawab of Chattari, to resign by the use of force and threats of personal violence, Accused 8, 5, 6 and 7, top-ranking members of the Majlis Ittehad-UI-Muslimeen and members of Its Working Committee, accused 2, 3 and 9, who were sympathetic with Majlis Ittehad-UI-Muslimeen ideas and objects, B. S. Venkat Rao leader of Depressed Classes who had pledged his and his party's support to Majlis Ittehad-UI-Muslimeen, were installed in office with Mir Laik Ali, who was an active sympathiser and supporter of Majlis Ittehad-UI-Muslimeen as Prime-Minister, through the efforts of Kasim Razvi and Majlis Ittehad-UI-Muslimeen, The formation of the Laik Ali Ministry imbued with the Majlis ideology made the achievement of the objectives of the Majlis Ittehad-UI-Muslimeen easier, by making the Government officials, especially of the Revenue and Police Departments, fall in line with the District and Taluq Organisations of the Majlis Ittehad-UI-Muslimeen, Finance, arms, transport, petrol, cloth and food rations were liberally supplied to the Razakars who were engaged in organising a State-wide campaign of terrorism, class hatred, commission of atrocities on Hindus in different places in the State, A definite programme of Direct Action containing 32 points was drawn up, Orders and circulars, referring to Hindus as disloyal and treacherous, suggested that they should be liquidated and killed, deprived of arms, lands and other property They were carried out ruthlessly through local workers of the Majlis Ittebad-UI-Muslimeen and-Razakars with the help of the local Government. servants. Bauds of Razakars also in the guise of civic guards, committed atrocities such as killing, looting, arson. These were the direct result of the instructions and decisions of the Majlis Ittehad-UI-Muslimeen and the assistance, passive and active, rendered by the officials especially of Revenue and Police Departments, and the inspiration, connivance and condonation by Mir Laik Ali and other ex-Muslim Ministers, B. S. Venkat Rao and Deen Yar Jung, Director-General of Police....All the accused along with other persons became parties to a criminal conspiracy with the common object of driving the caste Hindus out of the State by creating conditions of alarm and panic, by killing, looting and other

acts of violence In pursuance of this criminal conspiracy and as a direct result thereof between December 1946 and September 1948, nearly 1,200 murders, 4000 dacoities and 3,600 cases of arson with loss of property valued at about a crore of rupees and other offences were perpetrated by the Razakars, Deendars and Depressed Classes within the State of Hyderabad....All these ex-Ministers identified themselves with Kasim Razvi and the armed band of Razakars and local Majlis. They actively and openly encouraged Razakars....They evinced interest in their working.

9. Paragraph 3 of the challan as mentioned in the judgment of Shoebullah Khan murder case is as follows:

Considering the national activities of the late Shoebullah Khan, Editor of the Urdu daily, Imrose, a dangerous obstacle in the way of his dictatorial policies and ideology, accused 1, Syed Mohamed Kasim Razvi, conspired to bring about Shoebullnh Khan's death.

Syed Mohamed Kasim Razvi is one of the applicants before us.

10. With reference to the ideology and activities of the Majlis Ittehad-UI-Muslimeen and the Razakar Organisation and the connection of the Government with them the members of the present Tribunal have expressed themselves in Shoebullah Khan murder case in Para. 52 as follows:

...It is to be noted Clause (b) provided for military organisation amongst the Muslims and services throughout the Dominions and the community which, in the context, would only mean Muslim community. It was strongly urged by A-1 (Syed Kasim Razvi, one of the present applicants) in the course of his argument that Clause (c) provided better relations amongst the sons of the land, meaning all the sons of the land, i. e., all communities and, therefore, Razakar Organisation was not merely Muslim and was not communal. The words "between the sons of the land" are followed immediately by the words "to persuade them to join Razakar Organisation." P. W. 1 Aseer, when asked who could be a Razakar, expressly said "every Muslim...." Taking the entirety of the wording of the section, in particular Clauses (b) and (c) we are unable to accept the contention of A-1; we are satisfied that Razakar Organisation was expressly meant for Muslims and none else.

Again in Para. 74 of the judgment, the Tribunal say:

It is clearly established that A-1 was the head, the President of the Majlis Ittehad-UI-Muslimeen. Majlis Ittehad-UI-Muslimeen means Organisation of the Union of Muslims, that is, it was a body of Muslims and none other than Muslims. It is clearly established also that the Razakar Organisation was a branch of the Ittehad-UI-Muslimeen carrying on a particular activity of the Muslimeen. This Organisation also was of Muslims and none other than Muslims. It was complete and exact copy of an organisation of soldiers...The position was, therefore, this: an army was in existence numbering several lakhs of men and actively

endeavouring to increase its strength, this was a private army, a non-Governmental army. What then is one to think of such a vast and growing army, privately organised, privately officered, privately directed financed and equipped, not being a limb of the Government but obviously existing side by side with Government forces? The inference is irresistible that that army could not exist unless it was not merely tolerated but encouraged by Government. The army was of only Muslims In a State with a population overwhelmingly Hindu. It constituted a dangerous menace, dangerous communal menace, in the State of Hyderabad, an open menace. A-I was the head of it all, the communal Ittehad-UI-Muslimeen, the communal Razakar Organisation and the communal army. We hold that it is clearly established that A-I held a high place and had great influence over men and matters governmental and that his policy was the predominance of the Muslims communal, that is, anti-Hindu....

11. Though the Tribunal also say:

There is little or no evidence let in this case of the position of A-I vis-a-vis the Nizam or the Council of Ministers.

They have, however, expressed opinions about the ideology of the Majlis Ittehad-UI-Muslimeen and have drawn "irresistible inference" that the Razakar Army could not exist unless it was not merely "tolerated but encouraged by Government." In this present case, the aims, objects, the ideology and activities of the same Majlis Ittehad-UI-Muslimeen and the Razakar Organisation and the connection of the accused who happened to be Ministers, officials or supporters of the same Government, are some of the substantial matters of enquiry before the same members of the Tribunal. Syed Kasim Razvi who is an accused in this case was convicted in the two previous cases. Three of the applicants are said to be members of the Working Committee of the Ittehad-UI-Muslimeen, three others are ex-Ministers and all the accused are charged with criminal conspiracy to carry out the illegal objects and activities as mentioned in the challan. Nine of the witnesses to be examined in this case were witnesses in the Shoebullah Khan Murder Case and the Tribunal have in that case expressed an opinion in strong terms as regards some of them that they were trustworthy. Similarly, another 13 witnesses in the present case were witnesses in the Bibinagar Dacoity Case and with reference to several of them the Tribunal have also expressed strongly that they were truthful witnesses.

12. We have to consider the cumulative effect of these opinions, the fact that there is one accused common to all the cases and that some important witnesses also are common. In our opinion, there is ground for the applicants entertaining a reasonable apprehension. We may at the same time make it clear that there is not the slightest imputation of bias or prejudice on the part of any member of the Tribunal. But the absence of bias or prejudice, however, does not completely cover the issue. The question has to be considered from the point of view of the fear or apprehension in the mind of the accused whether the High Court considers that the accused as normal and reasonable persons could reasonably

entertain the fear or apprehension in the circumstances complained of.

13. There is one further question of law to be considered. It has been argued by the learned Advocate-General that expression of opinion in the discharge of judicial functions in judicial proceedings cannot be considered to be a reasonable cause for transfer. As a general principle, founded on grounds of convenience, the uprightness and judicial outlook of Judges, we agree, but this principle is also subject to the salient principles already referred to. Each case has to be considered on its own merits. Taking into consideration the strong opinions formed and strong conclusions expressed by the members of the Tribunal and the other facts and circumstances of the case already referred to, we feel that the ends of justice, the promotion of the feeling of confidence in the administration of justice which is so essential to social order and security and the principle that justice should not only be done but should manifestly and undoubtedly be seen to be done, require that the present members of the Tribunal should not try the present case. We order accordingly.

14. This order will cover all the petitions filed by the other seven accused.

15. Though some of the accused have not filed any application before us, as all the accused are jointly charged in one challan, our order will apply to the entire case and as regards all the accused.

16. Steps may be taken by the authorities concerned to have other members in the Tribunal or to have the case placed before any other duly constituted forum.