
(1957) 08 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 78 of 1955-56

Mohammad Azam

APPELLANT

Vs

State of Hyderabad (Now Andhra Pradesh) and another

RESPONDENT

Date of Decision : 14-08-1957

Acts Referred:

Constitution of India, 1950 — Article 154, 161, 162, 22(5), 226
Penal Code, 1860 (IPC) — Section 120B

Citation : (1957) 08 AP CK 0032

Hon'ble Judges : K. Subba Rao, C.J.; Jaganmohan Reddy, J

Bench : Division Bench

Advocate : M. Ataur Rahman, for the Appellant; M. Seshachalapathi, Government Pleader, for the Respondent

Judgement

Jaganmohan Reddy, J.—The petitioner was a typist in the Medical Department of the erstwhile Hyderabad Government having entered service on the 9th Meher, 1345F. (15th August, 1936) as a Daftar and later promoted on the 3rd Mehar, 1353F (9th August, 1944) as a typist. He was dismissed from service by the order of the Government, dated 31-8-1955 and was also suspended with retrospective effect from 9-6-1951 to 30-8-1955.

The petitioner challenges the order of dismissal and that of suspension and seeks for the issue of a writ of certiorari quashing the said order and for the issue of a writ of Mandamus directing the respondents to reinstate him without break in his service and to pay him the arrears of his salary.

2. In order to understand the background of this case, a few facts may be stated. It appears that the petitioner sought and obtained permission to avail of three holidays on the 3rd, 4th and 5th March, 1950 and proceeded to Bombay with one Ali Abbas and Abdul Qavi and some ladies. While at Bombay on 4-3-1950, it is alleged that he assisted two ladies to emplane for Karachi and saw the other lady off in a ship bound to Karachi.

He returned to Hyderabad on the 5th. It was after this that the news of Laik Ali's escape to Pakistan became known. Laik Ali who was the Prime Minister of Hyderabad State was placed under house arrest after the Police Action and an order under the Hyderabad Public Safety and Public Interest Regulation of 1358 F., was served on him by the then Inspector-General of Police on 9-12-1948. He escaped from his house on 3-3-1950.

It is in connection with this escape the petitioner along with 25 others was arrested on 13-3-1950. All the accused were being tried by the Special Judge on charges under Ss. 5 and 15 of the Hyderabad Public Safety and Public Interest Regulation read with S. 77-B of the Asafia Penal Code Corresponding to S. 120-B of the Indian Penal Code. Ten of the accused in. that case by their petition under Art. 228 of the Constitution challenged the validity of the detention of Laik Ali and contended that since it was unlawful, they could not be said to have abetted or attempted to abet his escape.

This contention was upheld by a Full Bench of the Hyderabad High Court in Showkat-un-nissa Begum v. State of Hyderabad, AIR 1950 Hyd 20 (FB) (A), which held that the prosecution instituted against these accused cannot stand. As a result of this decision the petitioner was released on 15-8-1950 and he joined the service the next day viz., on the 16th August. The petitioner states that his salary and allowances with retrospective effect were also paid to him.

Thereafter, on 21-4-1951, he was called by the Deputy Inspector-General of Medical Services, Dr. Pandit, and his statement was taken regarding his trip to Bombay and his movements in the city and subsequently it appears that on 9-6-1951, by an order of the Inspector-General of Medical and Health Service No. 1705/E. B. 16-7-1950, dated 9-6-1951, he was dismissed. The order is follows:

The statement given by you is not convincing. You have not stated any reasons for going to Bombay in your leave application. You have tried to deceive the Government by not statin the reasons.

In these circumstances and taking into consideration your activities in Bombay you are dismissed from service with immediate effect.

The petitioner put in a long representation of 7-8-1951, in which he stated that he had no made any application for leave, but had on asked for permission for availing the holiday that he was subsequently arrested and release from jail and entertained in service thereafter that the Court having exonerated him from a blame of any kind, the summary dismissal in the circumstances was against rules.

He, therefore, challenged the order of dismissal and also prayed for at least retiring h(sic) on proportionate pension. The Government after considering the representation for over for years served two orders on him, dated 31-8-19(sic) and 9-9-1955, both to the same effect. The fi(sic) order states as under:

Government has carefully considered representation, dated 7-8-1951, made by

S(sic) Mohammad Azam against his dismissal a praying for reinstatement. The Rajpramukh satisfied that in the interests of the security of the State it is not expedient to give him an opportunity to show cause against his dismissal. His proceeding to Bombay during his leave, keeping Government in the dark of his intention to do so, and his activities there, render him u(sic) for retention in service under Government, is accordingly dismissed from Government service with immediate effect.

The order, dated 9-9-1955, after adverting to above order of the Medical Department, dated 31-8-1955 and the representation made by petitioner in his petition, dated 7-8-1951, reduces in identical terms the order of dismissal on 31-8-1955. On 13-9-1955, another order 7422/E. M. was passed by the Director, Medical and Health Services suspending the petitioner from 9-6-1951 to 30-8-1955. The order is as follows:

In accordance with the Government in Medical and Health Department Order No. 1 S. M. dated 7-9-1955, sanction of the Government is accorded to the suspension of Shri Mohan Azam, typist, Directorate, Medical and Health Department from 9-6-1951 to 30-8-1955 and to payment of subsistence allowance, as per (sic) for the period specified above.

3. As we have already stated these (sic) are challenged.

4. The Government in their counter (sic) that immediately the petitioner was arrested 13-3-1950, he was placed under suspension: after his discharge when he was taken on (sic) on 16-8-1950, he was granted full pay for period he was under suspension.

The counter further alleges that the petitioner had in his confession made before Magistrate cleverly concealed the name of Laik Ali, that he had helped Ali Abbas in (sic)ing after the party arranging accommodation (sic) food and travelling arrangements; that the (sic)wers given were not truthful, but only con(sic) half-truths; that the discharge of the a(sic) does not preclude them from initiating a(sic) departmental proceedings; that as a result (sic) departmental enquiry the Government was (sic)vinced that the petitioner, keeping the Government in dark went to Bombay with the s(sic) purpose of assisting the escape of Mir La(sic) and his party; that the Government exa(sic) he case and action was taken under Art. 311 (2) (e) as the incidents relating to the escape of (sic)Mir Laik Ali to Pakistan could not be made the subject of departmental enquiry in the interest of security of the State, that the Rajpramukh having been satisfied that in the interest of the security of the State it was not expedient to give the petitioner such an opportunity, as that would (sic)ean disclosing the names of about 20 high personalities.

It was further stated that the petitioner had clear notice of the charge as per memo, dated (sic)5-1954, and that the decision of the Rajpramukh was not justiciable.

5. The only two questions to be considered this writ petition are (1) whether the order dismissal, dated 31-8-1955, is valid, and (2) whether the Government could under the rules spend the petitioner retrospectively from 9-6-1951 to 31-8-1955.

6. With respect to the first point, the dismissal of the petitioner on 9-6-1951, was bad, because he was not given a reasonable opportunity showing, cause against the action proposed to be taken. The Government in their order of 31-8-1955, and 9-9-1955, in fact recognised the invalidity of the previous order and dismissed the petitioner acting under proviso (c) to Cl. (2) of S. 311 which dispenses with the necessity to give a reasonable opportunity of showing cause against the action proposed to be taken with respondent to a member of the services specified in (1) of Art. 311, where the President, Governor Rajpramukh as the case may be, is satisfied that in the interest of the security of the State it is not expedient, to give that person such an opportunity.

7. Learned advocate for the petitioner says that after the representation made by the petitioner it was realised that the first order of dismissal was bad and that the Government was asked either to set that order aside and reinstate the petitioner or retire him on appropriate pension as requested by him or take action under Proviso (c) of Cl. (2) of Art. 311 of Constitution.

He submits that the Government acting on advice deliberately with a view to deprive petitioner of the opportunity of showing reasonable cause acted under the aforesaid proviso and hence its action is mala fide. The respondents of the Government produced do not appear to contain this letter giving this alleged advice nor is there any material either in the affidavits or otherwise on the records produced which it can be gathered that the Government acted merely with a view to deprive the petitioner of an opportunity to show cause. Where the action proposed to be taken against a member of the services specified in (1) of Art. 311 is under Proviso (c) of Cl. (2) Art. 311 the satisfaction that it is not expedient in the interests of the security of the State to give that person an opportunity to show cause, is the satisfaction of the Rajpramukh. Is the action to be subjective or objective? The state of a person's mind cannot be determined by an objective test and as long as the President, Governor, or the Rajpramukh acted in good faith, their satisfaction cannot be enquired in a Court of Law.

In the famous case of *Liversidge v. Anderson* 1942 AC 206 (B), the question which the House of Lords was called upon to determine whether the words "Secretary of State has reasonable cause to believe" occurring in Regulation 18-B of the Defence (General) Regulation made under the Defence of the Realm Act were to be given subjective meaning or to be determined by the application of the objective test.

We are not, however, concerned with the interpretation of these words though the majority except Lord Atkin accepted that it is the subjective meaning that should be given to those words & that the Courts of Law cannot enquire into the

existence or non-existence of facts on which the Secretary of State had reason to believe. In considering this question their Lordships considered the meaning of the word "satisfies" occurring in several other regulations, such as in Regulation 18-B, para. (1-A) and Regulation 2-D and 18-A, para (1) and they were all unanimous in holding this to be given a subjective meaning and there can be no recourse to a Court. Lord Maugham at page 223 said:

the Secretary of State is only required to be satisfied of something: see, for example, regulation 2-D and 18-A, para (1). In these cases it is conceded that there is no recourse to the Court provided, of course, that the Secretary of State acts in good faith.

7a. Again at pages 224-225 he observed:

If the appellant's contention on this point were correct, the same question would arise in the numerous cases where an executive order depends on the Secretary of State or some other public officer being "satisfied" of some fact of circumstance. It has never, I think, been suggested in such cases that the Secretary of State or public officer must prove that he was so "satisfied" when he made the order.

8. Lord Atkin in contrasting the words in Regulation 18-B (1) and 18-B (1-A) wherein the former words "the Secretary of State has reasonable cause to believe" and in the latter "the Secretary of State is satisfied" have been used, said at page 237:

Why the two different expressions should be used if they have the same "subjective" meaning no one was able to explain. I suggest that the obvious intention was to give a safeguard to the individual against arbitrary imprisonment.

Lord Wright discussing the change in the language in Regulation 18-B (1) and the replacement of the word "satisfied" by "reasonable cause to believe" observed at page 271:

It is, as I apprehended, not contested that under this earlier form of the regulation the matter was left to the discretion of the Secretary, but it was contended that the change from "if satisfied" to "if he has reasonable cause to believe" made all the difference and converted the plenary power of the Secretary into a power the exercise of which was subject to the judgment of a Court of Law.

Lord Macmillan also likewise put a similar subjective construction on these words along with other words used in the regulation as imparting the same meaning and conferring the discretion upon the Secretary of State.

9. After the Constitution the provision relating to the satisfaction of the Central Government or the State Government in detaining a person under S. 3 of the Preventive Detention Act came in for consideration in the Supreme Court in the

case of A.K. Gopalan Vs. The State of Madras,

In that case it was held unanimously that under S. 3 of Preventive Detention Act, 1950, the satisfaction of the authority was purely subjective and could not in the absence of proof of bad faith, be questioned at all and that S. 3 was not unconstitutional. In the case of The State of Bombay Vs. Atma Ram Sridhar Vaidya, , it was argued that the implied requirement that the grounds must be such as will enable the detenu to make a representation also indicates the quality or attribute of the grounds on which the order or detention may be made.

Whether the grounds satisfy the requirements of Art. 22 (5) is not left to the subjective opinion of the authority which makes the order of detention but an objective test is indicated, viz., that the grounds must be such as will enable the detenu to make a representation which quite clearly makes the matter justiciable. If the Court finds that no representation may be made on account of the vagueness of the grounds, the Court must also hold that the order made on such vague grounds cannot be sustained. Das J., as he then was, put the matter at page 170 thus:

This involves that S. 3 (1) (a) of the Act should be read as if the words "on grounds which when, communicated to him, will enable him to make a representation such as is mentioned in S. 7 of this Act" occurred after the words "if satisfied with respect to any person" and before the words "that with a view.

If such interpretation of words be not permissible according to accepted canons of construction then it must be held that in so far as S. 3 of the Act makes an order of detention dependent on the subjective satisfaction of the authority the section is unconstitutional, being repugnant to the provisions of Art. 22 (5) and the necessary intendment thereof. The argument so formulated is attractive but on closer scrutiny will be found to be unsound." It was held unanimously by the Supreme Court that though this argument was not advanced in exactly the same form in A.K. Gopalan Vs. The State of Madras, that fact makes no difference for the arguments have no force as they are founded on the assumption that the grounds on which an order may be made must be such as will, when communicated, be sufficiently full and precise so as to enable the detenu to make a representation.

As was observed the satisfaction being subjective, the Court cannot arrogate to itself the responsibility to judge the sufficiency or otherwise of the grounds. Kania C.J., at page 160 said- "The satisfaction of the Government, however, must be based on some ground. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way.

If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented

from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a Court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section.

It is not for the Court to sit in the place the Central Government or of the State Government and try to determine if it would have come to the same conclusion as the Central or State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law.

When the power to issue a detention order (Observed Patanjali Sastri J.) as he then was "has thus been made to depend upon the existence of a state of mind in the detaining authority, that is, its "satisfaction" which is pure(sic) subjective condition, so as to exclude a judicial enquiry into the sufficiency of the grounds justify the detention, it seems to me to be who inconsistent with that scheme to hold that it open to the Court to examine the sufficiency the same grounds to enable the person detain(sic) to make a representation....

10. In this case the question is; are the any grounds at all upon which the Rajpramu(sic) could have been satisfied that in the interests the security of the State it is not expedient give the petitioner a reasonable opportunity show cause against the proposed action? (sic) contention of the learned advocate for the Petitioner is that there were no grounds whate(sic) upon which the Rajapramukh could have been satisfied and that it was merely a fraud on power.

He submits that the Government found (sic) there was no material upon which the petition could have been asked to show cause why should not be dismissed, action under proviso of Art. 311 (2) was deliberate and mala fide sorted to for the reason that the Courts of will not enquire into the question of the s(sic) faction of the Rajpramukh. The person a(sic)ing fraud on the power or mala fides must establish the facts upon which the Court can (sic) that" inference.

In the affidavit there is not a word mentioned about this, nor what has been urged in argument has been set out therein. We also unable to discover from the records (sic) for any material upon which such an infe(sic) can be drawn. On the other hand we find there are two statements of the petitioner, taken by the Criminal Court and the other (sic) by the Deputy Inspector-General of Medical Health Services in which the participation o(sic) petitioner in the escape of Laik Ali and his (sic)vities in Bombay in helping persons to fly the country to Pakistan was enquired into.

It also appears that statements of wit(sic) were recorded for the trial before the Specia(sic)sions Judge which on a technical point had proceeded. It is not a case where the petitioner was acquitted of the charges. But all that rial which the prosecution had gathered with (sic)pect to the activities of the petitioner pr(sic)cial to the interests of the State were, how(sic) available upon which the

Rajpramukh could said to have been satisfied.

It is not a case where there was no ma(sic) at all. The orders of dismissal clearly state the Rajpramukh was satisfied that it was n(sic) (sic)pedient to give him an opportunity to cause against his dismissal basing that sa(sic)tion on the fact that he has proceeded to (sic)bay during his leave keeping the Government dark and his activities in Bombay, all of rendered him unfit for retention in Government service. We cannot, in these circumstance (sic)re into the subjective state of mind behind at satisfaction.

11. Learned advocate further contends that there was no personal satisfaction of the Rajpramukh, but it was the Government who issued (sic)e order in the name of the Rajpramukh. Apart (sic)m the general presumption under Illustration of S. 114 - *Omnia praesumuntur rite esse(sic)a* - it is again for the petitioner to establish allegation.

Ex facie the position under the Constitution that under Art. 154 the executive power is vest(sic)in the Governor & shall be exercised by him (sic)ier directly or through officers subordinate to (sic)i in accordance with the Constitution. Art. 162 provides that the executive power of a State shall (sic)end to the matters with respect to which the (sic)islature of the State has power to make (sic).

The Governor also has powers under Art. 161 grant pardons, reprieves, respites or remissions punishment, etc. Such powers as are to be (sic)cised by the Governor under the Constitution can only be exercised on the advice of the (sic)isters except where the Constitution expression by necessary implication provided that he exercise the powers in his individual discre(sic) as in the case of the Governor of Assam respect to the Tribunal matters.

In *Gnanamani v. Governor of Andhra*, 2 Mad LJ (AP) 33: (AIR 1954 AP 9) one of us (Hon"ble the Chief Justice) deal with this aspect of the matter and after re(sic)ig to the above Arts. 154, 161 and 162 ob(sic)d:

All the powers exercisable by a Governor of office can be exercised only on the advice of Ministers except in so far as the Constitution expressly or perhaps by necessary impli(sic) says that he can exercise those powers in individual discretion.

(sic)uld therefore even on the facts adverted to be unnecessary to consider the further on whether it is the personal satisfaction (sic) Rajpramukh or his satisfaction on the ad(sic) of the Ministers which is required under (sic) (c) of Cl. (2) of Art. 311. There (sic)ore no force in the contention that the of dismissal is invalid.

12. The next question relates to the order (sic)pension passed after dismissal and with reactive effect. This order is challenged on (sic)ound that no retrospective order of sus(sic) can be made. It is clear from the facts (sic) case that the petitioner was only dismiss(sic) from 31-3-1955. The prior order of dis(sic) being treated as invalid the petitioner in circumstances would be deemed

to be in(sic). The provisions governing the suspension member of the service are contained in (sic)(d) of the Hyderabad Civil Service (Classi(sic) Control and Appeal) Rules which is as(sic).

13. A member of a service may be placed suspension from service pending inquiry marges against him, where such suspension (sic)ssary in the public interest. The period (sic)pension, however, shall not exceed 6 without the previous order of Government provided that in the case of members of service, the period of suspension may be (sic) beyond a total period of one year only (sic)e sanction of His Exalted Highness the(sic).

This rule contemplates the suspension of a member of the services pending an enquiry into the charges against him, that is, before any action is taken against him. The word "suspension" generally connotes temporary deprivation of office, position or of one's privilege. This being the meaning, suspension of a person retrospectively was no meaning.

The rules do not empower the authority to suspend person retrospectively nor is such power consistent with the nature of suspension. In Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, a Bench of the Calcutta High Court consisting of Chakravarthi, C.J. and Lahiri J., considered a similar question where it was held that the power to suspend with retrospective effect was not implicit in a power of suspensions nor does any rule authorise the Government of India to make an order of suspension from service against an employee with retrospective effect.

There the appellant was holding the post of a Sub-Postmaster. On 2-9-1950 he was arrested on certain criminal charges under the provisions of the Indian Penal Code and of Prevention of Corruption Act and was placed under suspension by a letter, dated 5-9-1950, with effect from 2-9-1950 preceding when he had been arrested. In the criminal proceeding against him he was ultimately discharged on 13-10-1950, but his suspension, however, continued.

He was again ressumoned on 16-1-1951, by the Chief Presidency Magistrate on the same charge as previously laid and thereafter by a notification of the West Bengal Government, dated 1-2-1951, the case against him was allotted to the Court of a Special Judge. The appellant then moved the High Court under Art. 226 of the Constitution of India against the continuance of his suspension under the order of 5-9-1950.

The only point urged before the Bench was that no order of suspension with retrospective effect could at all be made. In considering this question referring the dictionary meaning of the word "suspension", Chakravarthi C. J., observed at page 405 (of ILR Cal): (at p. 343 of AIR):

Thus, the basic idea underlying the root word "suspend" and all its derivatives is that a person, while holding an office and performing its functions or holding a position or privilege, should be interrupted in doing so and debarred for the time

being from further functioning, in the office, or holding the position or privilege. He is intercepted in the exercise of his functions or his enjoyment of the privilege and put aside, as it were, for a time, excluded during the period from his functions or privileges. Such being the concept of a suspension order, suspension with retrospective effect is a contradiction in terms.

The antecedent period which an order of suspension with retrospective effect might be intended to cover, would ordinarily be a period during which the person concerned had already performed the duties of his office, or held the relevant position. There can be no meaning in suspending a man from working during a period when the period is past and he has already worked or suspending a man from occupying a position or holding a privilege in the past when he has already occupied or held it.

If the suspending authority had the powers of a Legislature, he could undoubtedly have said that although an employee might have actually worked during an antecedent period, he would be deemed not to have worked and to have been under suspension or although a person might have actually occupied a position in the past, he would be deemed not to have occupied it and to have been bereft of the privileges attaching thereto.

But the Government of India not being a Legislature and having given itself by the rules no more power than a power to suspend, the ordinary meaning of "suspension" must apply to the construction of the power. Any order made must be within the limits of the power to suspend and those limits must be taken to be such as are possible under the meaning of the word "suspension". If so, an order of suspension with retrospective effect under the authority of R. 2 is impossible in the nature of things." With respect, we agree with this view. The fact that the petitioner was not actually performing the duty from 9-6-1951 to 30-8-1955, does not in any way affect this position because it is not the petitioner's fault that he did not work, because the Government did not allow him to do so during the period when the petitioner is supposed to have been dismissed. As it turned out the order of dismissal of 9-6-1951, was not only bad, but the Government also assumed it to be so.

In our view the Government not having the power to suspend the petitioner retrospectively, the order of suspension must be held to be bad. We accordingly quash the order of suspension by the issue of a writ of Certiorari and we partly allow the petition, but in the circumstances without costs.