

(1994) 08 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : S. Writ Petition No. 217/90

Nazir Ahmad Dar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Constitution of India, 1950 — Article 311

Constitution of Jammu and Kashmir, 1956 — Section 126(c)

Citation : (1994) JKLR 607 : (1995) SriLJ 19

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Judgement

1. Petitioner, a tax collector in Notified Area Committee, Badgam, was dismissed from service by the orders of the Governor under Sec. 126 (2c)

of the State Constitution vide order No. 542GR of 1990 dated 16.3.1990. He has called this order in question on the ground that it had been

passed in colourable exercise of power and the satisfaction assumed is dehors the relevant record and without any basis.

2. No counter has been filed by the respondents to resist the petition. They have also failed to produce any record in support of the decision that it

was inexpedient to hold the inquiry in the matter.

3. Petitioner's case is that he proceeded on earned leave from 5.10.1988 and had to apply for its extension due to some ailment suffered by him

which was diagnosed as ""disk prolapse"". He, however, resumed his duties on 1.8.1989 in compliance to the orders of respondent NO.3 but was

charged with unauthorised absence which he explained and the proceedings against him were dropped. He thereafter discharged his duties with

usual devotion and dedication till 4th April 1990 when the impugned order dated

16th March, 1990, was passed dismissing him from service. The order is extracted hereunder:

Whereas the Governor is satisfied that the conduct and activities of Shri Nazir Ahmad Dar son of Shri Mohammad Akbar Dar resident of

Hyderpora, Tax Collector, Notified Area Committee, Badgam, are detrimental and prejudicial to the security of the State; and. And whereas the

Governor is further satisfied that in the interest of the security of the State it is not expedient to hold an inquiry under Section 126 (2c) of the

Constitution of Jammu and Kashmir, against the said Shri Nazir Ahmad Dar; Therefore, the Governor in accordance with the provisions of Section

126 of the Constitution of Jammu and Kashmir hereby dismissed Shri Nazir Ahmad Dar, Tax Collector, Notified Area Committee, Badgum, from

service with immediate effect. By order of the Governor"".

Mr. Z. Ahmed, learned counsel for the petitioner attacked the order on the ground that it was devoid of any reasons which had led to the

Governor's satisfaction that it was inexpedient to hold the inquiry against the petitioner in the interests of the security of the State. He contended

that there was no material or basis on which the Governor could have reached such satisfaction interms of Sec. 126 (2c) of the State Constitution.

He referred to and relied upon Tulsi Ram's case^{1985 (3) SCC 398} and AIR 1987 SC 2106 and urged that it was obligatory on the respondents

to disclose the reasons and the material supporting the Governor's conclusion that it was not expedient to hold the inquiry against the petitioner in

the interests of the security of the State.

4. In the circumstances, two issues fall for determination, viz. (i) whether the respondentState was bound to disclose reasons for dispensing with

the inquiry in the interests of the security of the State; and (ii) whether it was equally bound to produce the material before the court to show the

basis for the Governor's satisfaction in the light of the challenge that the action was tainted with colourable and malafide exercise of power and was

not based on any relevant material and proceeded on irrelevant considerations.

5. For proper appreciation of the issues involved, it becomes necessary to reproduce the relevant section of the State Constitution which reads

thus:

126. Dismissal, reduction or removal of persons employed in civil capacities under the State :

(1) No person who is a member of civil service of the State or holds a civil post under the State shall be dismissed or removed by an authority

subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or reduced in rank except after an inquiry in which he has been informed of the charges against

him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him

any such penalty, until he has been given reasonable opportunity of making representation on the penalty proposed, but only on the basis of the

evidence adduced during such inquiry: Provided that this subsection shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by

that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry"".

This provision is in parimateria with Art. 311 of the Constitution of India and it is elementary that it extends a constitutional protection to all persons

who are members of a civil service of the State or who hold civil posts under the State. It provides as a general rule that such persons shall not be

dismissed or removed from service by any authority subordinate to the appointing authority and shall not be so dismissed or removed from service

except after an inquiry in which such person has been informed of the charged against him and given a reasonable opportunity of being heard in

respect of such charges. It also lays down that where after such inquiry, it is proposed to impose such penalty on the person, he shall be given a

reasonable opportunity of making a representation on the penalty proposed.

6. This rule is subject to exceptions contained in claused (a), (b) and (c) of subsec. (2) of Sec. 126. These clauses dispense with the requirement

of holding an inquiry and providing a reasonable opportunity of being heard in the cases contained therein. Cl. (a) provides for doing away with the

inquiry where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; Cl.

(b) makes a similar provision where the authority empowered to take action is satisfied that for some reasons to be recorded in writing, it is not

reasonably practicable to hold such inquiry. And lastly, Cl. (c) which is material for our purposes, dispenses with such inquiry where the Governor

is satisfied that it is not expedient to hold such inquiry in the interests of the security of the State.

7. Each provision prescribes its own requirements. Whereas Cl. (b) imposes a constitutional obligation to record reasons when the authority

considers it reasonably impracticable to hold such inquiry, Cl. (c) does not insist on any such requirement. In other words, while an authority is

bound to record reasons in writing for impracticability of holding an inquiry, the Governor is not required to do so if he is satisfied that it would be

inexpedient to hold such inquiry in the interests of the security of the State. The action would be vitiated in the first case where the Authority fails to

record reasons in writing but it would not be so in the second case where the Governor has only to feel satisfied that it is not expedient to hold the

inquiry in the interests of the security of the State. It need also be noted that the Governor's satisfaction is relatable to the expediency or otherwise

of the holding of inquiry and not whether the acts of an employee, in fact, are [SIC] likely to affect or endanger the security of the State. Therefore,

the actual conduct of a Government servant is immaterial for purposes of assessing the requirements of clause (c).

8. Similarly, it is difficult to categorise the ways in which the security of the State can be affected. It may be either open or clandestine and may

involve a graver situation than a public order or law and order problem. It may be affected by actual acts or by the likelihood of such acts taking

place. But it is not the requirement of Cl. (c) whether the interests of the security of the State have been effected this way or that way but whether

the Governor is satisfied that it is not expedient to hold an inquiry in the interests of the State. As held in *Tulsi Ram's case*:

The satisfaction so reached must be necessarily a subjective satisfaction. Such satisfaction may be arrived at as a result of secret information.

There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether

holding of an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in the disclosure of such information. Once known the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under Cl. (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction of rank nor can they be made public".

9. The divergence of judicial opinion on the point in issue notwithstanding, the judgment of the Apex Court in *Tulsi Ram's case* holds the field and going by the law laid down and applying it to Sec. 126 of the State Constitution, it requires to be held that the Governor was not required to record reasons for assuming satisfaction for the inexpediency or otherwise of holding an inquiry in the interests of the security of the State. Consequently the order passed by him under Sec. 126 (2c) to dismiss or remove a Government servant or to reduce him in rank need not contain any reasons in support.

10. The first contention of the petitioner consequently fails. He must, however, succeed on the second plea. It is a settled position that power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached malafide or is based wholly on extraneous or irrelevant grounds. It has been held so by the Supreme Court in *State of Rajasthan Vs. Union of India* 1977 (3) SCC 572. The position in the present case is far worse. It is submitted that in this the Governor had assumed satisfaction on irrelevant considerations and in colourable exercise of power and on no basis or material. According to learned counsel for the petitioner, this was a case of total absence of material and there was no basis on which the Governor could reach the requisite satisfaction. This allegation could have been warded off by the respondents by production of record or material upon consideration of which the Governor could be said to have reached the satisfaction that it would be inexpedient to hold the inquiry in the interests of the security of the State. But the respondents have not at all cared to take the court into confidence in this regard. They have neither filed any return nor produced any record. Therefore, the only

irresistible conclusion that can be drawn in the circumstances is that no material existed to lead the Governor to the satisfaction that it was inexpedient to hold the inquiry against the petitioner in the interests of the security of the State. If that be so, which, in fact, it is, the order impugned falls like a house of cards.

11. The net result is that this petition succeeds and the order dismissing the petitioner from service is quashed. Respondents are accordingly directed to reinstate him to the position he held before his dismissal and with all consequential benefits.