

(1988) 09 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 133, 166 of 1982

Ningthoujam Debendra Singh Alias Deben Singh; L.Jamhlun
Kuki

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Constitution of India, 1950 — Article 311(2)(c), 311(2)(c)

Citation : (1988) 2 GLJ 420

Hon'ble Judges : J.M.Srivastava, J and T.C.Das, J

Bench : Division Bench

Advocate : N.Surjamani Singh, N.Pramod Chandra Singh, A.Nilamani Singh,
Advocates appearing for Parties

Judgement

Srivastava, J.—These two petitions under Article 226 of the Constitution of India, are directed against the same Order No. I2/2(4)/80H(J)/Pt dated 30th July, 1982 made by the Governor of Manipur whereby the petitioner in each of the Civil Rule, was dismissed from service under clause (c) of second proviso to clause (2) of Article 311 of the Constitution.

2. Briefly, the facts are that N. Debendra Singh, petitioner in Civil Rule No. 133/82 was at the relevant time Jailor in the Imphal Central Jail, Manipur and L. Jamhlun Kuki petitioner in Civil Rule No. 166/82 was Warder in the aforesaid Jail. On 22.9.81 both the petitioners along with another Warder O. Nabachandra Singh had escorted one under trial prisoner H. Rajen Singh from the Imphal Central Jail to the R. M. C. Hospital for treatment. On way back, said H. Rajen had escaped. The petitioners were subsequently dismissed from service by the aforesaid impugned order

3. The petitioners assail the order of dismissal and the petitioner in Civil Rule No. 166/8" also alleges that there was mala fide exercise of power in making the impugned dismissal order.

4. The respondents the State of Manipur and its authorities have resisted the petition and have stated that H. Rajen Singh, the under trial prisoner who had escaped was a terrorist and the competent authority had come to the conclusion that in the interest of the security of the State, it was not expedient to hold enquiry and accordingly in exercise of the powers under clause (c) of second proviso to clause (2) of Article 311 of the Constitution of India, the impugned order had rightly been made.

5. Shri N. Surjamani Singh, learned counsel appearing on behalf of petitioner N. Debendra Singh, and Shri A. Nilmani Singh, learned counsel appearing for petitioner Jamhlun Kuki, have submitted that the competent authorities ought to have recorded reasons for dispensing with enquiry. Shri A. Nilmani Singh has further contended that the action taken was vitiated because of malafide exercise of power, particularly because the petitioner had been suspended and an enquiry was contemplated that in the case of escape of under trial prisoners earlier and later, the said power had not been exercised, that the aforesaid undertrial prisoner was subsequently caught and had died and accordingly there was no need for taking such stringent action of dismissal from service. Shri Nilmani Singh has further contended that since the punishment meted out to the petitioner was so grossly disproportionate to the supposed misconduct, that it necessarily implied malafide exercise of powers. On the other hand, Shri N. Promodchandra Singh, learned Senior Government Advocate, has submitted that the said undertrial prisoner H. Rajen Singh was a hardcore terrorist and the manner in which he had been taken by the petitioners to the hospital in an autorickshaw without proper escort and the way he was later brought by cycle rickshaw even though he was handcuffed manifestly demonstrated the petitioners direct involvement in the said escape and accordingly the competent authority had at all levels duly considered the matter and had rightly taken the decision to dispense with the enquiry in view of the consideration of security of the State and that therefore the impugned order was perfectly justified and further that in the exercise of the said power there was no malafide in the decision making process on the part of the Government.

6. We have carefully considered the respective submissions on behalf of the parties and also the materials on record. We have also in particular carefully perused the Government of Manipur Home Department Secret File No. 12/2(4)/80/H(J)/Pt. which contains of consideration and decision which is impugned in these petitions. The questions which arise for consideration are that whether the impugned order was justified and correct, and that whether the impugned order was vitiated as contended by the petitioner in Civil Rule No. 166/82.

7. In so far as the first question is concerned, under clause (c) of second proviso to clause (2) of Article 311 of the Constitution, the President or the Governor, as the case may be, has the power to impose stated punishments including dismissal from service, without holding an enquiry if it is in the interest of the

security of the State. The Governor of Manipur therefore undoubtedly had the power to make the impugned order. The question to be seen is whether the said power has been validly exercised.

8. The impugned order at Annexure A/1 in Civil Rule No. .133/82 is as under :

"GOVERNMENT OF MANIPUR SECRETARIAT : HOME DEPARTMENT

ORDERS BY THE GOVERNOR : MANIPUR

Imphal, the 30th July, 1982.

No. 12/2(4)/80H(J)/Pt. Whereas S/Shri N. Deven Singh, Jailor, Yamkholun Kuki, Warder (under suspension) and O. Nabachandra Singh, Warder (since terminated from service) of Manipur Central Jail allowed to escape an extremist UTP Shri H. Rajen Singh whose both hands were handcuffed and one eye bandaged on 22.9.81 at about 10.30 a.m. near eastern end of Lalambung Pond at R. M. C. Road, Imphal, on their return from Hospital to Manipur Central Jail from their hands because of their negligence of duty.

2. Whereas, the Governor of Manipur is satisfied that S/Shri N. Deven Singh, Jailor and Yamkholun Kuki, Warder, are unfit to be retained in the service and that they ought to be dismissed from the service,

AND

3. Whereas, the Governor is satisfied under subclause (v) of the proviso to clause (2) of Art. 311 of the Constitution of India that in the interest of the security of the State, it is not expedient to hold an enquiry in the matter,

4. Now, therefore, the Governor of Manipur, hereby dismissed the said S/Shri N. Deven Singh and Yamkholun Kuki from the service with immediate effect. By orders & in the name of Governor.

Sd/ (B. L. Vohra)

Secretary (Home), Govt. of Manipur

9. The learned counsel for the petitioners have submitted that the aforesaid order nowhere discloses the reasons which led the Governor to conclude that it was in the interest of the security of the State not to hold the enquiry and accordingly the order was vitiated. We are unable to accept this submission. Clause (c) of second proviso to clause (2) of Article 311 of the Constitution, reads as under:

311. "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(!)?.....

(2).....

(a).....

(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 President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

10. A consideration of the aforesaid clause (c) shows that it nowhere requires that the Governor was required to record the reasons as to why he had come to the conclusion that it was in the interest of the security of the State not to hold the enquiry. The reason not to hold the enquiry was the satisfaction that it was inexpedient to hold the enquiry in the interest of security of the State and that was clearly stated in the order, We are unable to accept the submission that in the order itself the Governor was required to state the reasons as to how he was satisfied that an enquiry was not expedient in the interest of the security of the State. It is true that the clause (b) of second proviso to clause (2) of Article MI requires reasons to be recorded for holding that it was not reasonably practicable to hold the enquiry, but such is not the requirement in clause (c) of second proviso to clause (2) of Article 311. In our opinion it is quite clear that the said stipulation as required in clause (b) cannot be read as a requirement for exercise of the power under said clause (c). The matter is made clear by the pronouncement of Supreme Court in *Union of India vs. Tulsirara Patel* (1985)3 SCC 398 where the Court observed in para 142 :

"142. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311 (2). The satisfaction of the

President or Governor must, therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State."

"It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74 (1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163 (1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he

would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding 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 disclosure of the source 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 clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public." (emphasis supplied)

In para 143 the Court observed:

"143. In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The Court equally cannot be the judge of expediency or in expediency. Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review (emphasis supplied). Relying upon the observations of Bhagwati, J..... in *State of Rajasthan vs. Union of India*, it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground."

It may thus be abundantly clear that the law does not require that the Governor should have in the impugned order recorded the reasons which led him to the satisfaction that in the interest of the security of the State it was not expedient

to hold the enquiry.

11. It was then argued that the exercise of the power under said clause (c) of the proviso was malafide. It is quite obvious that any such decision has to have some reasons. We have carefully and closely scrutinised the Government secret File N . 12/2 (4)/80/H (J) Pt. We do find that the question whether the matter should be dealt with under said clause (b) or clause (c) had been duly and thoroughly considered by the authorities at all levels on record and finally it had been concluded for reasons duly recorded on the file that it was not in the interest of the security of the State to hold the enquiry and the aforesaid reasons were considered by the various concerned departments of the Government in particular the Home and Law, and the matter had been duly considered by the Council of Ministers, we are, therefore, satisfied that the Governor constitutionally speaking had after due and careful deliberations taken a well considered decision to invoke the power in the provisions of clause (c) of the second proviso to clause (2) of Article 311 of the Constitution and there is no infirmity in the decision making process leading to the issue of the impugned order. We accordingly hold that the impugned order is valid.

12. Shri A. Nilamani Singh has argued that the exercise of power was malafide because the order of dismissal was grossly disproportionate to the stated misconduct. Even if for the escape of prisoners earlier and later some Government employee had not been similarly dealt with, in our opinion, the action taken against the petitioners should not be considered as malafide exercise of power, because the under trial prisoner who escaped in the case was considered by the authorities as a hardcore terrorist and the petitioners it was considered were involved in his escape. The record produced does reveal that after due consideration of various aspects of the matter it was decided that dismissal from service was the appropriate punishment and the decision was not influenced by any extraneous consideration, The fact that the escaped prisoner was later apprehended and died, in our opinion does not make any difference and would not affect the validity of the impugned order. We therefore hold that, in the facts and circumstances of the case, it is not possible to accept the contention that the exercise of power in making the impugned order was malafide,

13. For the aforesaid reasons both the petitions fail and are dismissed. Parties to bear their own costs.

Das, J. I agree.