
(1997) 03 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 10668 of 1996 and W.M.P. No. 14179 of 1996

Pondicherry Bar Association

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Constitution of India, 1950 — Article 233, 234, 309, 320

Citation : (1997) 1 CTC 430 : (1997) 2 MLJ 118

Hon'ble Judges : Shivraj V. Patil, J;S.S. Subramani, J

Bench : Division Bench

Judgement

Shivraj Patil, J.—Heard the learned counsel for the parties. After hearing for sometime, at the request of the learned Government Pleader

representing the Respondents 1 and 2, we adjourned the case on October 16, 1996 to November 28, 1996 with a view to enable the

Respondents to have consultation with the Union Public Service Commission. The learned Government Pleader made this request in the light of the

stand of the petitioner that the rules impugned in the writ petition were made without consultation of Union Public Service Commission. Thereafter,

the writ petition was not listed for hearing before us. However the petition was listed before us on March 12, 1997. After hearing the learned

Government Pleader for respondents, we passed the following order :

When this petition was taken up, learned Govt. Pleader (Pondicherry) representing Respondents 1 and 2 submitted that the Government wrote to

the Union Public Service Commission so as to consult about the rules in question and in response the Union Public Service Commission has

addressed a letter to them stating that no such consultation is required relating to the appointment of Judicial Officers referring to Articles 320(3) of

the Constitution of India. It is proper for Respondents 1 and 2 to make the position clear by filing necessary memo and affidavit. In this regard

Learned Govt. Pleader for Respondents 1 and 2 prays time till March 20, 1997 to do the needful. Learned A.G.P. appearing for 3rd respondent

States that there is urgency in the matter. Learned counsel for the petitioner has no objection to take up the matter on March 20, 1997. In this view

of the matter call this writ petition on March 20, 1997 at 2:15 P.M.

2. It appears, the learned counsel for the petitioner moved the Registry on his part for taking up the matter urgently having regard to various

circumstances. On the basis of the note prepared by the Registry as to the posting of the case urgently, the Hon'ble Chief Justice ordered for

hearing of this case today at 2.15 P.M. Thus, the writ petition has come up before us.

3. In this writ petition, the petitioner is the Pondicherry Bar Association, represented by its Secretary, Dumas Street, Pondicherry-1. The petitioner

has sought for a writ of declaration or any other appropriate writ or order, declaring the entire Pondicherry Judicial Service (Cadre and

Recruitment) Rules, 1996 (for short the Rule), or alternatively the Rule 9(a)(ii) and (c) and Clauses 1(b) and 4(b) of the Annexure to the said

Rules, as ultra-vires the Constitution of India and to pass such further order as deemed fit in the circumstances of the case.

4. The learned counsel for the petitioner after pointing out Articles 233 and 234 of the Constitution of India, submitted that the appointment of

persons as District Judges in any State shall be made by the Governor of that State in consultation with the High Court exercising jurisdiction in

relation to such State, and as far as the appointment of persons other than District Judges to the Judicial Services of such State shall be made by

the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and

the High Court exercising jurisdiction in relation to such State. This being the position, either the Chief Secretary or the Law Secretary of the State

cannot come in the picture in relation to appointment of persons as District Judges or other subordinate Judicial Officers in a State Judiciary. The

learned counsel pointed out to Rule 9(a)(ii) and (c) and Annexure to the Rules.

5. Rule 9 reads thus :

9 Method of recruitment :- (a) District Judge - (i) by promotion on the basis of seniority-cum-merit from the cadre of Civil Judge (Senior Division)

:

Provided that such number of posts as may be determined by the High Court from time to time, but not exceeding in the aggregate 33-1/3% of the

posts in the cadre of District Judge may be filled by direct recruitment : and

(ii) by direct recruitment from the Bar on the basis of viva voce examination conducted by the High Court as specified in the Annexure.

(b) Civil Judge (Senior Division)/Chief Judicial Magistrate-By promotion from the cadre of Civil Judge (Junior Division)/Judicial Magistrate First

Class on the basis of seniority-cum-Merit.

(c) Civil Judge (Junior Division)/Judicial Magistrate First Class, - By direct recruitment on the basis of Written Examination and viva voce

examination conducted by the High Court as specified in the Annexure to these rules"".

Clause 1(b) and 4(b) in Annexure read thus :-

Clause 1(b) :- The Selection of District Judge shall be made by a Committee of five Judges of the High Court constituted for this purpose by the

Full Court of the High Court, the Chief Secretary to Government of Pondicherry and the Secretary (Law), Government of Pondicherry. Such

Committee shall be called as "Committee for Selection of District Judge."

Clause 4(b) :- The Selection of Civil Judges (Junior Division) shall be made by a Committee of five Judges of the High Court constituted for this

purpose by the Full Court of the High Court, the Chief Secretary to Government of Pondicherry and the Secretary (Law), Government of

Pondicherry. Such Committee shall be called as "Committee for Selection of Civil Judges (Junior Division)/Judicial Magistrate First Class.

5. The learned Counsel for the petitioner pointed out that the selection of District Judges as per clause 1(b) of Annexure to the Rules shall be made

by Committee of Five Judges of the High Court constituted for this purpose by the Full Court of the High Court, the Chief Secretary to

Government of Pondicherry, and the Secretary (Law), Government of Pondicherry. He has no objection as regards the selection by a Committee

of five Judges of this Court but he has objection to include the Chief Secretary and Law Secretary, Government of Pondichery, in the Committee

for Selection of District Judges. So also in regard to the selection of Civil Judges (Junior Division), according to the learned counsel, inclusion of

the Chief Secretary and Law Secretary in clause 4(b) of Annexure to the Rules in the Selection Committee is bad; They are ultra-vires of Article

233 and 234 of the Constitution of India in as much as neither Article 233 nor 234 provide for inclusion of either, the Chief Secretary or Law

Secretary in such Committees. Since the appointments relate to Judicial Officers of Subordinate Judiciary in the State, the inclusion of the Chief

Secretary and Law Secretary in the Selection Committee is untenable and illegal. Such an attempt to include executives in selection committees for

appointment to the posts of District Judges and Civil Judges (Junior Division) affect the independence of judiciary.

6. The other objection of the learned counsel for the petitioner was that the rules are bad for want of consultation with the Union Public Service

Commission. He submitted, not that the Respondents 1 and 2 have consulted the Union Public Service Commission after the case was adjourned

on October 16, 1996, and that Union Public Service Commission has replied that consultation with the Union Public Service Commission in the

matter of framing rules for appointment of Subordinate Judiciary in the Union Territory of Pondicherry, was not required as per the Union Public

Service Commission (Exemption from Consultation) Regulations, 1958, the petitioners grievance does not survive on that score.

7. The learned Government Pleader for Respondents 1 and 2 submitted that after the case was adjourned on October 16, 1996, the Respondents

1 and 2 did consult the Union Public Service Commission : But Union Public Service Commission by its letter dated Nil in F2/34/95/TT and the

U.P.S.C. clarified stating that it shall not be necessary to consult Union Public Service Commission in regard to any of the matter mentioned in sub

clauses (a) and (b) of Clause (3) of Articles 320 of the Constitution in view of the Union Public Service Commission (Exemption from

Consultation) Regulations, 1958. He submitted that such a consultation having regard to the said letter of union Public Service Commission was not

necessary. At any rate the Respondents 1 and 2 have consulted Union Public Service Commission and the stand of the Union Public Service

Commission in response to the consultation is, as stated above. He also submitted that Respondents 1 and 2 may not have any serious objection to

delete the Chief Secretary and Law Secretary from the Selection Committee referred to in the rules as indicated in clause 1(b) and clause 4(b) of the annexure to the rules.

8. The learned Government Pleader appearing for third respondent submitted that originally in the draft rules the Chief Secretary and Law

Secretary were not included in the Selection Committee but it appears that only Respondents 1 and 2 later included the Chief Secretary and Law

Secretary in the rules, in the said Selection Committees.

9. We have considered the submissions made by the learned counsel for the parties. At the hearing, the learned counsel for the petitioner submitted

that the challenge to the rules, by the petitioner, may be taken as confined only to Rule 9(a)(ii) and (c), and Clause 1(b) and clause 4(b) of

Annexure to the Rules so far as they relate to the inclusion of the Chief Secretary and Law Secretary in the Selection Committees. If the Chief

Secretary to the Government of Pondicherry and the Secretary (Law), Government of Pondicherry are deleted from the Selection Committees, the

petitioner may not have any objection to the rules in any other respect and that the objection as to want of consultation with the Union Public

Service Commission also is not pressed having regard to the fact that the Respondents 1 and 2 have consulted the Union Public Service

Commission and the Union Public Service Commission had indicated its stand as already stated above.

10. As is clear from Articles 233 and 234 of the Constitution of India, there is no place for the executives to come in, in the matters relating to

appointment of persons to be, and the posting and promotion of, District Judges in any State, and such appointment, promotions and postings are

to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Even in the matter of

recruitment of persons other than District Judges to the Judicial Service of a State, shall be made by the Governor of the State in accordance with

the rules made by him after consultation with the State Public Service Commission and with the High Court concerned. Here again no provision is

made in the, Constitution of India for inclusion of any Executive in the Committee for selection of persons for such posts.

11. Having regard to the scheme of the Constitution relating to recruitment of

persons in the subordinate judiciary of a State, and to maintain independence of judiciary, it is not permissible to include either the Chief Secretary or the Law Secretary, or both, in the Selection Committees, as is sought to be done in the impugned rules. In this view of the matter, we have no reservation or hesitation to hold that inclusion of the Chief Secretary to the Government of Pondicherry and the Secretary (Law), Government of Pondichery as members of the Selection Committee, either in clause 1(b) or in clause 4(b) of the Annexure to the Rules are clearly, ultra-vires of the Constitution of India, and as such they cannot be sustained.

12. We see no difficulty in separating the offending portion in clause 1(b) and clause 4(b) of the annexure to the Rules. Annexure 1(b) and 4(b) can be maintained by deleting the offending portions i.e., by deleting the words Chief Secretary and The Secretary (Law) to the Government of Union Territory of Pondicherry from the Selection Committees. More so, when the Respondents 1 and 2 have no objection in this regard.

13. The respondent No. 2 today has filed an additional affidavit and also a memo accompanied by copy of the letter addressed to the Union Public Service Commission seeking consultation as regards the rules and the reply of the Union Public Service Commission, along with the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. Paragraphs 3 to 5 of the said affidavit of the second respondent read :-

(3) I respectfully submit that this Hon"ble Court pending consideration of the main matter, passed an interim order on October 16, 1996, granting time to enable me and the first respondent to take necessary steps in the matter of consultation with the Union Public Service Commission in regard to the Rules in question and posted the matter on November 28, 1996 for further hearing.

(4) I Submit that upon reference to UPSC by letter dated Nil in F.2/34/95/TT, Union Public Service Commission clarified the situation by stating the it shall not be necessary to consult Commission in regard to any of the matters mentioned in (a) and (b) of clause (3) of Art. 320 of the Constitution in view of the Union Public Service Commission (Exemption from Consultation) Regulations, 1958.

(5) I Submit that I have filed along with a memo annexing the Copy of the Union

Public Service Commission (Exemption from Consultation)

Regulations, 1958. The copy of notification of Govt. of India, dated August 31, 1978 issued under Art. 309 of the Constitution conferring authority

of the Lt. Governor to make Recruitment Rules for Judicial Service in the Union Territory of Pondicherry in consultation with the High Court of

Judicature at Madras and earlier communication to our Administration in respect of the lack of need for going in for consultation with UPSC. I

submit that in such circumstances, there is no need for such consultation with UPSC and this has been reiterated by UPSC.

14. In view of what is stated in the affidavit of the second respondent extracted above, it follows that the consultation with the Union Public Service

Commission in regard to the rules was not needed. This apart, the respondent 1 and 2 did consult the Union Public Service Commission in regard

to the said Rules, and in response to the Union Public Service Commission has explained its stand. This being the position, the requirement of

consultation is also satisfied, notwithstanding the particular stand taken by the Union Public Service Commission. Even the learned counsel for the

petitioner, as already noticed above, did not pursue his objection in this regard. Under the circumstances, we have no reason to reject the

submission made on behalf of the Respondents relating to the requirement of consultation with Union Public Service Commission in regard to the

Rules, either that no consultation was required, or that even the consultation was made as a matter of fact.

15. In the result, for the reasons stated above, we pass the following order :-

The writ petition is partly allowed. The offending portion in clause 1(b) of the annexure to the Rules viz., "the Chief Secretary to Government of

Pondicherry and the Secretary (Law), Government of Pondicherry", and the offending portion in clause 4(b) of the annexure to the Rules viz., "the

chief Secretary to Government of Pondicherry and the Secretary (Law), Government of Pondicherry" are struck down. In other words except to

the extent of striking down the offending portions in the annexure as indicated above we, uphold the validity of Rule 9(a)(ii) and (c) of the Rules

which came up for consideration in this writ petition.