
(1960) 12 AP CK 0010
In the Andhra Pradesh High Court

Ramappa (M.)

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 13-12-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 311

States Reorganisation Act, 1956 — Section 115, 119, 120, 122, 127

Citation : (1961) 1 LLJ 569

Hon'ble Judges : P. Chandra Reddi, C.J.; Ramachandra Rao, J

Bench : Division Bench

Judgement

P. Chandra Reddi, C.J.—The petitioner seeks the removal of an order of dismissal passed by the Government of Andhra Pradesh on certiorari.

2. The material facts giving rise to the writ petition are capable of a concise statement. The petitioner Joined the Hyderabad Revenue Service in 1940 and from 1948 onwards he had been holding the posts of the category of District Collector. In 1956, he was appointed the Deputy Secretary to Government in the Public Works Department, while so, on the basis of a report submitted by the X Branch, OLD., in respect of certain allegations of corruption and other misconduct, the Government of Andhra Pradesh referred the matter to the Tribunal for Disciplinary Proceedings u/s 4 of the Hyderabad Public Servants (Tribunal of Inquiry) Act, 1950 (XXIII of 1950) (hereinafter will be referred to as the Act for convenience).

2. As many as nineteen charges of corruption were framed against him by the Tribunal and the petitioner was called upon to furnish his explanation within the time prescribed in the memorandum of charges. After the submission of the explanation, an elaborate oral enquiry was held in which number of witnesses were examined for the prosecution and for the defence and several documents also were filed.

3. The entire evidence was recorded by Sri Bhaskara Rao who held the office of the Disciplinary Proceedings Tribunal upto April 1959, when he was transferred to

some other post. Therefore, he could not submit his report. His successor, Sri M. Sriramamurthi, heard the arguments based on the oral and documentary evidence and submitted his report. An objection was formulated before him that he was not competent to hold the enquiry as he did not satisfy the qualification prescribed by Section 3 of the Act. This objection was negated and the tribunal submitted its report finding the delinquent officer guilty of the four charges and acquitting him of the rest.

4. Thereupon, the Government, acting under the proviso to Section 9 of the Act and under the proviso to Rule 16 of the Hyderabad Public Servants (Tribunal of Inquiry) Rules, 1950, called upon the petitioner to show cause why he should not be dismissed from service.

5. An explanation was submitted by the petitioner on 19 August 1959 and on 22 September 1959 in which he inter alia reiterated the objection as to the competency of the Tribunal to hold the present enquiry. The contention relating to the competence of the Tribunal did not prevail with the Government. On a consideration of all the material and the surrounding circumstances, they dismissed the petitioner from service. It is to quash this order that the present petition is filed.

6. The chief contention urged in support of this petition bears on the qualification of Sri Sriramamurthi to hold the office of the Tribunal for Disciplinary Proceedings under the Act.

7. As the answer to the question turns mainly on the provisions of the Act, it is convenient at this stage to extract the relevant provisions thereof. The Act was passed in 1950 and Section 3, in so far as it is of Immediate relevance, reads:

(1) A tribunal consisting of one or more members shall be constituted for the purpose of this Act.

(2) Every member of the tribunal shall be a judicial officer who has been employed as a Sessions Judge in the territory of India for a period of not less than three years.

8. The argument advanced on behalf of the petitioner is that since Sri Sriramamurthi did not hold the office of a Sessions Judge in the territory of India for a period of not less than three years, he has not satisfied the qualification laid down by Sub-rule (2), and as such the further enquiry held by him was vitiated.

9. The question that calls for determination here is whether the appointment of a District Judge who was not a Sessions Judge for not less than three years has vitiated the proceedings resulting in the dismissal of the delinquent officer. In the solution of the problem, we have to bear In mind the notification issued by the Government of Andhra Pradesh on 1 November 1956, the day on which the State of Andhra Pradesh was constituted. That notification reads as follows:

In exercise of the powers conferred by Section 122 of the States Reorganization

Act, 1956 (Central Act XXXVII of 1956), the Governor of Andhra Pradesh hereby specifies as respects the authority mentioned in Col. (2) of the schedule below as the authority competent to exercise the functions exercisable under the law mentioned in the corresponding entry in Col. (1) of the said schedule:

SCHEDULE Functions Authority (1) (2) Hyderabad Public Servants Tribunal for (Tribunal of Inquiry) Act, Disciplinary XXII of 1950. Proceeding's

10. It is immediately plain from this notification that the Tribunal for Disciplinary Proceedings constituted by the Government was competent to perform the functions exercisable by the tribunal under the Hyderabad Public Servants (Tribunal of Inquiry) Act, XXIII of 1950. Indisputably, it was well within the powers of Government to Issue this notification, having regard to the provisions of Section 122 of the States Reorganization Act. What is the effect of this notification? Does it modify the provisions of Section 3(2) of the Act which contemplates the appointment of the member of the tribunal who has Sessions experience for a period of not less than three years?

11. The argument presented on petitioner's behalf is this. The Act continued to be in force even after the appointed day by reason of Section 119 of the States Reorganization Act. Subsequently, the Act was not repealed nor was there any adaptation as contemplated by Section 120 of the States Reorganization Act. If the procedure indicated in the relevant sections is not followed with reference to the Act, its provisions will continue to prevail. Therefore, no effect can be given to the notification in so far as it affects the public servants of the area known as Telangana which has subsequently been merged in the Andhra Pradesh as it is repugnant to Section 3(2).

12. We do not think that we can accede to this proposition. Section 122 of that Act confers power on the State Government to issue such a notification.

13. It reads:

The Central Government, as respects any Part C State, and the State Government as respects any new State or any transferred territory may by notification in the official gazette specify the authority, officer or person who, as from the appointed day, shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.

14. When once the notification is promulgated by the concerned Government, it serves to substitute the authority indicated in the notification for the one mentioned in Section 3(2) of the Act. So long as the notification is in force, the tribunal mentioned therein is competent to perform the function of a tribunal for that region also irrespective of the possession of the qualification laid down in Section 3(2) of the Act. Notwithstanding this, the other provisions of the Act still govern the public servants of the concerned region. The notification has not the effect of repealing Section 3. It only Invests the authority indicated therein with

competence to perform the duties of the tribunal. The idea underlying the notification is to dispense with two tribunals for the State, one for the erstwhile Andhra area and the other for the Telangana region.

15. Even if there is any real inconsistency between the Act and the impugned notification, the notification should prevail in view of the provisions of Section 127 of the States Reorganization Act, which says:

The provisions of this Act shall have effect notwithstanding anything; inconsistent therewith contained in any other law.

16. The change is brought about in Section 3 of the Act by virtue of Section 122 of the States Reorganization Act. For these reasons, we feel that the necessary qualification prescribed by Section 3 does not go to the root of the enquiry held by the concerned officer.

17. The next point that falls to be considered is whether the notification has in any way infringed the proviso to Section 115 of the States Reorganization Act which recites:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

18. It is argued for the petitioner that by altering the qualification required for holding the post of the tribunal his conditions of service have been varied to the petitioner's disadvantage. The argument proceeds that the Act contemplates the appointment of a person who has acted as a Sessions Judge for a period of not less than three years, as he has got to enquire into charges which are of a quasi-criminal nature and an enquiry by a person who has not got the prescribed experience is to the disadvantage of the public servant. We do not think we can subscribe to this view. It may be that it is a condition being taken against the public servant. But the qualification to be possessed by a member of the tribunal who might be required to enquire into the conduct of a public servant cannot be regarded as "condition of service." That is extraneous to the conditions of service of the officer. Farther, we are not satisfied that the inquiry by the particular officer who was in the grade of a District Judge and who has had varied experience, was in any way disadvantageous to him. In this view of the matter, it is unnecessary for us to go into the question whether the proviso to Section 115 of the States Reorganization Act, 1956, envisaged only the regular employment of the officer or whether it has relation to enquiries to be conducted against public servants.

19. There is also another answer to this objection. Assuming that there has been a violation of any provision of law relating to enquiries, it does not amount to an infraction of Article 311 of the Constitution which provides for a reasonable opportunity being given to a civil servant before he is dismissed or removed or

reduced in rank, Article 311(2) is in these words:

No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

20. Could it be predicated is a case like this that the public servant was denied a reasonable opportunity to show cause against the action proposed to be taken? It is urged in support of this objection that when the tribunal lacked the requisite qualification, it would amount to a denial of reasonable opportunity to the delinquent officer.

21. To substantiate this proposition, reliance is placed on the judgment of Rajagopala Ayyangar, J., in C.S. Rajagopala Ayyar Vs. State of Madras and Another, . In that case, a stationary sub-magistrate was charged with corruption and an enquiry was made by the Tribunal for Disciplinary Proceedings. The tribunal submitted its report finding him guilty of the charges. This resulted in the dismissal of the delinquent officer. In a petition to quash that order on certiorari, one of the contentions urged was that the Government had no power under Rule 4 of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, (1948) to refer the case to the Disciplinary Tribunal for enquiry and that the Government could not act upon the report of the tribunal since he was a judicial officer. The learned Judge accepted this contention. He held that the petitioner was a judicial officer and as such there was complete lack of jurisdiction in the tribunal to hold the enquiry. It may be mentioned here that no question as to the qualification of the officer holding the post of the Tribunal for Disciplinary Proceedings was raised in that case. The only point which the learned Judge considered was whether the Government had jurisdiction to refer the matter to the Disciplinary Tribunal. The question whether particular officer had the requisite qualification to hold the post did not arise in that case. Therefore, the cited case does not; render us much assistance.

22. This decision was followed by a Bench of this Court in W.P. No. 462 of 1953, rendered by Subba Rao, C.J., and Bhimasankaram, J. The only objections raised were that no enquiry could be made by the Tribunal for Disciplinary Proceedings and that, secondly the order dismissing the petitioner was passed by the Madras State and consequently the petitioner had no remedy available against the Andhra State under the provisions of the Andhra State Act. Overruling these contentions, the learned Judges stated that so far as judicial officers are concerned, it was not competent for the Government to refer the case to the Tribunal for Disciplinary Proceedings as it did not fall within the ambit of Rule 4 of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948. In reaching this conclusion, the learned Judges relied on C.S. Rajagopala Ayyar Vs. State of Madras and Another, . The learned Judges were unconcerned with the problem which we are now called upon to solve, namely, how far the lack of the prescribed qualification would vitiate the enquiry held by the tribunal. In this context, it should be remembered that in the instant case the officer who was

appointed the Tribunal for Disciplinary Proceedings was in the grade of a District Judge and had filled several responsible posts such as a member of the Railway Rates Tribunal. The only objection raised is that he did not act as a Sessions Judge.

23. In our opinion, the fact that the tribunal did not possess the qualification indicated in Section 3(2) would not render the proceedings a nullity. It is not every infringement of any rule in the conduct of an enquiry that would attract Article 311(2) of the Constitution. The only requirements of Article 311(2) are that the delinquent officer should be afforded sufficient opportunity of showing cause against the action proposed to be taken, that he must be told of the charges that are leveled against him and the allegations on which they are based and that he must be given an opportunity to deny his guilt and establish his innocence. He should also have an opportunity to make his representations as to why the proposed punishment should not be inflicted on him.

24. We do not think that the competence or the requisite qualification of, an officer is an essential element of Article 311(2). The content of Article 311 is stated by Das, O.J., in *Khem Chand v. Union of India* 1959 I.L.L. 167 at 175 in the following words:

(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally;

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

To read a further requirement into the Article, namely, that the person holding the enquiry should have a particular qualification would be to enlarge the content of Article 311. It should be remembered that the tribunal merely holds an enquiry and submits its report and that is not binding on the Government. It is a mere expression of opinion of the authority and it lacks both "finality and authoritativeness which are the essential tests of a judicial pronouncement.

25. In *Venkataraman v. Union of India* (1954) S.C.J. 461, Mukherjee, J., who spoke for the Court, observed that the only purpose for which an enquiry under the Public Servants (Inquiry) Act (XXXVII of 1850) could be made was to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable the Government to determine provisionally the

punishment to be inflicted on the officer prior to giving him a reasonable opportunity of showing cause as is required by Article 311 of the Constitution. His lordship added that an enquiry was not at all compulsory and that it was open to the Government to adopt any other method if it so chooses and that the enquiry was generally held as a matter of convenience.

26. In *Mohammad Ghouse Vs. State of Andhra Pradesh* by its Chief Secretary, Secretariat, Hyderabad, Bench of this Court observed that the essential element in the awarding of penalties and punishments against public servants is not as to who conducts the enquiry but whether the person has been given the opportunities referred to above and that the enquiry is fair and unbiased.

27. In this case, there is no complaint that the petitioner was not afforded any reasonable opportunity as contemplated by Article 311 of the Constitution, nor is it even suggested that the enquiry was not fair or unbiased. It should be remembered that a public servant holds the office during the pleasure of the President or the Governor, as the case may be, and it is only the violation of Article 311 that would enable an aggrieved officer to invoke the jurisdiction of this Court under Article 226 of the Constitution. Therefore, it is not every infraction of the rules unconnected with Article 311 that clothes the delinquent officer with a right to invoke the extraordinary jurisdiction of this Court under Article 226. For these reasons, we hold that the petitioner cannot successfully impeach the order in question. In our opinion, he was rightly dismissed and no interference is called for with that order.

28. In the result, the writ petition is dismissed with costs. Advocate's fee Rs. 150.

29. W.P. Nos. 350 and 417 of 1978 have become infructuous in view of the final order passed by the Government. They are also dismissed.