
(1973) 12 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Appeal No. 211 of 1972

Sardari Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-12-1973

Acts Referred:

Citation : (1974) ILR Delhi 592

Hon'ble Judges : S.N. Shankar, J; Narain Andley, J

Bench : Division Bench

Advocate : S.A.K. Dhar, M.C. Bhandare, P.N. Tiwari and B.M. Srivastava, for the Appellant;

Judgement

S.N. Shankar, J.

(1) This order will dispose of Civil Writs 954 of 1971, 211 to 218 of 1972, 249 to 251 of 1972 and 697 of 1972. The main question on which the decision of these petitions depends is as to nature, scope and amplitude of the power conferred on the President by Article 311(2)(c) of the Constitution.

(2) The petitioners in these writ petitions were employees of the Delhi Police Force. On April 14, 1967 they were dismissed from service. Each order of dismissal purported to be under clause (c) of proviso to clause (2) of Article 311 of the Constitution and was signed by the Joint Secretary, Government of India in the Ministry of Home Affairs on behalf of the President of India. The petitioners challenged the validity of these orders, amongst others, on the ground that the President had no occasion to deal with their cases and the power under Article 311(2)(c) had not been exercised by him but by the Joint Secretary to the Government of India which he was not competent to do and hence the orders were bad in law. In reply it was maintained that the Joint Secretary was competent to make the orders by virtue of the authority which he derived under the Government of India (Allocation of Business) Rules, 1961 made under Article 77(3) of the Constitution. This contention prevailed in the High Court but on

appeal the Supreme Court held that the function in clause (c) of proviso to clause (2) of Article 311 could not be delegated by the President to any one else and that the President had to be satisfied personally that in the interest of the security of the State it was not expedient to hold the inquiry against the petitioners under Article 311(2). The orders were, Therefore, quashed as illegal. ultra virus and void. The petitioners were thereupon reinstated and allowed to resume duties. Their arrears of pay etc. were also paid. By subsequent orders all dated June 5, 1971 the petitioners were again dismissed under Article 311(2)(c) without inquiry. These orders are being assailed in the present petitions.

(3) All the orders are in identical terms. For example, order in C.W. 211 of 1972, Sardari Lal v. Union of India and others, reads as under :--

" WHEREAS you Sardari Lal, Sub-Inspector, being No. D/331 (present No. D/1177) of Delhi Police, hold your office during the pleasure of the President, And whereas the President, after considering all the facts and circumstances of your case, is satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution, that in the interest of the security of the State it is not expedient to hold, in relation to you, such inquiry as is referred to in clause (2) of the said article 311 of the Constitution. And whereas the President after considering all the facts, relevant materials and circumstances of your case, is satisfied that you are unfit to be retained in the public service and ought to be dismissed from such service; Now, Therefore, the President is pleased to dismiss you from service with immediate effect. By order and in the name of the President of India. (R. C. Gupta) 5-6-71 Deputy Secretary, Government of India."

(4) In the respective writ petitions, each petitioner has set out his individual particulars as to the date of his joining the Police Force, the dates when he was granted promotions from time to time and the dates when he was confirmed in the post held by him at the time the impugned order was made. Not much turns on these details for the decision of these petitions and we shall refer to them hereafter to the extent that is necessary in the context of the argument made before us.

(5) Respondents to the petitions are Union of India and Inspector General of Police. Shrimati Indira Gandhi, as Prime Minister and Home Minister of India, was also impleaded as one of the respondents but her name was deleted from the cause title in pursuance of the order of this Court dated March 31, 1972.

(6) Petitioners contend that the impugned orders had in fact not been made by the President and the satisfaction mentioned in them was not that of the President. In any case, they maintain that no facts and circumstances existed to justify the conclusion of the President mentioned in the order that it was not expedient in the interest of the security of the State to hold the inquiry envisaged in Article 311(2) of the Constitution against them.

(7) In opposition to the writs, counter affidavits have been filed by Shri P. R. Rajgopal, Inspector General of Police and Shri G. K. Bhanot, Joint Secretary to

the Government of India, Ministry of Home Affairs. In both these affidavits, it is unequivocally affirmed that the impugned orders were passed by the President himself. Shri G. K. Bhanot, in his counter affidavit in C. W, 211 of 1972 (Sardari Lal v. Union of India and others) states "I say that in this case, the President of India having personally considered all the facts and circumstances of the petitioner's case and after having satisfied himself, passed the above order that in the interest of the security of the State, it was not expedient to hold inquiry under Article 311(2)". The counters further state that the petitioners deliberately and intentionally tried to subvert the discipline in the Delhi Armed Police Force and maintain that the satisfaction of the President under clause (c) of proviso to clause (2) of Article 311 was not a justiciable issue.

(8) The file containing the original order of the President in respect of dismissal of the petitioners was produced in Court and the order duly signed by the President was shown to the learned counsel for the petitioners. We see no reason, in these circumstances, to disbelieve the sworn statements in the counters that the President personally considered the facts and circumstances of each case and himself passed the order. The contention, Therefore, that the President himself did not pass the impugned orders is rejected. The question for decision then is whether this Court can scrutinise and examine the facts and circumstances that led the President to arrive at the satisfaction that it was not expedient in the interest of the security of the State to hold the inquiry envisaged in Article 311(2) against the petitioners, and if so, to what extent.

(9) It was argued on behalf of the petitioners that even though it is not open to the Court to examine the propriety or sufficiency of the material before the President which led to his satisfaction but if the facts relied upon for this purpose were such that no one could reasonably arrive at the conclusion mentioned in the order the Court would be competent to quash it. Reliance in support of this submission was placed on The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . Rohtas Industries Vs. S.D. Agarwal and Others, and the Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, . These cases relate to the satisfaction of the Central Government under the provisions of Companies Act, 1956. The provisions considered in these cases prescribed certain preconditions that must exist before the Central Government, on the basis of its satisfaction, could exercise its powers. In Barium Chemicals case, the provision was section 237(b) of the Companies Act, 1956. It was held that the expression in the opinion of the Central Government" in this section meant that before the discretion conferred by this section to order investigation could be exercised by the Central Government, there must exist circumstances which, in the opinion of the authority, suggest what has been set out in sub clauses (i), (ii) or (iii) of the section. Likewise, in Rohtas Industries case the Court was considering the provisions of sections 235 to 237 of the Companies Act. It was held that existence of circumstances mentioned in section 237(b) was a condition precedent to the formation of opinion by the Central Government and that the

existence of circumstances, but not the opinion formed thereon, was open to judicial review. In Rampur Distillery and Chemical Co. Ltd., the provision before the Court was section 326 of the same Act. This section deals with the power of the Central Government to approve the appointment etc. of managing agent and circumstances in which approval may be accorded. Sub-section (2) provides that the Central Government shall not accord its approval unless it is satisfied that the matters mentioned in clauses (a), (b) and (c) exist. The Supreme Court held that courts were not concerned with the sufficiency of the grounds on which the satisfaction was reached but what was relevant was the satisfaction of the Central Government about the existence of the conditions in clauses (a), (b) and (c) so that the existence of the satisfaction could not be challenged except probably on the ground that the authority acted mala fide. But if in reaching its satisfaction the Central Government misapprehended the nature of the conditions or proceeded upon irrelevant materials or ignored relevant materials the jurisdiction of the courts to examine the satisfaction was not excluded.

(10) Article 311, after providing in clause (1) that no person holding a civil post, in terms of the Article, shall be dismissed or removed by an authority subordinate to that by which he was appointed, and in clause (2) that no such person as aforesaid shall be dismissed or removed 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 a reasonable opportunity of making representation on the penalty proposed, contains a proviso. The proviso lays down that clause (2) of the Article shall not apply in cases mentioned in clauses (a), (b) and (c) of the proviso. Clause (c) which alone is relevant for these cases reads as under :-

" 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."

(11) Unlike the provisions in the Companies Act this clause does not lay down any pre-conditions that must exist before the President or Governor proceeds to be satisfied. In B.K. Sardari Lal Vs. Union of India (UOI) and Others, , the Supreme Court following earlier decision in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, on pages 307 and 308 of the report, in the context of the satisfaction and the nature of function of the President under clause (c), said :-

" ON the principles which have been enunciated by this Court, the function in clause (c) of the proviso to Art. 311(2) cannot be delegated by the President to any one else in the case of a civil servant of the Union. In other words he has to be satisfied personally that in the interest of the security of the State, it is not expedient to hold the inquiry prescribed by clause (2)."

(12) It is, Therefore, clear that the satisfaction of the President under clause (c) has to be personal and subjective. Reference to Article 361 of the Constitution shows that the President is not answerable to any court for the exercise and

performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties except to the extent and in the manner specified in the two provisos to clause (1) of this Article. The exercise of the power by the President under clause (c) does not fall within any of these provisos. The result, Therefore, is that the exercise of power by the President under clause (c) to the proviso to Article 311(2) is fully covered by clause (1) of Article 361 and the President is not answerable to any court for the exercise and performance of his powers and duties under this clause of the proviso to Article 311 and no court has jurisdiction to examine the facts and circumstances that led to the satisfaction of the President envisaged in clause (c) except probably on the ground of mala fide.

(13) In *Rao Birinder Singh Vs. The Union of India (UOI) and Others*, a proclamation issued by the President in exercise of powers conferred on him by Article 356 was sought to be quashed on the ground that it was unconstitutional and illegal. This Article provides that where the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation had arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may issue a proclamation in terms of the Article. Satisfaction of the President was assailed on a plea similar to the one raised before us. A division Bench of the Court, repelling the challenge, said :-

".....THE President having issued the Proclamation pursuant to his constitutional power under Article 356 and it not being an executive act of the Union, and the President not being amenable to the jurisdiction of this Court in view of sub-art. (1) of Art. 361, this Court cannot go into the validity or legality or propriety of his Proclamation. He cannot be present in Court and in his absence; his Proclamation is not open to consideration by this Court, not even the relevancy of the recital as to his satisfaction."

(14) The proclamation was also assailed on the ground that it was mala fide but the Court held that no such case had been made out.

(15) Reference may also be made to *M. Gnanamani Vs. Governor of Andhra and Another*. In this case. Suba Rao, C.J. dealing with Article 361 in the context of Article 226 of the Constitution held that in case of official acts an absolute immunity from the process of Court is given to a Governor and this immunity extends not only to his official acts but also to acts purporting to be done by him in exercise of the powers conferred on him, so long as he is not guilty of dishonesty or bad faith but this will not preclude the acts of the Governor from being questioned, if they can be done without a process on the Governor.

(16) In *B. Eswaraiah Vs. The State Andhra (now Andhra Pradesh) and another*, before the Division Bench of the same High Court, the Petitioners challenged the orders of compulsory retirement passed against them by the Governor under Article 311(2)(c) without inquiry on grounds similar to the ones urged before us. The Bench, in the context of clause (c) of the proviso said that this clause in

terms confers unrestricted power on the Governor, in the interest of the security of the State, to deprive a particular officer of the reasonable opportunity provided by Article 311 and that the power was not circumscribed by any objective standards and, Therefore, could not be questioned in a court of law. The only exception, the Court said, was a case where it was proved that the order was mala fide or for ulterior purposes. The same view was reiterated in another Division Bench decision of the same High Court in Mohammad Azam v. State of Hyderabad and another A. I. R. 1958 AP 619 .

(17) In Biman Chandra Bose Vs. Dr. H.C. Mukherjee, Governor and Others, . The Court held that Article 361 afforded immunity not only in respect of the exercise and performance of the powers and duties of the office of the Governor but also in respect of "any act done or purporting to be done" by him in the exercise and performance of those powers and duties.

(18) That the power of the President under clause (c) to the proviso to clause (2) of Article 311 is to be exercised on his subjective satisfaction and is not examinable by the courts is demonstrated by the language employed in the three clauses to this proviso. Clause (a) to the proviso states that the dismissal or removal or reduction in rank on the grounds of conduct which has led to conviction on a criminal charge would deprive the person concerned of the opportunities contemplated by clause (2) of Article 311, The fact of conviction on a criminal charge is an objective fact and it can be examined whether in fact there was such a conviction to deprive the person concerned of the aforesaid opportunities. The deprivation of these opportunities under clause (b) to the proviso also depends upon the satisfaction of the authority concerned that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. Since reasons have to be recorded, the satisfaction of such an authority will be an objective as distinguished from a subjective satisfaction and the reasons will be examinable by a Court of law to the extent permissible according to the decisions of the Supreme Court in Barium Chemicals Ltd. (supra) etc. On the other hand, clause (c) of the proviso does not talk of any ground or reasons to be recorded. It is the personal satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry. Apart from the fact that in terms the satisfaction is expressed to be subjective, the satisfaction is with regard to the interest of the security of the State. It cannot be doubled that questions relating to the security of the State cannot be examined by a Court because such questions are primarily political questions.

(19) The impugned orders, for these reasons, in our view, having been made by the President in exercise of the special powers conferred on him by the Constitution as opposed to the executive powers of the Union, are not justiciable on the ground urged by the petitioners. The President is the sole Judge to determine whether it was not expedient in a particular case, in the interest of the security of the State to hold the inquiry envisaged in Article 311(2).

(20) It was then contended on behalf of the petitioners that the dispensation of the inquiry by the President under clause (c) did not operate to deprive the petitioners of the second opportunity of making representation in regard to the penalty proposed. The argument is wholly without substance. The second opportunity of making representation against the proposed penalty is an opportunity prescribed by clause (2) of Article 311. The proviso to clause (2) clearly states that clause (2) as a whole will not apply if the President was satisfied that in the interest of the security of the State it was not expedient to hold such inquiry. The question of affording an opportunity to make representation against the proposed penalty, Therefore, did not arise if the President was satisfied under clause (c) that it was not expedient to hold an inquiry in a particular case.

(21) It was next urged that the impugned orders did not state that the petitioners tried to subvert the discipline in the Delhi Armed Police Force as now stated in the counter affidavits and the orders were, Therefore, bad. This argument also is without merit. What is stated in the counter affidavits is the reason for the dismissal and not the grounds for the satisfaction. The further argument that the respondents having themselves disclosed the reason in the counter affidavits this Court was competent to examine them has also to be rejected for the same reason.

(22) It is stated in the counter affidavits filed by Shri P. R. Rajgopal, Inspector General of Police that the Delhi Non-gazetted Police Officers including the petitioners formed a Karamchari Sangh in the Union territory of Delhi and in the year 1966 the said Sangh held public meetings and started agitation in which the petitioners took active part and indulged in activities calculated to undermine the discipline of the Delhi Police Force and in view of all these facts and circumstances the petitioners were dismissed from service on April 14, 1967. It is further stated that the facts and circumstances remained the same at the time when the impugned orders were passed and that the impugned orders only cured the technical defect found by the Supreme Court. On the basis of these averments it was urged that the facts and circumstances that existed in 1966 could not form the basis of the impugned orders passed in the year 1971. We do not agree. The activities that the petitioners were indulging in were all through before the appropriate authorities. The question as to how they should be dealt with for purposes of Article 311 in view of those activities was also before them. Orders of dismissal were passed at first on the basis of this material in 1967 but when the Supreme Court held that the orders suffered from a technical infirmity the same material was placed before the President and the President himself after considering the material and all other facts was satisfied under clause (c) of proviso to clause (2) of Article 311 that in the interest of the security of the State it was not expedient to hold an inquiry in relation to the petitioners. The mere lapse of time in this process does not vitiate the order of the President.

(23) An argument was raised that the impugned orders, according to the dates

given on them, were typed on June 3, 1971 and the file was put up before the President on June 5, 1971 only when the President took the decision. The fact that the orders had already been typed out and prepared before the President took his decision, it was contended, showed that the President did not exercise his mind. We are unable to accept the submission. Even if the orders had been drafted and typed earlier on June 3, 1971 that was of no consequence if the President, on the papers being submitted to him, decided that in the facts and circumstances placed before him, action under clause (c) of Article 311(2) was called for. The fact that the orders had been prepared earlier is thus not material. A suggestion was also made, not in the petition but at the stage of rejoinder, that the former President Dr. Survepalli Radhakrishnan had refused to accept this very material to be sufficient for purposes of dispensing with the inquiry against the petitioners as envisaged under Article 311(2). There is nothing before us to substantiate this allegation and the fact that this averment was not made at the time when the previous orders of dismissal dated April 14, 1967 were challenged and also that the present writ petitions also did not contain any such plea, to our mind, shows that the same are an after thought.

(24) It was next contended that the petitioners were employees of Delhi Administration and were not civil servants of the Union and the order of dismissal passed by the President was bad as it should have been passed either by the Lieutenant Governor or the Metropolitan Council. Reference in this context was made to sections 7 and 8 of the Police Act, 1861 and rule 12.1 of the Rules framed under this Act which provide for the appointments etc. of officers in Delhi Police Force. The petitioners, it is true, were employees of Delhi Police Force but that makes no difference and does not affect the power of the President under clause (c) of proviso to Article 311(2). Delhi is a Union territory. According to Article 239 in Part VIII of the Constitution every Union territory, save as otherwise provided by Parliament by law, shall be administered by the President acting to such extent as he thinks fit through an Administrator to be appointed by him with such designation as he may specify. President, Therefore, has all the powers in relation to a Union territory except to the extent he delegates them to the Administrator, The Administrator appointed by the President for the Union territory of Delhi is the Lieutenant Governor of Delhi. It is not the case of the petitioners that the power under Article 311(2)(c) of the Constitution has been delegated by the President to the Lieutenant Governor and, indeed, the Supreme Court in *B.K. Sardari Lal Vs. Union of India (UOI) and Others*, has held that this power is personal to the President and cannot at all be delegated to any one else. The President alone, Therefore, continues to be vested with this power and the question of its being exercised by the Lieutenant Governor does not arise. Further, the Parliament has by law provided for the administration of the Union territory of Delhi by the Delhi Administration Act, 1966 (Act 19 of 1966). Section 3 of the Act has constituted a Metropolitan Council for Delhi. Section 22 prescribes the functions of this Metropolitan Council but lays down that subject to the provisions of this Act, the Metropolitan Council shall have the right to discuss

and make recommendations with respect to the matters specified in clauses (a) to (f) in terms of this section. The question, Therefore, of the Metropolitan Council enjoying the power under Article 311(2)(c) also does not arise. The contention, for these reasons, is without merits.

(25) Challenge was then made to the orders on the ground that they were discriminatory and mala fide in as much as to remove the petitioners from service action could have been taken against them under the provisions of Civil Services (Safeguarding of National Security) Rules, 1953 or the Liberalised Pension Rules. It was urged that resort to Article 311(2)(c) was taken only to deprive the petitioners of valuable rights of pension etc. We do not think so because we find that under the cited Rules, government servant can only be compulsorily retired from service but not dismissed. If the Government decided to dismiss the petitioners and if a valid power to do so otherwise existed we see no reason why it could not be exercised by the Government. The power to compulsorily retire a government servant and the power to dismiss him are two distinct powers which exist separately and independently of each. It is for the Government to decide whether in the facts of a particular case the employee concerned should be compulsorily retired or dismissed. There is no discrimination or mala fide, if on the material before it the Government decided to dismiss the petitioners instead of proceeding to retire them compulsorily. Great stress was laid on the fact that those of the petitioners who had completed the prescribed number of years of service had earned the right to pension and they would be gravely affected by reason of the order of dismissal. This contention, to our mind, is not relevant and does not in any manner affect the power that the President enjoys under Article 311(2)(c).

(26) It was then urged that the order was mala fide in so far as the decision to dismiss the petitioners had already been taken by the Government and the President simply endorsed it with a view to oblige the Prime Minister. We are surprised that this argument was persisted in even after the file containing the orders of the President had been shown in Court. This is a reckless allegation, to our mind. It is true that the conduct of the petitioners was severely deprecated in the concerned circles and the general view after the disturbances of 1967 was that the situation calls for a firm action. It is also correct that the Home Minister also made a statement at the floor of the House in this connection but all that is irrelevant once it is proved that the matter was placed before the President and the President himself considered it and took the decision. Support was sought to be drawn from a letter of the Prime Minister copy of which has been filed with the petitions as Annexure "O". In this letter addressed to Shri Barupal, Member of Parliament, the Prime Minister has stated that while dealing with the cases of Delhi police employees it had been decided to take in service all those employees who had taken part in the strike but in order to keep discipline in the police it was not considered proper to adopt the same attitude in respect of 18 persons referred to in the letter (including the petitioners) and that it was decided that it would be beneficial to dismiss them from service. This letter is dated July 31,

1971. It was written after the President had already taken his decision on June 5, 1971 and the orders of dismissal of the petitioners had in fact been issued and served on them. We fail to see how this letter supports the plea raised or leads to an inference of mala fide of the President in passing the impugned orders. In fact Annexure "K", copy of the statement made by the Home Minister in the Lok Sabha on December 18, 1970, shows that in all 1014 police men were involved in the disturbances that occurred in Delhi in March/April, 1967. Only 18 out of this total number were dismissed by the President in exercise of his powers under clause (c) of the proviso to clause (2) of Article 311. This indicates that each case was considered on its own facts and the power under Article 311(2)(c) was not invoked indiscriminately but only in cases where it was necessary so to do. The charge of discrimination or mala fide is thus wholly without basis.

(27) Lastly, it was contended that Pritam Singh petitioner in C.W. 954 of 1971 was given commendation certificate and a special award after his reinstatement in the service and that Dev Raj, petitioner in C.W. 697 of 1972 on reinstatement after the decision of the Supreme Court applied for confirmation and his case was duly recommended by his senior officers. These facts, it was urged, show that there was nothing against them which could be considered to be against the interest of the security of the State. The submission is misconceived. The performance of duty by an employee is different from his conduct otherwise. It is no criterion for determining whether in the interest of the security of the State, it was not expedient to hold an inquiry against him under Article 311(2). Wholly different considerations enter in the determination of this question. The satisfactory or even commendable discharge of the duties by these two petitioners (or as a matter of that others like them) is no proof of their conduct with reference to the security of the State.

(28) It was also urged that Kartar Singh, Ragbir Singh, Ram Pal Singh, Ram Mehar, Hans Raj, Hari Shanker and Brij Mohan, all constables of Delhi Armed Police were previously dismissed from service on charges of indiscipline but were subsequently reinstated and they have not been dismissed by the President thereafter. Likewise, it was urged that Shri Ram, Inspector held office in the Sangh along with the petitioners but he has not been dismissed. This, it was contended, amounted to discrimination. It is clearly stated in the counter affidavits of Shri Bhanot that it is wrong that the orders of dismissal were passed against the petitioners because of the formation by them of Non gazetted Karamachari Sangh or its revival subsequently. The order was made because the President was satisfied in the interest of the security of the State that it was not expedient to hold an inquiry under Article 311(2) against the petitioners in view of their conduct in "deliberately and intentionally" trying to "subvert the discipline in the Delhi Armed Police Force". The fact that the constables previously dismissed were reinstated and not dismissed again and Siri Ram, though an office-bearer of the Sangh, was not dismissed again supports the respondents' case that the action against the petitioners was taken after due deliberation and on the basis of evidence of their conduct. The charge of discrimination is,

Therefore, wholly unmerited.

(29) For all these reasons, we find no merit in these writ petitions and the same are, Therefore, dismissed with costs. As all the petitions were argued together the respondents will have only one set of fees as costs. Counsel's fee Rs. 300.