
(1979) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 363 of 1979

Sayeed Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-08-1979

Acts Referred:

Constitution of India, 1950 — Article 132, 14, 19, 196, 226
Official Secrets Act, 1923 — Section 5
Prisons Act, 1894 — Section 15, 28, 42, 45, 54

Citation : (1979) WLN 466

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—The petitioner, in this writ petition under Article 226 of the Constitution, has challenged the constitutional validity of Rule 320A, which was added in Part VIII, Section XVIII of the Rajasthan Prisons Rules, 1951 (for short "the Rules" hereafter) made u/s 59 of the Prisons Act (No. IX of 1894), ("the Act") hereinafter.

2. The petitioner was appointed as a warder in Central Jail, Jodhpur, on January 1, 1970 and he was confirmed on this post in 1973. The petitioner has stated that he is the Secretary of the Jail Branch of the Rajasthan Subordinate Services Association of Jodhpur District. A notification No. GSR 149, dated December 15, 1978 (Ann. 1, was published in the Rajasthan Rajpatra, dated December 28, 1978 by which, in exercise of the powers conferred upon him by proviso to Article 309 of the Constitution, the Governor of Rajasthan amended the Rules by adding the following new Rule 320A after existing Rule 320.

320A. Restrictions respecting right to form Association, freedom of speech etc.-

(1) No subordinate officer shall without the express sanction, of the Government:

(a) be a member of, or be associated in any way with any trade union, labour

unions of political associations; or

(b) be a member of, or be associated in any way with any other society, institution, association or organisation that is not recognised as part of the Prison Department of which he is an employee or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document unless such communication or publication is in the bonafide discharge, of his duties or is of a purely literary, artistic or scientific character.

Explanation : - If any question arises as to whether any society, institution, association or organisation is of a purely social, recreation or religious nature under Clause (b) of Sub-rule (1), the decision of the Government thereon shall be final.

(2) No subordinate officer shall shout slogans or display play cards or or flags or otherwise participate in or address any meeting or take part in any demonstration organised:

(a) for any political purposes; or

(b) for the purposes of protesting against any of the provisions of the Prisons Act of 1894 or these rules or any other rules made under that Act; or

(c) for the purposes of protesting against any disciplinary action taken or proposed to be taken against him or against any other subordinate officer; or

(d) for any purpose connected with any matter pertaining to him remuneration or other condition of service or his conditions of work or his living conditions, or the remuneration, ether conditions of service conditions of work or living conditions, of any other subordinate.

(3) Any person who contravenes any of the provisions of the above Sub-rules (1) and (2) shall, without prejudice to any other action that may be taken against him, be liable to be dismissed in a disciplinary proceeding and also be liable to be prosecuted under, Section 54 of the Prisons Act. 1894 and there shall be no hesitation in launching prosecution and simultaneously folding disciplinary proceedings.

The petitioner has proved that by at appropriate writ, order or direction, it may be declared that the aforesaid notification Anx. 1, is illegal as being ultra vires of the Sub-clauses (a), (b) and (c) of Clause (1) of Article 19 of the Constitution and it may be struck down. It has also been prayed that if any action is taken against the petitioner on account of the addition of Rule 320A, it, may also be declared that such action is illegal.

3. The writ petition is opposed on behalf of the State of Rajasthan. It was stated if the reply that Rule 320A is not violative of Article 19(1)(a), (b) and (c) of the

Constitution and that the restrictions are reasonable. It was pleaded that the subordinate officers in the Jail Department, like the petitioner, are charged with special duties. The employees of the Jail Department are in the nature of a security force and they are equipped with fire-arms, ammunitions, batons etc. According to the respondent, Rule 320A was framed with a view to obviate the danger to security to Prisons, which is likely to occur if the acts prohibited by it, are permitted and the maintenance of public order is in fact directly dependent upon existence of strictly disciplined and efficient prison staff. It was, thus, contended that the imposition of restrictions on the persons of the prison staff for approximately and in fact directly correlated with public peace, safety and tranquility. As the restrictions imposed are in the interest of public order, Rule 320A cannot be struck down. Along with the reply, copy of communication Ex. R/1. dated December 25, 1978 was also filed. Ex. R/1. is a letter addressed by the President to the Superintendent, Central Jail Jodhpur requesting him to make arrangements for the security of the prison staff.

4. Learned Counsel appearing for the petitioner has raised the following contentions:

(1) The Rules were framed by the State Government in exercise of power conferred by Section 59 of the Act and as such the Governor was not competent to amend them by inserting Rule 320A in exercise of the powers conferred upon him under Article 309.

(2) Rule 320A of the Rules contravenes Article 19(1)(a), (b) and (c) and the restrictions imposed by it, are not reasonable in the interests of public order.

(3) Sub-rule (3) of Rule 320A of the Rules could not be framed as it does not fall within the scope of Article 309 in as much as this cannot be said to be a provision regulating the recruitment and the conditions of service of persons appointed to public services and posts in connection With the affairs of the State.

(4) the words "associated in any way" used in Clause (a) and (b) of Sub-rule (1) of Rule 320A, are vague and it may open flood gates of arbitrary, action and as such it is violative of Article 14 of the Constitution.

On the other hand the learned Additional Advocate General submitted that the writ petition is pre-mature as no cause of action has accrued to, the, petitioner as yet, for, until permission is refused to form an association or union, he cannot challenge the validity of Rule 320A of the Rules. He sought to justify Sub-rules (1), (2) and (3) of Rule 320A under Clauses (2), (3) and (4) of Article 19, on the ground that the conditions imposed are Reasonable restrictions in the interests of public order. He urged that the Governor was competent to add Rule 320A, as it relates to the conditions of service of the subordinate officers of the Jail Department.

5. I will first deal with the objection that the writ petition is premature, as no cause of action has accrued to the petitioner, for, until permission is refused to

form an association or union, he cannot challenge the validity of Rule 320A. This objection need not detain me long. In *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, , very soon after Rule 4-A, of the Bihar Government Servants' Conduct Rules 1956, was notified, the appellants before their Lordships of the Supreme Court, first of whom was the President of the Patna Secretariat Ministerial Officers' Association and the others, who were Assistants or Clerks under the Bihar State Government filed as petition before the High Court of Patna, under Article 226 of the Constitution challenging the validity of the aforesaid rule, inter alia, on the ground that it interfered with the rights guaranteed under Sub-clauses (a), (b) and (c) of Clause (1) of Article 19 of the Constitution. The petition was dismissed by the High Court of Patna but on application by the appellants, a certificate was granted under Article 132 of the Constitution. Their Lordships of the Supreme Court granted the appellants a declaration that Rule 4-A of the aforesaid Rules was violative of Sub-clauses (a) and (b) of Article 19(1) and, therefore, it was struck down. In this petition, the petitioner seeks to enforce his fundamental rights guaranteed under Article 19(1) of the Constitution. Under Article 226 of the Constitution, a petition for enforcement of any of the rights conferred by Part III could be filed. Apart from this, the petitioner has stated; in para 3 that the members of the subordinate services of the Government of, Rajasthan have formed an association in the name of the Rajasthan Subordinate Services Association, that this association has several branches & one of them being Jail Branch and that the petitioner is the Secretary of the Jail Branch of the aforesaid Association. The petitioner's rights under Art, 19(1) are directly affected by Rule 320A, and as such soon after, it was notified, he is entitled to raise the question of its constitutional validity. It may also be mentioned, that the specific objection that the petitioner has no cause of action was not taken in the return filed by the respondent. For the foregoing reasons, I am unable to agree with the Additional Advocate General that the petitioner has no cause; of action to maintain the writ petition. This objection is, therefore, over ruled.

6. Now, I proceed to examine the first contention raised by Mr. Mridul, regarding the competence of the Governor to amend the Rules by inserting Rule 320A, to the existing Rules. Section 59 of the Act empowers the State Government to make rules consistent with the Act. In the Section 28 items are mentioned in respect of which, the State Government may make rules. The Rules were framed by the Government of Rajasthan in exercise of the powers conferred by Section 59 of the Act and all of other powers enabling it in that behalf. Chapter XVII, which contains Rules 286 to 313, deals with Jail Officers. Chapter XVIII, which contains Rules 314 to 335, deals with Subordinate Officers. Some of the important rules, which are material for the present purpose are,

(1) Rule 315. Subordinate officers to be on probation for one year.

(2) Rule 316. Subordinate officer to be made acquainted with the terms of Sections 42 and 45 of the Prisons Act.

(3) Rule 317. Conditions of employment of subordinates officer appointed to any jail.

(4) Rule 318. Officers to inform Superintendent when any relative or acquaintance is admitted or confined in the jail.

(5) Rule 319. Jail employees must be persons of respectable character;

(6) Rule 320. Employees forbidden to communicate.

(7) Rule 321. No person dismissed from any service or convicted of any crime should be appointed without special sanction.

(8) Rule 322. Declaration to be taken before entertaining an officer in jail service.

(9) Rule 323. All subordinate officers to reside in jail quarters.

Chapter XVIII of the Rules provides for recruitment & conditions of service of the subordinate officers of the Jail Department. Items No. 10 and 28 of Section 59 are as under:

(10) for the governing of prisons and for the appointment of alt officers appointed under this Act;

(28) generally for carrying into effect the purposes of this Act.

A perusal of the notification No. 141 (Anx. 1) shows that the Governor had made Rule 320A for amending the Rules made u/s 59 of the Act. The Rules framed by the State Government are subordinate legislation in as much as Section 59 of the Act empowers the State Government to frame Rules under the Act. Article 309 is an enabling provision which, confers certain powers upon a Legislature to enact laws for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. This is, however, subject to the provisions of the Constitution. Proviso to Article 309, inter alia, lays down that the Governor may, in the case of public services and posts, in connection with the affairs of a State, make rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in this regard is made by or under an Act of the appropriate Legislature under Article 309. It is the State Government only which could make Rules u/s 59 of the Act, may be for regulating the recruitment & conditions of service of persons appointed to services and posts Some of the rules, reference of which has been made above and which are contained in Chapter XVIII of the Rules, show that they relate to regulating of the recruitment & conditions of service of subordinate officers of the Jail. Rule 320A, which has been inserted by notification (Anx. 1) forms part of Chapter XVIII of the Rules which, as staged above, generally deals with the conditions of service of subordinate officers of the Jail. It is only the State Government, which is competent to make rules u/s 59 of the Act, in respect of 28 items mentioned therein. In my opinion, the Governor could not amend the Rules framed u/s 59 of the Act by the State Government, by inserting Rule 320A, while exercising

powers conferred upon him by the proviso to Article 309 I, therefore, hold that it was beyond competence of the Governor (rule making authority to have emended the Rules by adding Rule 320 A after the existing Rule 320. Sub-rule (1) of Rule 320A consists of three Clauses (a), (b) and (c). According the petitioner, Clauses (a) and (b) are ultra vires Article 19(1)(c), which deals with the right of a citizen, to form associations or unions. They prohibit membership of associations or unions without express sanction of the Government, The contention of the learned Additional Advocate General) was that these clauses are protected by Clause (4) of Article 19.

7. According to Clause (c) of Sub-rule (1) of Rule 320A, the subordinate officers of the prison staff are forbidden to communicate and it infringes Sub-clause (a) of Clause (1) of Article 19, which protects right regarding freedom of speech and expression. The learned Additional Advocate General submitted that this is a reasonable restriction and is saved by Clause (2) of Article 19. The question, therefore, that engages attention is whether the restrictions are reasonable in the interests of the public order. After considering important decisions, their Lordships of the Supreme Court in *Pathumma and Others Vs. State of Kerala and Others*, deduced the following tests for judging reasonableness of restrictions;

(1) In judging reasonableness of the restrictions imposed by Clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State policy.

(2) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of general public.

(3) In order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will have to vary from case to case and with regard to changing conditions, the values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which enter into the judicial verdict. In other words, the position is that the court has to make not a rigid or dogmatic but an elastic & pragmatic approach, to the facts of the case and to take an overall view of all the circumstances factors and issues facing the situation.

(4) The reasonableness of a restriction is to examine the nature and extent, the purport end content of the right, nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit to be conferred on the person or the community for whose benefit the legislation is passed, urgency of the evil and necessity to rectify the same.

(5) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated. If there is a direct nexus between the restriction and the object of the Act then a strong presumption in favour of the constitutionality of the Act will naturally arise.

(6) The test of reasonableness of restrictions is the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

(7) So far as, the nature of reasonableness is concerned it has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute.

(8) In judging reasonableness of restrictions the Court is fully entitled to take into consideration matters of common report, history of the times and matters of common knowledge and the circumstances existing at the time of legislation.

8. The next question is about the meaning of the expression "public order" used in Clauses (2) and (4) of Article 19. In *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, it was held by their Lordships that in the limited sense, particularly in view of the history of the amendment, it can be postulated that public order is synonymous with public peace, safety and tranquility. In *O.K. Ghosh and Another Vs. E.X. Joseph*, it was observed as under:

Therefore, in Clause (2), public order is virtually synonymous with public peace, safety and tranquility. The denotation of the said words cannot be any wider in Clause (4). That is one consideration which is necessary to bear in mind. When Clause (4) refers to the restriction imposed in the interests of public order, it is necessary to enquire as to what is the effect of the words "in the interests of". This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect the restriction can be said to be in the interests of public order. A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct".

The constitutional validity of Rules 23 and 23A of the Rajasthan Government Servants and Pensioners Conduct Rules, was examined in *Madanlal Thanvi v. D.I.G.P., Jodhpur* 1963 R.L.W. 49 in which, it was observed as under:

It is well recognised that the right to form association is a basic and elementary right in democratic Governments and our Constitution has guaranteed the same under Article 19(1)(c).

In *State of Madras Vs. V.G. Row*, Patanjaii Sastri, C.J., speaking for the court observed as follows:

The right to form associations or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of authority in the executive Government to impose restrictions on such right, without allowing the ground of such imposition, both in their factual and legal aspect, to be duly tested in a judicial inquiry, is a strong element which in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed by Section 15(2)(b) on the fundamental right under Article 19(1)(c); for, no

summary and what is bound to be a largely one-sided review by an Advisory Board, even Where its verdict is binding on the executive Government, can be a substitute for a judicial enquiry The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to over ride a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights.

The validity of Rule 4-B of the Central Civil Services (Conduct) Rules 1955 was examined in O.K. Ghosh and Another Vs. E.X. Joseph, . It was laid down as follows?:

We are, therefore, satisfied that the restriction thus imposed would make the guaranteed right under Article 19(1)(c) ineffective and even illusory. That is why we see no reason to differ from the conclusion of the High Court that the impugned Rule 4-B is invalid.

Sub-rule (1) of Rule 320A begins with the words, "No subordinate officer shall, without the express sanction of the Government". Thus, it is necessary for a subordinate officer to obtain express sanction from the Government in regard to the matters mentioned in Clauses (a), (b) and (c) of Sub-rule (1) of Rule 320A. It is not clear from Rule 320A as to what criteria would be employed for according sanction. There is no provision" for any opportunity of hearing being given to the Subordinate officers before according sanction or refusing the same. To my mind, it appears, that the Government has reserved the power to accord or refuse sanction on its subjective satisfaction. There are no sufficient means of control over possible misuse of power. There is no indication about emergent and extraordinary circumstances warranting for such reservation of power. It, therefore, denies and unduly restricts the right of the subordinate officers of the prison aim to form association. When such is the case, this sub-rule cannot be said to be valid. In this connection, I may refer to Madanlal's case 1963 R.W.L. 49 S. Vasudevan and Others Vs. S.D. Mital and Others, was relied on, in Madanlal's case 1963 R.L.W. 19. It was observed by the learned Judges of the Bombay High Court as under:

Even though the rule in terms does not prohibit Government servants from forming associations or unions, by making membership of un-recognised associations a disciplinary offence, it has in substance done so and in considering infringement of fundamental rights it is the substance of the impugned Act or rule that matters and not the terms.

9. Further question is whether this restriction of obtaining express sanction of the Government is reasonable in the interests of the public order. Their Lordships of the Supreme Court in O.K. Ghosh and Another Vs. E.X. Joseph, observed as under:

It is clear that Rule 4-B Imposes a restriction on this right. It virtually compels a

Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the; Said association is withdrawn or if after the association is formed, ad recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government. If the association obtains the recognition and continues to enjoy it, Government servants can become members of the said association; if the association does not secure recognition from the Government, or recognition granted to it is withdrawn, Government servants must cease to be the member of the said association. That is the plain effect of the impugned rule. Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of the members of the said association. Similarly, it is difficult to see any connection between recognition and public order.

According to Sub-rule (c), subordinate officer is prohibited from communicating with the press or publishing or causing to be published any book, letter or document except when such communication or publication is in the bonafide discharge of his duties or is of purely literary, artistic or scientific character. The freedom of speech and expression includes freedom of press and circulation. Reference in this connection may be made to *Romesh Thappar Vs. The State of Madras*, and *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . It was held in *Virendra v. The State of Punjab* (sic) that the right to freedom speech and expression carries with it right to propagate and circulate one's views and opinion subject to reasonable restriction. Rule 320 of the Rules provides that the subordinate officers are forbidden to communicate. It reads as under:

Rule 320 Employee forbidden to communicate - All persons serving in the jail department are strictly prohibited from communicating directly or indirectly to Government servants belonging to other departments, or to non official persons, or to the press, any document or information which may come into their possession in the performance of their public duties or has been prepared or collected by them in the course of their duties whether from official sources or otherwise. Any officer or servant found guilty of a breach of these orders is liable to be prosecuted u/s 5 of the Indian Official Secrets Act, 1923, and there shall be no hesitation about departmental enquiry or prosecution in this matter.

10. Mr. Mridul also submitted that Explanation to Sub-rule (1) of Rule 320A is bad as the question whether any society, institution, association or organisation is purely social, recreational or religious under Clause (b) of Sub-rule (1) has been left to be determined by the Government without laying down any guide lines for the purpose and this determination can be arbitrary. The Explanation is capable of being used arbitrarily so as to discriminate unreasonably and

unjustifiably. No guide lines have been mentioned in the Sub-rule (1) of Rule 320A for determining social, recreational or religious nature of any society, institution, association or organization. The decision of the Government in this regard has been made final. As there is nothing to control over possible misuse of power, it may affect the exercise of rights conferred by Sub-clause (c) of Clause (1) of Article 19. Applying the test Nos. 2 and 5 mentioned herein above, and having regard to the meaning of the expression "public order" and further keeping in view the principles laid down in Madanlal's case 1963 R.L.W. 19, Kameshwar Prasad and Others Vs. The State of Bihar and Another, and S. Vasudevan and Others Vs. S.D. Mital and Others, . I am of opinion that Clauses (a), (b) and (c) of Sub-rule (1) of Rule 320A cannot be said to impose reasonable restrictions in the interests of the public order. There is no direct and proximate nexus or reasonable connection between the restriction imposed and the object, which is sought to be achieved. I, therefore, hold that Sub-rule (1) of Rule 320A is invalid.

11. This takes me to the question about the validity of Sub-rule (2) of Rule 320 A. Learned Counsel for the petitioner urged that Clauses (a), (b), (c) and (d) of Sub-rule (2) of Rule 320. A result in denying to the petitioner or for that matter to the subordinate officers of the Jail Department rights of freedom of speech and expression and to assemble peaceably and without arms guaranteed under Sub-clauses (a) and (b) of Clause (1) of Article 19. Mr. C.N. Sharma submitted that the Sub-rule (2) does nothing more than to impose reasonable restriction on the exercise of the rights alleged to be infringed It is not necessary to repeat the reasons given by me above, while judging the validity of Sub-rule (1) of Rule 320 A after considering Clause (2) of Article 19 It is clear from the perusal of Sub-rule (2) of Rule 320A that the subordinate officers are prohibited to (1) shout slogans (2) display placards or flags (3) participate in or address any meeting and, (4) take in any demonstration organized for the purpose mentioned in Clauses (a) to (d). One may express his feelings by shouting slogans or displaying placards or flags. One may participate in or address any meeting to convey his feelings to the person or authority to whom the communication is intended. This sub-rule puts an embargo on doing of the acts for the purposes mentioned in Clauses (a) to (d). It was held in Kameshwar Prasad and Others Vs. The State of Bihar and Another, that any prohibition or restriction of the right of citizens to hold peaceful demonstrations to express their feelings is prima facie violative of the rights under Clauses (1) (a) and (b) of Article 19 One would have understood, if provisions were made to regulate the activities mentioned in Sub-rule (2) of Rule 320A. It may be added that the acts mentioned are likely to take various forms and so long the acts are peaceful and orderly no prohibition or restriction can be imposed Under Article 19(1)(b) right to assemble peaceably and without arms is guaranteed and this can only be restricted amongst others in the interests of the public order. The acts enumerated in Sub-rule (2) of Rule 320A fall within 19(1)(a) and (b), and I find it difficult that the restrictions are in the interests of the public order. If the acts mentioned in Sub-rule (2) for the

purposes stated in Clauses (a) to (d) would have been prohibited or restricted for preventing noisy, disorderly or violent activities or if, it were to regulate the actions of the subordinate officers, they would have fallen within the protective Clauses (2) and (3) of Article 19 But this is not so. In support of this view of mine, I may quote from Kameshwar Prasad and Others Vs. The State of Bihar and Another, ;

The threat to public order should therefore arise from the nature of the demonstration prohibited No doubt, if the rule were so framed as to single out those types of disturbance of public tranquility or which would fall under the order limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it jays a ban on every type of demonstration be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result.

12. It may be mentioned here that under Article 33, the Parliament has been empowered to modify the tights conferred by Part III in their application to the members if the Armed Forces or Forces charged with the maintenance of public order for the purposes of ensuring the proper discharge of their duties and toe maintenance of discipline among themselves.

13. For the aforesaid reasons, restrictions imposed by Sub-rule (2) of Rule 320A are not in the interests of the public order Sub-rule (2) of 320A, therefore, contravenes Article 19(1)(a) and (b).

14. It now remains to examine the validity of Sub-rule (3) of Rule 320 A. A perusal of Sub-rule (3) of Rule 320A shows that any person who contravenes any of the provisions of Sub-rules (1) and (2) thereof, is liable to be prosecuted u/s 54 of the Act and that there shall be no hesitation in launching prosecution and simultaneously holding disciplinary proceedings. Sub-rule (3) is not one, which can be said to regulate recruitment and conditions of service of persons in respect of whom law cloud be made under Article 309 of the Constitution Such a sub-rule is not contemplated under the proviso to Article 309. In State of Mysore v. Padmanabhacharya, it was observed:

Under the proviso the Governor can make rules regulating the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the State.

In the circumstances, I have no hesitation in saying that Sub-rule (3) of Rule 320A is out side the scone of Article 309 and, is, therefore, bad. This can be viewed from another angle also. Section 54 of the Act reads as under:

Section 54. Offences by prison-subordinates:

(1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by the competent authority, or who shall withdraw from the duties of

his office with out permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully over stay any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

Section 54 makes adequate provisions for punishing all offences by prison-subordinates inclusive of wilful breach or neglect of any rule or regulation or lawful order made by the competent authority. No rule could be framed under proviso to Article 309 on the matters covered by Section 54 of the Act.

15. Learned Additional Advocate General, while arguing for the constitutional validity of Rule 320A, referred to Divakaran Nair Vs. State of Travancore-Cochin, and Santokh Singh Vs. Delhi Administration, . In Divakaran Nair Vs. State of Travancore-Cochin, Rules 80(a) , 81 and 82 of the Government Servants' Conduct Rules were examined, while determining validity of a directive issued in form of a circular forbidding both the Associations from retaining a non-official, who happened to be the same, as their President. In para 8, it was observed:

And so long as such restrictions and regulations are not arbitrary and bear a reasonable relation to legitimate ends to be attained of question as to their constitutionality can arise.

The above principle cannot be disputed, It may, however, be mentioned that the reasoning mentioned in the aforesaid decision runs counter to that in Madanlal's case 1963 R.L.W. 19 and O.K. Ghosh and Another Vs. E.X. Joseph, . In Santokh Singh Vs. Delhi Administration, , the question regarding the validity of Sec 9 of the Punjab Security of the State Act (No. XII of 1953) came up for consideration It reads as under:

9. Dissemination of rumours, etc. - Whoever

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs or by visible or audible representations or otherwise publishes any statement rumour or report shall, if such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency or morality, or amounts to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of the public order or tends to over throw the State, be punishable with imprisonment which may extend to three years or with fine or with both.

It was laid down therein as under:

The test of reasonableness of the restriction has to be considered in each case in the light of the nature of the right infringed, the purpose of the restriction, the

extent and the nature of the mischief required to be suppressed and the prevailing social and other conditions at the time. There can be no abstract standard or general pattern of reasonableness. Our Constitution provides reasonably precise, general guidance in this matter. It would thus be misleading to construe it in the light of the American decisions given in different context. Section 9 of the Act is, in our view, plainly within the legislative competence of the Punjab Legislature and it would be for the Court in which the appellant is being tried to decide as to how far the appellant's speech is covered by this section.

In para 8, following observations were also made:

We of course agree with Shri Agarwal that the fundamental right guaranteed by Article 19(1)(a) and the Interest of public protected by Article 19(g) must be properly adjusted and reasonable balance struck bet even the two.

The test laid down in Santokh Singh Vs. Delhi Administration, is covered by the tests which have been mentioned here in above for judging reasonableness of the restrictions. It was held that anything to over-throw the State must necessarily be prejudicial to security of the State and, therefore, a law can be made placing reasonable restrictions of the right of freedom of speech and expression in this respect, in the interests of security of the State & prima facie therefore, Section 9 clearly fell within express language of Article 19(2). This authority is clearly distinguishable as language of Rule 320A is materially different from Section 9 of the Act No. XII of 1953.

16. As I have already examined validity of Sub-rules (1) to (3) of Rule 320A, it is not necessary to examine fourth contention raised by Mr Mridul in regard to Article 14 of the Constitution.

17. From the above discussion, it follows that I have reached the following conclusions:

(1) that Rule 320A was beyond the competence of the Governor under Article 309 of the Constitution, for, Rule 320A could not be added after the existing Rule 320 of the Rules framed u/s 59 of the Act as the rules under the Act could only be framed by the State Government;

(2) that Sub-rules (1) and (2) of Rule 320A infringe the fundamental rights of the subordinate officers of the prison and they are not protected by Clauses (2), (3) and (4) of Article 19.

(3) that Sub-rule (3) of Rule 320A is beyond the rule making power of the Governor under proviso to Article 309 of the Constitution, as it does not regulate recruitment and conditions of service of the subordinate officers of the prison staff.

18. In view of the aforesaid conclusion, I am left with no option but to accept this writ petition.

19. The writ petition is allowed and the notification Anx. 1, by which, Rule 320A was added to existing Rule 320 of the Rules is held illegal and it is declared that Rule 320A of the Rules is ultra vires and invalid. It is, accordingly, struck down. In the circumstances of the case, I leave the parties to bear their own costs of this writ petition.