

(1965) 01 J&K CK 0002
In the Jammu And Kashmir High Court

Sheikh Ghulam Rasul	Vs	APPELLANT
State of Jammu and Kashmir and Another		RESPONDENT

Date of Decision : 11-01-1965

Acts Referred:

Constitution of India, 1950 — Article 20

Citation : (1967) 1 LLJ 365

Hon'ble Judges : S. Murtaza Fazl Ali, J;J.N. Bhat, J

Bench : Division Bench

Judgement

J.N. Bhat, J.—This is a writ petition filed by Sheikh Ghulam Rasul against the State of Jammu and Kashmir and the Chairman and the

Members of the Anti-Corruption Commission (hereinafter to be referred to as the Commission), for the issue of a writ of certiorari quashing the

order of the Commission dated 9 July 1964 and further restrain-in? the Commission from proceeding against the petitioner u/s 3(d) of the Jammu

and Kashmir Government Servants' Prevention of Corruption (Commission Act) (hereinafter to be referred to as the Act).

2. The petitioner's case is that he was working as a Conservator of Forests in the State of Jammu and Kashmir till 8 March 1958 when he was

retired. He was re-employed afterwards and finally ceased to be in Government service from 30 June 1962. After re-employment the petitioner

held the office of the Custodian of Evacuee Property, Jammu, and discharged the functions of a Provincial Rehabilitation Officer. On a complaint

against one S. Prahlad Singh in respect of certain acts alleged to have been committed by him, the Government appointed a Commission of Inquiry

in which the petitioner appeared as a witness for the prosecution. The Commission of Inquiry exonerated Prahlad Singh in respect of charges

framed against him.

3. The recommendation of that Commission was accepted by respondent 1, the State, on 27 February 1963. On the basis of the same allegations

a fresh enquiry was started against Prahlad Singh in which the petitioner also was called and the Commission framed a charge against the petitioner

under the Act as amended by Act 1 of 1964 which received the assent of the Sadar-i-Riyasat on 25 March 1964. The petitioner has, therefore,

come up in writ requesting the quashing of the charge framed against him and preventing the Commission from taking any further action on the

basis of the charge on the following grounds:

(1) That the Act is not retrospective.

(2) That its amendment in 1964 is not retrospective and violates Article 20 of the Constitution of India.

(3) That the amendment has put in other penalties which were not existing in the previous Acts, etc.

4. The State and the Commission were represented in these proceedings by the learned Advocate-General. The State has admitted that the

petitioner was retired on the date as stated by him. His re-employment and the termination of his services on 30 June 1962 are also admitted by

the State. It is denied by the respondents that S. Prahlad Singh was exonerated. The charge framed against him by the Commission is different

from the charges levelled against him earlier by the State. About the legal objections raised by the petitioner to the framing of the charge against him

by the Commission and the proceedings therein, it is stated that all the grounds taken by the petitioner are incorrect and the petitioner is not

entitled to any relief.

5. The case was argued at great length and very ably by Sri Sharma for the petitioner and the Advocate-General for the State and the

Commission. Sri Sharma's argument is that the Act makes the Government servants found guilty of corruption by the Commission liable to certain

punishments and therefore, under the provisions of Article 20(1) of the Constitution of India which applies to this State this Act can have

application to only such actions or misdeeds of the Government servants as would be committed by them after the promulgation of this Act. in legal

language he has stated that the Act would be prospective and not retrospective

in operation. The same argument would apply to the amendment introduced by Act 1 of 1964 to the Act. According to Sri Sharma the alleged act of the petitioner has been committed by him somewhere after his re-employment but before the principal Act came into force. Therefore the petitioner cannot be proceeded against under the provisions of this Act.

6. These contentions were raised by the petitioner before the Commission also. The Commission overruled these objections of the petitioner

holding that the corruption mentioned in the Act was also included in the definition of corruption as contained in the Prevention of Corruption Act,

2006, the Public Servants' (Inquiries) Act of 1977 and the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules of 1956.

The Act only varied the procedure for determining the corruption committed by a Government servant. According to Sri Sharma these findings of

the Commission were wrong in law. We shall examine the arguments advanced by Sri Sharma in detail.

7. His first argument was that the Act as well as its amendment in 1964 contravened the provisions of Article 20(1) of the Constitution of India.

This article reads as under:

No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor

be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

8. According to Sri Sharma, the alleged act of the petitioner was committed by him before the Act was passed in 1962 by the State legislature. It

makes the petitioner liable to punishment and the petitioner cannot be punished under this Act because corruption as defined in the Act did not

constitute an offence according to the laws prevalent when the alleged act of the petitioner was committed. In the first place this argument of the

learned Counsel is devoid of force, because Article 20 in its first part talks of convictions and offences. The Commission has no power of

convicting a person. It is an advisory or a recommendatory body which after inquiring into certain matters can at the most make a recommendation

to the Sadar-i-Riyasat for the prosecution of a certain person.

9. Before this Act came into force, there already existed on the statute book the Prevention of Corruption Act, 2006. Section 5 of that Act defines

corruption and has four clauses appended to it. Under this section criminal misconduct is used for the word "corruption" used in the Act, excepting that In Clauses (a) and (b) of Section 5(1) of that Act the word "habitually" is an addition. Section 5(3) of that Act makes possession of property disproportionate to one's known source of income as criminal misconduct. Therefore, in substance, the definition of corruption as given in the Act is the same as contained in Section 5 of the previous Act of 2006 only that in the present Act the word "corruption" has been used whereas in the previous Act the words "criminal misconduct" have been used. The Public Servants' (Inquiries) Act 28 of 1977 also authorized the appointment of an inquiry commission into the misbehaviour of any person in service of the Government in the form of a Court, Board or authority to which the person was subordinate or by a commission set up by the Government for that purpose. The word "misbehaviour" is a far wider term than corruption used in the Act. The Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules also provide various punishments that could be inflicted on a Government servant. Sri Sharma pointed out that the forfeiture of recurring pension, gratuity or compensation was a penalty greater than that could be Imposed under the laws prevalent when the alleged act of the petitioner was committed. This also is not correct, because under Article 168 of the Kashmir Civil Service Regulations, the withholding or withdrawing of pension is permissible. Therefore on this argument of the learned Counsel even the Act does not create a new offence; all that it gives is a definition of what corruption is. But the acts which have been classified as corruption by the Act were already considered as such by the previous enactments referred to above. Article 20(1) dealt with what is known in legal language as the doctrine of ex postfacto law. What this article prohibits, is the conviction of a person except for the violation of a law which was in force when the alleged act was committed. It does not at all affect the procedure of determining an offence which may be different after the Constitution came into existence from what it was before the Constitution. As already stated, the Commission has no power to convict anybody; at best, u/s 17 (3), it can recommend that a person may be prosecuted for an offence in a Court of law. Therefore, Article 20(1) has no application to the findings of the Commission.

10. In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, , it has been laid down that:

What is prohibited, under Article 20 is only conviction or sentence under an ex postfacto law and not the trial thereof. Such trial under a procedure

different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time

cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular

Court or by a particular procedure except in so far as any constitutional objection by way of discrimination or the violation of any other

fundamental right may be involved.

11. The same observations have been repeated in a Division Bench authority of the Madhya Bharat High Court in *State v. Narayan* AIR 1954 MB

206 wherein it has been laid down:

Article 20 prohibits the creation of a new offence, the punishment of which may be prescribed with retrospective. The other limitation is that no one

shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

If the presiding Judge were to award a sentence under the Criminal Law Amendment Act, 1952, severer than that which was provided in the

former law (viz., the Indian Penal Code) then, of course, it would offend against Article 20. But before the stage of sentence no question of any

heavier penalty arises and till the accused are tried and convicted under the new law, namely, the Criminal Law Amendment Act which was not in

force when the acts constituting the offence were committed, there is no question of punishment. Till then the constitutionality of the trial under the

Criminal Law Amendment Act cannot be questioned.

12. The main stress of the arguments of Sri Sharma was that the Act could not be held retrospective as also its amendment. Therefore for any acts

committed by an officer before the Act came into force he could not be proceeded with. If the Act is a procedural Act, it can have retrospective

effect. There can be no doubt about that. The law on this point is very well-settled.

13. Maxwell in his *Interpretation of Statutes* (8th Edn., p. 198) says:

Although to make a law punish that which, at the time when it was done, was

not punishable, is contrary to sound principle, a law which merely alters the procedure may, with perfect propriety, be made applicable to past as well as future transactions and no secondary meaning is to be sought for an enactment of such a kind. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. The remedy does not alter the contract or the tort; it takes away no vested right, for the defaulter can have no vested right in a state of law which left the injured party without, or with only a defective, remedy.

These observations are based on a number of authorities cited therein.

14. Similarly the Privy Council, the Supreme Court and the High Courts in India have laid down the same principle-see AIR 1927 242 (Privy Council) and The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta, Income Tax Officer and Another, .

15. As already stated, corruption as defined in the Act constituted an offence under the laws existing in the State even before. The Commission

and the Act came into being as a result of complaints of widespread corruption in the administrative machinery of the State. In the year 1958, the

Jammu and Kashmir Civil Services (Disciplinary Proceedings Tribunal) Rules were enforced under which the misconduct of Government servants

was to be investigated by a commission appointed under these rules. To inquire into the misconduct of a certain class of Government servants the

Act came into force and a high-powered commission was contemplated which could take cognizance of such misdeeds of the Government

servants and after due Inquiry recommend to the Sadar-i-Riyasat appropriate punishment to be awarded to such guilty persons. In cases where the

Commission recommended the imposition of any punishment in respect of which Section 133 of the Constitution of Jammu and Kashmir required

the consultation of the Public Service Commission or compliance of any other provision of the said Constitution, orders could only be passed after

such consultation or compliance. This shows that the role of the Commission was simply to institute an inquiry and make a recommendation to the

Sadar-I-Riyasat for an appropriate punishment. The punishment was to be

awarded by the Sadar-i-Riyasat. Even then the formalities of a show-cause notice were to be gone into. In our opinion this Act simply modified the procedure of holding an inquiry into a complaint against a Government servant and the Commission was the tribunal which could conduct the inquiry according to the procedure contained in the Act. In view of this matter further arguments of Sri Sharma need not have been considered, but as some important propositions were enunciated by him, we shall comment upon those submissions of Sri Sharma also.

16. Sri Sharma contended that the word "" corruption "" uses the present tense only in 8. 3 of the Act, i.e., accepts, obtains, misappropriates or converts to his own use, etc., which shows that the operation of the Act was intended to be prospective and not retrospective. If the Act was designed to apply to past actions of Government servants it should have used the words "" has accepted before or after the commencement of the Act,"" so on and so forth. He strongly contended that the amendment of 1964 which was the Act applicable to retired Government servants leaves no room for doubt that it is prospective and not retrospective. By this amending Act (Act 1 of 1964) the main change that has been Introduced in this Act is in the definition of a Government servant. Formerly Government servant meant a person who was in the service or pay of the Jammu and Kashmir Government and whose pay or salary or pension was met from the revenues of the State.

17. By the amendment of 1964 (Act 1 of 1964) the word Government servant means a person who is or at anytime whether before or after the commencement of this Act was in the service or pay of the Government of Jammu and Kashmir or whose pay, salary or pension is met from the revenues of the State, or who has received a gratuity or any other post retirement compensation, from the revenues of the State.

When this amendment was introduced the purpose was that the principal Act should be deemed to have denned a Government servant according to its new definition. It could not be the intention of the legislature to make the Act prospective because if the Act were to apply to acts done by a Government servant after the date of the amendment, it would render the

amendment meaningless because after a particular person ceased to be a Government servant, he could not commit any act as a Government servant. On the other hand, the Insertion of a wider definition in the original definition of the Government servant shows that the intention of the legislature has been to make the actions of a retired Government servant liable to be the subject-matter of a charge before the Commission if those acts were performed before he finally retired. The following salutary provisions of interpretation have to be kept in view while considering whether the main Act as well as its amendment are prospective or retrospective in effect:

- (1) What was the object of the Act ?
- (2) What was the evil that was intended to be cured by the Act ?
- (3) The establishment of the machinery for achieving the object.

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not Intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their allocation, by rejecting them altogether or by Interpolating other words, under the influence, no doubt, of an Irresistible conviction that the legislature could not possibly have intended that its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or Ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."" (Vide Maxwell's Interpretation of Statutes, 8th Edn., p. 202,)

18. The learned author has given a number of Illustrations from English law where certain words have been interpreted differently from their ordinary meaning and where certain words have been taken as non-existent in an enactment. He has also given a number of cases where certain words have been thought to be existing in a particular legislation when they did not at all so exist. This rule of Interpretation is very well-settled.

19. In the case of amending Acts ordinarily an amendment is intended to carry out the immediate legislative object. Sutherland in his book on

Statutory Construction, 3rd Edn., Vol. III, pp. 410-412, has observed:

In interpreting an amendatory Act, the Courts have followed the principles of construction used in the interpretation of an original Act, making

special use of certain principles of interpretation particularly applicable to an amendatory Act; but in addition they have developed at least one

principle of construction peculiar to an Act purporting to change an existing statute. Thus, as in the case of original Acts, the object in construing an

amendatory Act is to determine the legislative intent. To do so, the Court will read the amendment as a whole, words of common use will be

construed in their natural, plain and ordinary meaning. If possible, effect must be given to every word. The amendment will be given a reasonable

construction; a literal construction which would lead to absurd consequences will be avoided. When the intent of the legislature is not clear from its

language, the Court will consider surrounding circumstances. The Court will examine the title of the amendment. It will consider records of

legislative proceedings and reports of legislative committees concerning the amendments; also previous judicial and executive construction thereof.

Statutes in *pari materia* will be looked at and amendments of procedural statutes will be liberally construed.

Similarly Crawford in his book on Statutory Construction at pp. 616-617 summarizes the position thus:

Of course amendments or amendatory statutes are subject to the rules and principles of construction applicable to original enactments. For

instance, the only legitimate recourse to construction is to ascertain the legislative intention. In ascertaining this intent the Court may not only

examine the body of the statute, but its caption. Statutes in *pari materia* may also be resorted to for assistance. Executive as well as judicial

construction may likewise be of assistance. And the evil sought to be remedied by the amendment may be considered as some indication of the

legislative intent.

Similarly in Halsbury's Laws of England, 2nd Edn., Vol. XXXI, p. 693, it has been laid down:

Mere amending provisions should not be Interpreted so as to alter completely the character of the principal law, unless clear language is found

indicating such an intention, and where a statute of limited operation is repealed

by one which re-enacts its provisions in an amended form it need

not be presumed that its operation was to be extended to classes of persons hitherto not subject to them. Where, however, expressions of larger

meaning are used in an amending statute than in the principal Act, it must be taken they are used intentionally.

20. Halsbury has laid down ten general rules with regard to the language of statutes, and Rule 3 is that a statute is to be regarded as always

speaking. Therefore the use of the present tense in this definition. Moreover, in view of the principles laid down by a different jurists and authorities

regarding interpretation of statutes, the present tense will be deemed in this case to include the past or past participle.

21. In a special Bench case of the Orissa High Court in Radhi Bewa and Another Vs. Bhagwan Sahu and Others, difference of opinion arose

between the Chief Justice and Jagannadhadas, J., with regard to interpretation of certain sections of the Hindu Women's Right to Property Act.

The matter was referred to Narasimham, J., as he then was, who, agreeing with the Chief Justice, laid down:

The tense and the mood of the verb used in the Act are such that whenever the Act is taken up for consideration it should appear as if the Act is

then speaking. Therefore, merely because the verb 'dies' in Section 3(2) is in the present tense it is not correct to say that the Act refers to the

present and to the future and not the past, as such construction would overlook the well-known rule that a statute is to be regarded as always

speaking.

This is discussed in Para. 6 of the judgment wherein Narasimhan, J., discussed the various sections of that short Act. It was considered that it was

in consonance with the object of the Act that the word 'dies' should be interpreted as the words 'has died' also.

22. In The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta, Income Tax Officer and Another, Hidayatullah and Raghubar Dayal,

JJ., have laid down that:

Under ordinary circumstances, an Act does not have retrospective operation on substantial rights which have become fixed before the date of the

commencement of the Act. But this rule is not unalterable. The legislature may affect substantial rights by enacting laws which are expressly

retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clauses gives to any of its provisions. When this happens, provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed.

23. In construing the main Act as well as the amending Act, as will be clear from the above quotations, the object with which the Act was passed

has to be kept in view. The old Act is to be deemed to be good law and to govern the purpose for which it was enacted except so far as it is

amended. The object of the Act was to punish the acts of those Government servants who had committed corruption within its meaning while they

were in service. It would be ridiculous if the acts which could be the subject-matter of an investigation by the Commission were the acts of only

those officers who still continue in service and who would commit such acts after the Act came into force. It was to remedy an evil which as

already stated was rampant in the administrative set up that the main Act came into being. More-over, when the Act was being Implemented,

certain oases came to the notice of the legislature which according to the strict Interpretation of the Act would not constitute corruption by a class

of officers, namely, those who had retired. In their case the legislature thought it necessary to enlarge the definition of the word "" Government

servant"" so as to cover their misdeeds. The definition of Government servant was therefore amended and the rest of the material provisions of the

Act remained unaltered. The amendment of this definition clearly made it applicable to acts performed by retired Government officers while in

service.

24. It has already been remarked that a statute is to be considered always speaking. The use of the present tense in Section 3 has to be considered

in that very spirit. The interpretation sought to be put on the present tense in the section would defeat the purpose of the Act. In Interpreting a

statute the policy is to carry out the object and not defeat the purpose of the Act. The use of the present tense in our opinion, refers to the time of

the commission of the act and not its cognizance being taken by a competent

tribunal. The act, when committed, should satisfy the definition of the word ""corruption"" no matter when it is sought to be adjudicated upon.

25. In our view, therefore, the Act and its amendment are valid legislations and do not contravene the provisions of any law much less the

Constitution of India as applied to the State. The interpretation sought to be put on these by Sri Sharma is unwarranted, There is no force in this

writ petition which is dismissed.

S. Murtaza Fazl Ali, J.

26. I agree.