
(1999) 05 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Letters Patent Appeal No. 50/1998

State of J & K

APPELLANT

Vs

Ghulam Jeelani Bhat

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Constitution of India, 1950 — Article 311(2)(c)

Constitution of Jammu and Kashmir, 1956 — Section 126(2)(c)

Citation : (2000) 1 SCT 1114 : (1999) 2 SriLJ 435 : (1999) SriLJ 435

Hon'ble Judges : Bhawani Singh, C.J and Bashir-Ud-Din, J

Bench : Division Bench

Advocate : M.H.Attar , Altaf Haqani, Advocates appearing for the Parties

Judgement

Bhawani Singh, Chief Justice.

1. This Letters Patent Appeal is directed against the judgment of Single Judge dated January 29, 1997, whereby writ petition has been allowed

and order No. Home410 of 1991 dated August 21, 1991 has been quashed and the State directed to take back the petitioner in service as if the

order of dismissal impugned in the writ petition had never come into existence, with all consequential benefits, which accrue to the petitioner from

the date of issuance of impugned order.

2. Petitioner was dismissed by Government order NO. Home410 of 1991 dated August 21, 1991 by the Governor in exercise of power under

Clause (c) of the proviso to SubSection (2) of Section 126, Constitution of Jammu and Kashmir and SubClause (c) of the proviso to Clause (2) of

Article 311 of Constitution of India and in the interest of the security of the State holding of enquiry against the petitioner was not found expedient.

Precisely. Order runs as under:

Government of Jammu and Kashmir, Civil Sectt., Home Department.

Sub: Termination of services of Sh.Ghulam Jeelani Bhat

S/O Gh. Mohammad R/O Saidakadal, Srinagar

working as Fireman in J and K Fire Services.

Govt. order No. Home410 of 1991 Dated. 21.8.1991.

Whereas the Governor is satisfied that the conduct and activities of Fireman Shri Ghulam Jeelani Bhat S/O Gh.Mohammad working as Fireman J

and K Fire Services are detrimental and prejudicial to the security of the State and therefore, it is necessary that the said Ghulam Jeelani Bhat S/O

Gh.Mohammad R/O Saidakadal, working as Fireman should be dismissed from service in public interest and,

Whereas, the Governor is further satisfied that in terms of Clause (c) of the proviso of SubSection (2) of Section 126 of the Constitution of J and

K in the interest of the security of the State, it is not expedient to hold an inquiry against the said Gh.Jeelani Bhat, Fireman.

Now, therefore, the Governor in accordance with provisions of Section 126 of the Constitution of Jammu and Kashmir read with Article 311 of

Indian Constitution, hereby dismiss the said Ghulam Jeelani Bhat, Fireman, J and K Fire Services with immediate effect.

By order of the Governor of Jammu and Kashmir.

Sd/

Addl. Secretary to Govt. Home Deptt"".

3. Petitioner challenged the above order. Despite several opportunities, Appellant did not file counter affidavit, nor the record was made available

to the court, with the result that Single Judge proceeded to decide the case on merit. After taking into consideration the decision of this court in

SWP No. 352/1990, (Mohammad Shafi Mir Versus State of Jammu and Kashmir) decided on 4121996, Single Judge ruled that action taken

under Section 126 (2) (c) of the State Constitution, Judicial Review is permissible within parameters laid down by the Apex Court in AIR 1995

SC 1403 (A.K.Koul and another Vs. Union of India and another) based on earlier decision of the same Court in 1994 (3) SCC 1, (S.R.Bomma

Versus Union of India). Since the State did not raise any defence, dismissal of petitioner in terms of Section 126 (2) (c) of the State Constitution

was not sustainable. Reliance on a decision of this Court in 1995 SLJ 19 (Nazir Ahmad Dar Versus State and others) has been placed for arriving at this conclusion.

4. Appellant has challenged this decision through this Appeal. Shri M.H.Attar, Additional Advocate General, contended that judgment passed by

Single Judge is liable to be set aside on the ground that it is not based on facts of the case in the absence of which judgment referred to in the

judgments by Single Judge cannot be applied. In support of the contention, confidential file was produced before us for perusal. Shri Altaf Haqani,

counsel for petitioner, contended that when the Appellant failed to file objections despite several opportunities, the Single Judge had no other

alternative but to decide the case accepting the facts contained in the petition.

5. Case against the petitioner is originated by Additional Director General of Police (CID), J and K, Srinagar stating that the petitioner was

arrested in case FIR No 3/90 under Section 3/4 TADA, 3EAO, 3OSA, 2/3 EandIMCO, 120B RFC P/S CI(K) and subjected to interrogation,

and it was found that he was affiliated with Hizbul Mujahideen outlawed militant outfit. He was motivated by one Mohd. Sadiq son of Mohd.

Sadeeq, resident of Saida Kadal, Srinagar to join Hizbul Mujahideen for monetary consideration, to undergo arms training across the border and

later participate in Jihad. He was introduced to one Mohd. Ahsan Dar, Chief of the said party by Sadiq Dar, who directed him to undergo arms

training in POK, wherefrom he assured him to enroll as Mujahideen. On 27.2.1990 at about 930 hours, he was led by said Sadiq Dar to

Amirakadal by Scooter, then to Bemina in a Matador wherefrom they boarded a truck alongwith 47/48 more youths and went towards Kupwara

for onward journey across the border. On 1.3.1990, the petitioner alongwith other youths and guides crossed the border and reached the arms

training centre at Muzafarabad POK, where they underwent arms training in handling pistol in the training centre. Where he remained till 19.5.1990,

when he infiltrated to this side alongwith other group members. He was apprehended alongwith 13 more youths on this date and arms/ammunition

recovered from his possession. The activities of the petitioner were stated to be not only prejudicial to the security of the State, but also violative of

Conduct Rules being a Government employee. It is also reported that holding of

departmental inquiry in such a case was not reasonably

practicable and the petitioner be removed from Government service under Section 126 of Jammu and Kashmir Constitution read with Article 311

of the Constitution of India. This information is conveyed on 21/11/1991 to the Additional Chief Secretary (Home), Government of Jammu and

Kashmir, Srinagar. It is approved by Additional Chief Secretary (Home), State Government, on 10/3/1991 and reported to the Governor of Jammu

and Kashmir, who passed the order of dismissal of petitioner from service with immediate effect on 25/5/1991, conveyed by Government Order

No. Home 410 of 1991 dated: 21/8/1991.

6. In *Union of India and another Versus Balbir Singh and another* (AIR 1998 SC 2043), it is said that (page 2046, para 8 and 9):

8. If an order passed under Article 311(2) Proviso (c) is assailed before a Court of law on the ground that the satisfaction of the President or the

Governor is not based on circumstances which have a bearing on the security of the State, the Court can examine the circumstances on which the

satisfaction of the President or the Governor is based; and if it finds that the said circumstances have no bearing whatsoever on the security of the

State, the Court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by

wholly extraneous or irrelevant considerations".

9. In the present case, there is no material to infer any mala fides. What is required to be seen is whether the* order is based on material which is

wholly extraneous or irrelevant, having no bearing whatsoever on the security of the State. The Tribunal had called upon the appellants to produce

the entire confidential material on which the order is based. The Tribunal has held that at least two of the files placed before it are highly

confidential. They all relate to the activities of the respondent which have a bearing on the security of the State. This is not a case where there is

absolutely no material relating to the activities of the respondent prejudicial to the security of the State. The entire material gathered by the

Intelligence Bureau was placed before a very high level Committee of Advisors under the procedure prescribed by the Government

Memorandum. This was precisely for the purpose of ensuring that when a Government servant is dismissed without enquiry, there should be

cogent material to indicate that it is necessary to do so in the interest of the security of the State. The material was examined by the Advisory

Committee. Thereafter, it advised the dismissal of the respondent under proviso (c) to Article 311 (2). Therefore, the President has issued an order

under proviso (c) to Article 311(2)"".

Thereafter, the Court said in para 10 that:

10. In our view, this was not a case where there was not relevant material. The Tribunal could not have substituted its own judgment for the

satisfaction of the President of India. The Tribunal is under a misapprehension when it holds that if the respondent could be criminally prosecuted a

Departmental Enquiry could have been held on the basis of this same material. The respondent placed reliance on the observations to this effect

made by the Andhra Pradesh High Court in B. Bhaskara Reddy Vs. Govt. of Andhra Pradesh, (1981) 1 Sery LR 249:(1981 Lab 1C 18). The

Tribunal has not noted that the material which was placed by the Intelligence Bureau before the Advisory Committee and the President did not

relate merely to the assassination of the Prime Minister. It related to various other activities of the respondent as well, which the authorities

considered as prejudicial to the security of the State. The fact that the respondent was subsequently acquitted by this Court in the criminal trial will

not make any difference to the order which was passed by the President on the totality of material which was before the authorities long prior to

the conclusion of the criminal trial"".

7. In S.R.Bomma's case, Apex Court held that the order of the President can be examined to ascertain whether it is vitiated either by mala fides or

is based on wholly extraneous and /or irrelevant grounds. In A.K.Kaul Versus Union of India, (AIR 1995 SC 1403), the Court examined the

extent of Judicial Review permissible in respect of an order of dismissal passed under second proviso Clause (c) of Article 311 (2) of the

Constitution and held that the satisfaction of the 'President can be examined within the limits laid down in S.R.Bomma's case. However, the Court

cannot sit in Appeal over the order, or substitute its own satisfaction for the satisfaction of the President. So long as there is material before the

President which is relevant for arriving at his satisfaction as to action being taken under Clause (c) to the second proviso to Article 311(2), the

Court would be bound by the order so passed. The Court pointed out that the order would be open to challenge on the ground of mala fides or

being based wholly on extraneous and/or irrelevant grounds. Even if some of the material on which the action is taken is found irrelevant, the Court

would still not interfere so long as there is relevant material sustaining the action and the truth or correctness of the material cannot be questioned

by the Court, nor will it go to the adequacy of the material, nor the court would substitute its own opinion for that of the President and while

examining the ground of mala fides, situation whether action is found to be clear case of abuse of power or fraud on power the court will not lightly

presume abuse or misuse of power giving allowance for the fact that the President and the council of Ministers are the best Judge of the situation

and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter. These are some of the

parameters to be taken into consideration by the Court while examining the matter when Judicial Review of any action taken under this provision is

sought. However, for application of these principles, Court has to examine the entire confidential material on which the order is based.

8. In the present case, there is no material to inter any mala fides. The question is whether the order is based on material, which is wholly

extraneous or irrelevant having no bearing whatsoever on the security of the State. We have extracted the material in the preceding part of this

Judgment. It mentions the activities of the petitioner. They are serious enough so far as security of the State is concerned. The material in

possession of Appellant is neither extraneous nor irrelevant. Rather, it can be said that it is sufficient, serious with a bearing on the security of the

State. It demonstrates that activates of petitioner are such which are prejudicial to the security of the State. With this background, the Governor,

State of Jammu and Kashmir, has rightly found that in the interest of security of the State, it is not expedient to hold an inquiry against the petitioner.

Order passed by the Governor on 2551991 is in two parts. In the first part, satisfaction is recorded with respect to conduct and activities of

petitioner being detrimental and prejudicial to the security of the State necessitating his dismissal from service. In the second part, satisfaction is

recorded with respect to nonexpediency to hold the inquiry against the petitioner in the interest of security of the State meeting the requirement for

exercise of power in the background of relevant material against the petitioner. Therefore, the judgments of this Court brought to our notice by

learned counsel for petitioner are not applicable as they have been decided on the facts of those cases.

9. Therefore, there is merit in this Appeal and the same is allowed. Order of Single Judge dated January 29, 1997 is set aside and Government order No. Home410 of 1991 dated 2181991 is upheld.