

(2001) 10 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 385 of 1997

State of J & K

APPELLANT

Vs

Mohd.Afzal Lone

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Constitution of Jammu and Kashmir, 1956 — Section 126

Citation : (2001) KashLJ 664 : (2001) SriLJ 416

Hon'ble Judges : H.K.Sema, C.J and B.L.Bhat, J

Bench : Division Bench

Advocate : M.H.Attar, M.Abdul Qayoom, Advocates appearing for the Parties

Judgement

1. This appeal is directed against a judgement and order dated July 24, 1997 passed by the learned Single Judge in SWP No. 94 of 1993,

allowing the writ petition filed by the petitioner. This appeal has been preferred by the State.

2. We have heard Mr. M.H. Attar, Learned Addl. Advocate General, as well as Mr. M.A. Qayoom, learned counsel for the

respondentwritpetitioner.

3. Facts leading to filing of the present appeal may be summarily recited.

4. Respondentwrit petitioner was working as a Junior Assistant in Law Department and was attached with Director Litigation, Kashmir. He was

arrested on 26th of March, 1992 in connection with FIR No. 50 of 1992 registered with Police Station Bakshi Nagar, Jammu, under Sections 3/4

TADA and 3/5 ESA. In course of investigation it was revealed that respondentwrit petitioner was locally trained militant of ""Hizbul Mujahidin

Outfit"" and designated as 'Nazir Platoon'. It was also revealed that he was

involved in killing of a Patwari, a BSF Jawan, and a Taxi driver. It was also alleged that he had collected Rs. 38,000/ from innocent people, which was utilized for meeting the requirements of the outfit and purchase of arms and ammunitions. This secret information was dispatched by the Additional Director General of Police, C.I.D. J and K, Srinagar, vide his letter dated 04.09.1992 to Additional Chief Secretary Home, J and K Government. This aforesaid information was processed at various levels and after obtaining approval of the Governor, the services of the respondent/writ petitioner were terminated by order dated 24.11.1992, which was assailed in the writ petition. The order dated 24.11.1992 reads:

government of Jammu and Kashmir General Administration Department.

Sub : Termination of services of Shri. Mohd. Afzal Lone S/o Abdul Rehman Lone R/o Village Hanjan (Kulgam) District Anantnag working as Junior Assistant in Law Department.

Government order No.: 1101GAD of 1992 Dated: 24.11.1992

Whereas the Governor is satisfied that the conduct and activities of Shri Mohd. Afzal Lone S/o Abdul Rehman Lone R/o Hanjan (Kulgam)

working as Junior Asstt. in the Law Department (Directorate of Litigation, Kashmir) are detrimental and prejudicial to the security of the State and

therefore, it is necessary that the said Shri Mohd. Afzal Lone should be dismissed from service and

Whereas the Governor is further satisfied in terms of clause (c) of the proviso of subsection (2) of Section 126 of the Constitution of Jammu and

Kashmir and Clause (c) of the proviso of the SubSection (2) of Article 311 of the Constitution of India that in the interest of security of the State it

is not expedient to hold an enquiry against the said Shri Mohd. Afzal Lone.

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

Constitution of India hereby dismiss the said Shri Mohd. Afzal Lone from Service with immediate effect: (emphasis supplied) By order of the

Governor.

Sd/ (S.D. Singh) Commr/Secretary to Government General Administration Department.

The learned Single Judge, after hearing counsel of both sides quashed the

impugned order dated 24.11.1992. As would appear from the judgment and order, the Government failed to produce the relevant record at the time of hearing of writ petition resulting in allowing the writ petition. The

operative portion of the judgement of the learned Single Judge is reproduced :

C1 .(C) Permits dispensing with such inquiry where the Governor feels satisfied that it is inexpedient to hold such inquiry in the interests of the

security of the State. But the Governor's satisfaction is to proceed on some material or basis. Where his action is questioned on the lack of material

or its irrelevance or frivolousness, the Government is obliged to produce the record to satisfy the court that the requisite satisfaction was not drawn

in air and if Government defaults in doing so, it would only render the action vulnerable to quashment. (See AIR 1985 SC 1416, AIR 1995 SC

1403, AIR 1991 SC 385,1995 SLJ 19 and 1993 SLJ 171).

6. Clause (c) of SubSection (2) of Section 126 of the Constitution of Jammu and Kashmir is in Para materia with clause (c) of SubSection (2) of

Article 311 of the Constitution of India. It reads:

(C) Where the Governor is satisfied that the interest of the security of the State, it is not expedient to hold such inquiry.

7. Under Clause (c) of SubSection (2) of Section 126, the Governor is empowered to dismiss a Government servant, if he is satisfied, in the

interest of security, that it is not expedient to hold such inquiry. Under the said clause, the Governor need not to give any reasons but his

satisfaction must be based on the material collected and placed before him.

8. in A.K. Koul and another vs. Union of India and another, reported as (1995) 4 SCC, 73, the Apex Court while examining the scope of judicial

review in the order of dismissal passed under Article 311 (2) (c) has held that the judicial review is permissible within the limits laid down in S.R.

Bomma's case.

9. Before us, the learned Additional Advocate General has produced the relevant records including the secret information on the basis of which the

Governor based his satisfaction that it is not expedient to hold an inquiry. Before we deal with the record, we may at this stage refer to the few

decisions of the Supreme Court dealing with the similar question of law.

10. In. S.R. Bommai vs. Union of India (1994) 3SCC, 1 the Apex Court pointed

out that order passed under Article 311(2) (c) by the President

or the Governor, as the case may be, can be examined to the extent to ascertain whether such order is vitiated either by malafied or is based on

wholly extraneous and/or irrelevant grounds. It was pointed out by the Apex Court that the Court cannot, however, sit in appeal over the order or

substitute its own satisfaction for the satisfaction of the President. It was further pointed out that so long there is some material before the President

or the Governor, which is relevant for arriving at his satisfaction, the Court, would be bound by the order so passed. The Apex Court enumerated

the scope of judicial review of the satisfaction of the President or the Governor, as the case may be, for passing an order under Article 311 (2) (c)

of the Constitution as under:

1. That the order would be open to challenge on the ground of malafides or being based wholly on extraneous and/or irrelevant grounds.

2. Even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some

relevant material sustaining the action. 3. The truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy

of the material and it will also not substitute its opinion for that of the President/ the Governor.

11. The view taken in S.R. Bommai's case (supra) was reiterated in Union of India and another vs. Balbir Singh and another, reported in AIR

1998 SC 2043.

12. Keeping in view the law laid down in the background, we will not proceed to examine the materials placed before the Governor, from which

he derives satisfaction that in the interest of security^ of the State, it is not expedient to hold the inquiry.

13. As already said, the Additional Director General of Police, CID, J and K, has submitted a secret report that the respondentwrit petitioner

while working as Junior Assistant in the Law Department, attached with Director Litigation, Kashmir, enrolled himself in Militant organization and

locally trained in such organization and was designated as Nasir Platoon and involved in killing of a Patwari, a BSF Jawan, and a Taxi driver and

other subversive activities, was processed by the Home Department and recommended to the Governor to take action under Clause (c) of

SubSection (2) of Section 126 of the Constitution of Jammu and Kashmir. The fact that respondent writ petitioners was a locally trained militant

while in Government service, that too in the Law Department of the State, attached with Director Litigation, would definitely to have satisfied the

Governor that it is not expedient to hold the inquiry in the interest of the security of the State. We are clearly of the view that if the

documents/material collected, on the basis of which the Governor formed his satisfaction, had been placed before the learned Single Judge, he

ought to have taken a different view.

14. The Governor, after examining the recommendations of the State Home Department and perusal of the documents on the basis of which

recommendations had been made, passed the following order on 17.11.1992, which is available in File No. GD(Adm) 15/92Home(I):

I have carefully considered the relevant facts and grounds of action against Shri Mohammad Afzal Lone S/o Shri Abdul Rehman Lone R/o Hanjan

(Kulgam). Junior Assistant in the Law Department, placed before me.

I am satisfied that the conduct and activities of the said Shri Mohammad Afzal Lone are detrimental and prejudicial to the security of the State and

therefore, it is necessary that the said Shri Mohammad Afzal Lone should be dismissed from service. I am further satisfied that in terms of Clause

(c) of provision of Subsection 2 of the Section 126 of the Constitution of Jammu and Kashmir and SubClause (c) of the proviso of Clause (2) of

Article 311 of the Constitution of India that in the interest of the security of the State it is not expedient to hold an enquiry against the said Shri

Mohamad Afzal Lone.

Therefore, in accordance with the provisions of Section 126 of the Constitution of Jammu and Kashmir Article 311 of the Constitution of India, I

hereby dismiss the said Shri Mohammad Afzal Lone, Junior Assistant, Law Department from service with immediate effect.

15. A cursory reading of the order would clearly show that there was materials on the basis of which the Governor formed his satisfaction that in

the interest of the security of the State it is not expedient to hold an enquiry. From the genesis of the order it would also clearly demonstrate that

the satisfaction of the Governor was derived at after the application of the mind on the materials placed before him.

16. It is not well settled principle of law that judicial review is not a review against the decision. It is a review against the decision making process.

Once it is found by the Court that the decision making process is validly made, it is not the function of the Court to make a roving enquiry into

adequacy and inadequacy of the materials before the Governor, on the basis of which he derives his satisfaction, and substitute the conclusions

arrived at by the authority by its own conclusions. This would amount to encroachment of the field meant for the other organs. As already pointed

out, judicial review is limited to exercise of power based on malafide or wholly extraneous or irrelevant considerations. In the instant case, we are,

after the perusal of the record placed before us, clearly of the view that there was sufficient materials for the Governor to have arrived at the

subjective satisfaction that in the interest of the security of the State, it is inexpedient to hold an enquiry. The satisfaction of the Governor is

subjective satisfaction and such satisfaction is derived from the materials placed before him and once it is found that there was some materials from

which the Governor derived his satisfaction, the adequacy and inadequacy of such materials, on basis of which the Governor derives his

satisfaction, cannot be questioned by the Court in exercise of judicial review.

17. In view of what has been stated above, the judgement and order dated July 24, 1997, passed by the learned Single Judge in SWP No. 94 of

1993 is hereby quashed and set aside. This appeal is allowed. SWP No. 94 of 1993 filed by the respondentwrit petitioner shall stand dismissed.

No order as to costs.