

(1985) 02 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No. 178 of 1984

The President of India and Others

APPELLANT

Vs

M.K. Kunjappan

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Constitution of India, 1950 — Article 166(3), 226, 311, 311(2), 331[2]

Citation : (1985) KLJ 204

Hon'ble Judges : K.S. Paripoornan, J;K.K. Narendran, J

Bench : Division Bench

Advocate : M.B. Kurup and K. Narayana Kurup, for the Appellant; A.X. Varghese, K.S. Madhusoodanan and Thomas Chazhukkaran, for the Respondent

Judgement

Narendran, J.—The short point that arises for consideration in this Writ Appeal is whether a member of the Civil Service of the Union not holding a sensitive post can be dismissed from service under Clause [c] of the 2nd proviso to Article 311 [2] of the Constitution of India even if he preaches violence, belongs to a political party which was once banned and is involved in a murder case pending trial. Incidentally the ambit of the jurisdiction of this Court to interfere with an order passed under Article 311 [2] Clause [c] of the 2nd proviso also arises for consideration. The petitioner in the Original Petition [respondent in the appeal] was a Jamadar Watchman [Class IV employee] of the Telegraph Store Depot, Ernakulum. The petitioner was suspended from service under R. 18 [2] of the Central Civil Services [Classification, Control and Appeal] Rules, 1965 as he was arrested and kept under custody for more than 48 hours pending investigation of a criminal offence of murder. The petitioner and others were acquitted in the murder case by the Sessions Court. As the petitioner was not reinstated he made Ext. P2 representation to the authorities. Thereafter he filed O. P. No. 1818 of 1979 before this Court and this Court gave a direction to the authorities to pass orders on Ext. P2 within two weeks. In an appeal this Court set aside the acquittal of the accused by the Sessions Court in the murder case and remanded the case to Sessions Court, Ernakulum for fresh trial and the same is still

pending. Then on 9-2-1983 the petitioner was dismissed from service under Article 311 (2) Clause (c) of the 2nd proviso by Ext. P3 order. The petitioner challenged Ext. P3 in the Original Petition, contending the dismissal as unconstitutional. It was also contended that the impugned order was vitiated by malafides.

2. A counter-affidavit was filed on behalf of respondents 2 to 5. A preliminary objection that the satisfaction of the President of India under the relevant proviso to Article 331 [2] of the Constitution is not justiciable was taken in the Counter-affidavit. The main contention in the counter-affidavit is; If on the materials before the President there was sufficient material to indicate that in the interest of the security of the State it was expedient not to hold an enquiry nothing else is required and the President's satisfaction is final. The President is satisfied that the petitioner's continuance is not in the interest of the security of the State. The allegation of malafides is also denied in the counter-affidavit.

3. The learned Judge who heard the Original Petition rejected the contentions of the Union of India, set aside the impugned order of dismissal and allowed the Original Petition. The learned Judge held that the relevant files are insufficient to show that anyone had formed an honest opinion that it was inexpedient from the stand point of the security of the state to hold an enquiry into the petitioner's conduct, that the power under clause (c) of the 2nd proviso to Article 311 (2) was exercised not because it was inexpedient to hold an enquiry from the stand point of security of the State but because the Department wanted to get rid of the petitioner for some reason or other and that this was not a bonafide exercise of power.

4. The learned counsel for the appellants contended that the learned Judge went wrong in interfering with the impugned order dismissing the respondent as the same is one passed by the President of India after the President was satisfied that in the interest of the security of the State it was not expedient to hold an enquiry. According to the learned counsel the satisfaction of the President under Article 311 (2) Clause (c) of the 2nd proviso of the Constitution is not justiciable and this Court cannot, under Article 226 of the Constitution, sit in judgment over the matter. The learned counsel pointed out that at any rate, this Court cannot substitute its own conclusions in the matter. It was contended that the entire purpose of the proviso in question will be frustrated if the Court is given the power to enquire into the question whether it was expedient in the interests of the security of the State to hold an enquiry as insisted by Article 311(2). According to learned counsel the deliberations of the Committee as revealed from the relevant files made available to the Court will clearly indicate that there was sufficient material to invoke clause (c) of the 2nd proviso to Article 311 (2) in this case. It was also pointed out that there is no sufficient material in this case to find an allegation of malafides.

5. Learned counsel for the respondent contended that the enquiry can be dispensed with only if the President is satisfied that in the interest of the security

of the State it is not expedient to hold the enquiry. So, according to learned counsel, unless the alleged activities of the Government servant has something to do with the security of the State no dismissal without an enquiry is possible. It was also contended that the satisfaction of President is not his personal satisfaction and it is the satisfaction of the the Council of Ministers on whose advice the President generally exercises his powers. Regarding the allegation of malafides the learned counsel pointed out that the contention raised in ground No. 2 in the Original Petition is not controverted by producing the relevant files. According to learned counsel it is not enough if the files are simply made available to the court, it should be produced in court so that his client can peruse it.

6. In *Samsher Singh Vs. State of Punjab and Another*, the Supreme Court has held:

The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the president or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two articles 77 (3) and 166 (3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor.

In *M.A. Rasheed and Others Vs. The State of Kerala*, it has been held:

Where powers are conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them", or when "in their opinion" a certain state of affairs exists; or when powers enable public authorities to take "such action as they think fit" in relation to a subject matter, the Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

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Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of

reasonableness to which the administrative body is required to conform may range from the courts' own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis.

In *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) A. C. 997 the point that arose for consideration was whether the courts have the power to review an order by the Minister refusing to refer to a Committee of investigation a complaint under the Milk Marketing Scheme. On the Minister refusing to refer their complaint to a Committee the appellants moved the Divisional Court which made an order against the Minister but this order was set aside by the Court of appeal. It was then that the appellants appealed to the House of Lords contending that it is the duty of the Minister to refer every genuine and substantial complaint or alternatively that his discretion is not unfettered and that in this case he failed to exercise his discretion according to law because his refusal was caused or influenced by his having misdirected himself in law or by his having taken into account extraneous or irrelevant considerations. Reversing the decision of the Court of appeal the House of Lords held:

Parliament conferred a discretion on the Minister so that it could be used to promote the policy and objects of the Act which were to be determined by the construction of the Act; this was a matter of law for the court. Though there might be reasons which would justify the Minister in refusing to refer a complaint, his discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere.

In the above case Lord Upjohn in his judgment held:

There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the headings I have mentioned.

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He may have good reasons for refusing an investigation, he may have indeed, good policy reasons for refusing it, though that policy must not be based on political considerations which as Farwell L. J. said in *Rex v. Board of Education* are pre-eminently extraneous.

In *Mrinal Kanti Das. v. State of W.*, B. 1977 Lab. I. C.628 a Division Bench of the Calcutta High Court has observed:

The learned Advocate General submitted that he, however, had no objection to show the relevant files to us provided the same were not disclosed to the petitioners. We declined to peruse the files behind the back of the petitioners as it would be a flagrant disregard of judicial principles to decide these two rules oh

the basis of our personal knowledge about the contents of these files without affording any opportunity to the petitioners to meet the allegations that might be contained in the files.

In the above decision the Court held;

The Governor can dispense with the enquiry under Article 311(2) only when he is satisfied that it would not be expedient in the interest of the security of the State. There is nothing before us to indicate that there was any material before the Governor or at any event the materials before the Governor pertained to the security of the State.

In *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, it has been held:

This circumstance is undoubtedly disturbing but the courts cannot uphold the plea of malafides on the basis of mere probabilities.

In *B.C. Dass etc. Vs. State of Assam and Others*, dealing with the impact of the clauses of the proviso to Article 311 (2) of the Constitution it has been held:

Under the three sub-clauses of the proviso, this principal clause ceases to apply together in case the conditions laid down in these sub-clauses are satisfied. sub-clause (c), which is relevant in this case, lays down that, 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 the enquiry under the principal clause, that clause shall not apply. In order, therefore, to enable the Governor to pass an order of dismissal without holding an enquiry, without informing the Government servant of the charges against him and. without giving him an opportunity of being heard in respect of those charges, and without giving him & reasonable opportunity of making a representation again at the penalty proposed, the Governor must be satisfied that, in the interest of the security of the State, the holding of such an inquiry is not expedient.

Article 311 of the Constitution of India reads:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:-- (1) No person who is a member of a civil service of the Union or an all-India service or civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) 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.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any

opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;

(c) where the President of 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.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

It goes without saying that in the exercise of its jurisdiction under Article 226 of the Constitution the High Court cannot sit in appeal, over the order challenged. But at the same time it cannot be said that the High Court has no power to interfere. The High Court will interfere if the authority has acted illegally; i.e. going by the statutory provision which gives the authority the power to pass the order, the order impugned could not have been passed and the order is the result of a misdirection in law. If the existence of a matter of law or fact which is a condition precedent for the exercise of the power as per the statute which gives the authority the power, is not there, then the satisfaction of the authority will have no legs to stand and the High Court will have to interfere and undo the harm done by the order. In other words, the High Court has the power to ascertain whether the opinion formed by the authority has any factual basis and the conditions precedent to its formation were there. In this case the President of India has no doubt powers under clause (c) of the 2nd proviso to Article 311 (2) of the Constitution to dismiss a member of the civil service of the Union without an enquiry if and only if he is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry into the charges against him. So two conditions must exist, namely: (1) the security of the State is involved and (ii) in view of that it is inexpedient to conduct enquiry. In this case the respondent is only a Watcher in a Post and telegraph Depot. The allegations against him are that he preaches violence, is the member of a political group which was once banned and that he is an accused in a murder case pending trial. In a case where the allegations against civil service personnel question have nothing to do with the security of the State and he is not one holding a sensitive post there is no justification whatsoever in invoking clause (c) of the 2nd proviso to Article 311(2) of the Constitution of India. The conditions precedent for the exercise of the power under clause (c) of the proviso are absent here and hence there is no justification for invoking the powers under the clause. If for example, the respondent was involved in spying the position would have been different. As

long as the activities of the respondent has nothing to do with the security of the State, if action is to be taken against him and if his services are to be dispensed with that can only be after an enquiry as insisted by Article 311(2) and not in exercise of the powers under Article 311(2) clause (c) of the proviso. The right conferred by Article 311 of the Constitution on the civil service is a valuable right It cannot be given the go-by like this. The clauses (b) and (c) of the 2nd proviso to sub-article (2) can be invoked only if the situation really warrants and enquiry cannot be held, because the rule is that a member of the civil service can be dismissed only after a full fledged enquiry.

In the above view we take there is no reason whatsoever to interfere with the judgment of the learned single Judge setting aside the dismissal of the respondent. If the respondent is still kept out of service it is only proper that he is reinstated and that too with back wages without further delay. The Writ Appeal is dismissed with the above directions. No costs.

Immediately after the judgment was pronounced, the learned Senior Central Government Counsel requested for a certificate to appeal to the Supreme Court of India. We are not satisfied that the case involves any substantial question of law of general importance which, in our opinion, needs to be settled by a decision of the Supreme Court. The request for certificate is refused.