
(1956) 03 MAD CK 0055
In the Madras High Court

The State of Madras and Another

APPELLANT

Vs

C.S. Rajagopala Ayyar

RESPONDENT

Date of Decision : 14-03-1956

Acts Referred:

Madras Civil Services Disciplinary Proceedings Tribunal Rules, 1948 — Rule 4
Prevention of Bribery and Corruption Act, 1947 — Section 5(1)

Citation : (1956) 2 MLJ 176

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—This is an appeal from the judgment of Rajagopala Ayyangar J., in W.P. No. 844 of 1952. That petition was filed by the respondent for the issue of a writ of certiorari to quash an order of the Government, dated 7th June, 1951, dismissing him from service. The petitioner joined the service of the Government in the Revenue Department about thirty years ago and he was a permanent member of that department in the Coimbatore District. He was Stationary Sub-Magistrate, Pollachi, from 14th March to 23rd June, 1949. As such he was engaged in the trial of a case of wrongful confinement and extortion. Two charges were framed against him and an inquiry was directed to be made by the Tribunal for disciplinary proceedings. The two charges were (1) that he demanded a sum of Rs. 10,000 as a bribe for acquitting the accused in the case before him, and (2) that he demanded and received illegal gratification of two sums of Rs. 500, each from one Gopalaswami" Goundar promising to convict the accused concerned in the case filed by him against one Chinnaswami Goundar and others. The Tribunal, after an elaborate enquiry, found in regard to charge (1) that the charge was proved to the limited extent, namely, that the accused officer demanded a bribe of Rs. 10,000. The Tribunal however found that no money was actually paid. The Tribunal held that the second charge had not been proved at all. The Tribunal recommended that the officer may be dismissed from service. On receipt of the report, the Government, after consultation with the Board of Revenue, called upon, the respondent to show cause why he should

not be dismissed from service. A copy of the Tribunals report was also sent to him. The respondent then sent in his explanation, but the Government by their order dated 7th June, 1951, accepted the findings and the recommendation of the Tribunal and directed that he be dismissed from service with effect from 23rd June, 1949, the date from which he had been kept under suspension. It is to quash this order that the writ petition was filed. Three contentions were raised on behalf of the respondent before Rajagopala Ayyangar, J., who heard and disposed of the petition; namely, (1) that the Disciplinary Tribunal had no jurisdiction to inquire into the complaint against the petitioner because the petitioner was an officer in the Judicial Department, (2) that the Government had no power to refer his case to the tribunal because they had previously decided that the case against the petitioner should be tried in a Court of law and not by the Tribunal for disciplinary proceedings, and (3) that the charge found to have been proved against him was not "corruption" within the meaning of Act II of 1947. The learned Judge upheld the first and third contentions, but rejected the second contention. In the result he held that the order of dismissal was invalid and quashed it. The State of Madras has filed the above appeal from the said order.

2. For a consideration of the first contention, it is sufficient to refer to Rule 4 of the Madras Civil Services Disciplinary Proceedings Tribunal Rules, 1948, made by the Government in exercise of the power vested in them by Section 241 of the Government of India Act, 1935. That rule runs as follows:

The Government may subject to the provisions of Rule 5 refer to the tribunal:

(a) cases relating to Government servants on a monthly salary of Rs. 150 and above in respect of matters involving corruption on the part of such Government servants in the discharge of their official duties;

(b) all appeals to the Government from Government servants against disciplinary orders passed by heads of departments and other competent authorities on charges of corruption and

(c) any other case or class of cases which the Government consider should be dealt with by the Tribunal provided that cases arising in the Judicial Department and against Government servants in the subordinate ranks of the police forces of the rank of Sub-Inspector and below shall not be referred to the Tribunal.

3. The short question for decision is whether the proviso to the rule applies to this case, that is, whether this is a case arising in the Judicial Department. The learned Judge was clearly of the opinion that the case fell within the said proviso and therefore it would not be a master which could have been sent up for inquiry to the Tribunal for disciplinary proceedings. The reason for this opinion of the learned Judge was that the charge against the officer was not in relation to anything done by him as an officer of the Revenue Department but in his character as a Magistrate and, therefore, an officer of the Judicial Department. We must confess that the matter did not appear to us to be so clear as it

appeared to the learned Judge. After some deliberation we have formed a contrary opinion. We do not think that the true test is functional. That is, it is not in every case where a particular officer is exercising his powers as a Magistrate that the proviso is attracted. There are many Tahsildars in the State on whom second class magisterial powers have been conferred. In discharging such powers they do not become officers of the Judicial Department and while discharging executive functions should be deemed to be officers of the Revenue Department. We have held in L.P. Appeal No. 114 of 1955 that a permanent Tahsildar appointed as Additional First Class Magistrate, in exercise of the powers conferred on the Government by Section 12 of the Criminal Procedure Code, is not appointed to a new Civil post but is only invested with certain powers specified in Schedule III of the Code of Criminal Procedure and that he continues to be a member of the Revenue Department appointed by the Collector. The learned Judge was impressed by the fact that the salaries of Sub-Magistrates, along with officers in the Civil Judicial Department, are listed in the budget estimates under Head 27: Administration of Justice, and by the heading of the form in Board's Standing Order 163, for investing magisterial powers on the members of the subordinate magistracy, namely "the Judicial Department.". Before the Scheme of Separation was introduced, several revenue officers were appointed Magistrates. In some cases they were in charge of revenue duties as well as magisterial duties but in some other cases they were performing only magisterial duties. This circumstance however did not make any difference as regards the appointing and controlling power which continued to be with the Collector subject to further control of the Board of Revenue. These revenue officers who were performing either wholly or partly magisterial functions, were not subject to the administrative control of the High Court. It is only when the Scheme of Separation was introduced that all Subordinate Magistrates who were constituted into a separate cadre for each district came completely under the administrative control of the High Court.

4. In the Madras Services Manual, Vol. III, in the section dealing with the Madras Revenue Subordinate Service the following definition of "Deputy Tahsildars" is given, namely,

Deputy Tahsildars shall mean and include Taluk Tahsildars, Assistant Tahsildars, Stationary Sub-Magistrates, Huzur Head Clerks, Forest Panchayat Deputy Tahsildars, Inspecting Deputy Tahsildars, Special Deputy Tahsildars on settlement duty and Deputy Tahsildars on other special duties.

According to this definition the respondent was undoubtedly a Deputy Tahsildar and therefore a member of the Revenue Subordinate Service. In our opinion the fact that a member of the Revenue Department is discharging judicial functions does not make him a member of the Judicial Department. All members of the Judicial Department are under the Administrative control of the High Court and admittedly persons in the position of the respondent did not come within the administrative control of the High Court.

5. Mr. Champakesa Ayyangar, learned Counsel for the respondent, relied on the definition of a "Judge" in the Penal Code. That definition is for a special purpose and has no bearing on the question whether a particular officer belongs to the Revenue Department or the Judicial Department. Our attention was drawn to an unreported judgment of the Andhra High Court in Writ Petition No. 462 of 1953. In that case the learned Judges expressed concurrence with the view of Rajagopala Ayyangar, J., in the judgment now under appeal so this does not carry the matter any further. We hold that the respondent was not a member of the Judicial Department at the time when charges were framed against him and the enquiry was directed to be made by the Disciplinary Proceedings Tribunal, and, therefore, his case does not fall within the proviso to Rule 4 of the Madras Civil Services" Disciplinary Proceedings Tribunal Rules, 1948.

6. The next ground on which the order of dismissal is impugned is based on the findings of the Tribunal which were accepted by the Government. As already mentioned, the Tribunal found that the charge of bribery, that is, charge No. 2, had not been proved, and even in respect of charge No. 1 the Tribunal's finding was that payment of money was not proved. "Corruption" is defined in the Madras Civil Services" Disciplinary Proceeding Tribunal Rules as having the same meaning as "criminal misconduct in the discharge of official duties" u/s 5(1) of the Prevention of Bribery and Corruption Act (Act II of 1947). Section 5(1) of that Act runs as follows:

A public servant is said to commit the offence of criminal misconduct in the discharge of his duty:

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any ether person any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

As the finding of the Tribunal related only to a single instance of attempt to obtain a bribe, it was contended that Clause (a) would not apply. Nor would Clause (d) apply. Of course Clauses (b) and (c) cannot possibly apply. The learned Judge held, and we agree with him, that on the findings of the Tribunal the respondent was not guilty of the offence of "criminal misconduct in the discharge of his duty" which is designated as "corruption" in the Disciplinary Proceedings Tribunal Rules. The question however is whether on this ground the enquiry by the Tribunal was without jurisdiction and whether consequently the order of dismissal was invalid. Now Rule 4 provides for cases which may be referred to the Tribunal by the Government. One category of cases relates to Government servants on a monthly salary of Rs. 150 and above, in respect of matters involving corruption on the part of such Government servants in the discharge of their official duties. It cannot be disputed that the second of the charges framed against the respondent would fall within Clause (d) of Section 5(i). The fact that on enquiry the Tribunal found that the charge had not been established would not take away the jurisdiction of the Tribunal to make the enquiry. Apart from this, there is Clause (c) of Rule 4 under which the Government have got the power to refer

any other case or class of cases which the Government consider should be dealt with by the Tribunal.

It surely cannot be contended that an officer of Government cannot be dismissed if even a single act of bribery has been established against him. An officer can be dismissed from service not only for corruption but also on other grounds and for conduct which makes him unfit to be in Government service. It follows that the reference by the Government to the Tribunal in this case was quite competent. In this case the Tribunal found, and the Government accepted the finding, that the respondent had demanded a bribe in a case which was pending before him. On that finding the Government was perfectly justified in passing an order of dismissal. The decision of the Orissa High Court in *Biswabhusan Naik Vs. The State*, , relied on by the respondent's counsel, does not bear on the question before us, as that case arose out of a criminal prosecution under the Prevention of Corruption Act.

7. In the result, we hold that the order of dismissal, dated 7th June, 1951, cannot be impugned on any of the grounds put forward by the respondent. The appeal is allowed and the Writ Petition No 844 of 1952 is dismissed. There will be no order as to costs here and before Rajagopala Ayyangar, J.