
(1956) 11 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 169 of 1956

V.C. Chacko

APPELLANT

Vs

State of Travancore Cochin

RESPONDENT

Date of Decision : 09-11-1956

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)
Government Servants Conduct Rules, 1950 — Rule 63

Citation : AIR 1957 Ker 7 : (1957) 1 KLJ 6

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.C.N. Menon, for the Appellant; V. Rama Shenoi, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner is an acting clerk in the Taluk Office, Deviculam. In May 1956 he was working in the Taluk Office at Kottayam and for certain activities of his on 28-5-1955 while stationed at Kottayam the following charge-sheet (Ex.A) was delivered to him on 14-7-1955:

"It has been brought to the notice of Government that Sri V. C. Chacko, Clerk Taluk Office, Deviculam has violated many of the provisions of the Government Servants' Conduct Rules and on a preliminary enquiry, I am satisfied that there are grounds for proceeding against him. The following charges are therefore framed against him.

(1) He is taking active part in the activities of the peace-council sponsored by the Communist Party.

(2) He has participated in the deliberations held on 28-5-55 at Best Hotel, Kottayam, under the presidency of Professor Joseph Mundassery and took part in the discussions on the actions of Government.

(3) He has put question for elucidation in the said meeting regarding the policy

pursued by the Government.

He has thereby acted in contravention of Rules 63, 64, 65 and 70 of the Government Servants' Conduct Rules. He is hereby directed to put in a written statement of his defence if any on the various charges within a week of the receipt of this memo failing which it will be presumed that he has no defence. He will also state whether he desires an oral enquiry or only to be heard in person", and the following order (Ex. B) passed on 4-4-1956:

"Sri V. C. Chacko, Clerk, Taluk Office, Deviculam is seen to have violated the provisions of Rules 63, 64, and 65a of the Government Servants' Conduct Rules. Sri Chacko will therefore be transferred from the place. He will also be fined Rs. 10/- (rupees ten only) with a severe warning for the irregularities noticed against him".

2. The main contention of the petitioner is that Rules 63, 64 and 65(a) of the Government Servants' Conduct Rules, 1950, are ultra vires of the first three of the seven fundamental rights guaranteed by Article 19 of the Constitution viz., the right to freedom of speech and expression, the right to assemble peaceably and without arms & the right to form associations or unions. Rule 70 though mentioned in the charge-sheet (Ex. A) is not relied on in the order of the 4th April 1950 (Ex. B) and so does not arise for consideration. Rules 63, 64 and 65 (a) read as follows:--

"63. No Government servant shall, by any utterance writing or other-wise discuss or criticise in public or at any meeting or association or body, any policy pursued or action taken by Government nor shall he in any manner participate in such discussion or criticism:

Provided that nothing contained in this rule shall be deemed to prohibit:--

(i) any Government servant from participating in discussion at any private meeting solely of Government servants or of any recognised association of Government servants on matters which affect the personal interests of such servants individually or generally; or

(ii) any Government servant from defending and explaining in public or private meetings any policy or action of Government for the purpose of removing misapprehensions and correcting misstatements or for the purpose of effectively carrying out such policy.

Explanation: Nothing contained in this rule shall be construed to limit or abridge the power of Government requiring any Government servant to punish and explain any policy or action of Government in such manner as may appear to them to be expedient or necessary.

64. A Government servant may not, except in the discharge of his official duties, preside over or take part in the organisation of or occupy a prominent position at or address any non-official meeting or conference, at which it is likely that

speeches will be made or resolutions will be proposed or passed criticising the action of Government or requesting Government to take certain action other than to make grants admissible under Government rules or orders in support of education or similar institutions.

Regularly convened meetings for the transaction of the legitimate business of Municipal Councils and similar bodies established by law or created by Government, and of associations of Government servants recognised by Government, and of committees or branches of such bodies or associations are not non-official meetings for the purpose of this rule.

"65. No Government servant shall, in any document published by him or in any communication made by him to the press or in any public utterance delivered by him, make any statement of fact or opinion which is capable of embarrassing.

(a) the relations between the Government and the people or any section thereof".

3. Learned counsel for the petitioner drew my attention to *Krishna Chandra v. Chief Suptd. Central Telegraph office, Calcutta*, (S) AIR 1955 Cal 76 (A), where Sinha, J. dealt with Rule 20(1) of the Government Servants' Conduct Rules, 1926, framed under the powers conferred by Sub-section (2) of Section 96 of the Government of India Act, 1919:

"Criticism of Government and Publication of information or opinion upon matters relating to foreign countries-

(1) No Government servant shall in any document published under his own name Or in any public utterance delivered by him, make any statement of fact or opinion which is capable of embarrassing

(a) the relation between Government and the people of India or any section thereof or (b) the relation between His Majesty's Government or the Governor-General in Council and any foreign country or the Ruler of any State in India".

The learned Judge held that the word "embarrass" has a wide discretionary meaning, that it is

"entirely vague and uncertain to say that a Government servant cannot say anything or write anything which is "capable of embarrassing" the relation of the Government and its people or of the Government and a foreign country or the Ruler of a State",

that Rule 20 (1) constitutes an unreasonable restriction on the fundamental rights granted under Article 19(1)(a) of the Constitution and as such is ""ultra vires" and void under Article 13(1) of the Constitution". On appeal from the said judgment Chief Superintendent, Central Telegraph Office, Cal. Vs. Krishna Chandra Chatterjee, , a Division Bench of the Calcutta High Court consisting of Chakravarthi C. J. and Lahiri, J. reversed the decision and remanded the case to the learned trial Judge on the ground that Article 19(1)(a) of the Constitution could not possibly have any application to the facts of the case before them.

They said:

"The alleged transgression took place on the 1st of August, 1949. It is sought to be punished by Rule 20 (1) of the Government Servants' Conduct Rules, read with Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. The punishment and indeed the whole proceedings are sought to be averted on the ground that the respondent could not be proceeded against under Rule 20 (1) at all, inasmuch as that Rule offended against Article 19(1)(a) of the Constitution. In order that Rule 20 (1) might offend against Article 19(1)(a) in respect of an act done on the 1st August 1949, it is to my mind, essential that Article 19(1)(a) should have been in force on that date. It was certainly not in force on that date and Rule 20 (1) as applied to the Facts of this case, is thus not required to conform to Article 19(1)(a) or to satisfy its requirements". and

"While we say nothing as to the correctness or otherwise of the construction put by Sinha, J. on Rule 20 (1), we must hold that the question of Rule 20 (1) transgressing any fundamental right was not relevant and the petitioner was not entitled to say that even in its application to an act done by him on the 1st of August, 1949, the rule being repugnant to the Constitution was void".

The word "embarrassing" occurs only in Rule 65 and as I have come to the conclusion on the papers before me that Rule 63 is quite sufficient to sustain the punishment awarded I do not propose to consider the validity or otherwise of either Rule 65 or of Rule 64.

4. Rule 63 is neither vague nor indefinite, but clear and specific and must be considered as forming part of the contract of service under which the petitioner continued to work since the promulgation of the Government Servants' Conduct Rules, 1950, on the 22nd February 1950. The said rules were not issued under any statutory or constitutional provision and as I read them they are the terms on which the petitioner continued in the employment of the State subsequent to their promulgation. The petitioner is bound to obey them as they are the basis of his employment until such time as he chooses to leave the State service or the rules are modified by the State.

5. I am unable to see in Rule 63, violation of the provisions of Article 19(1) (a), (b) or (c) of the Constitution and I must hold that a reasonable restriction on the freedom of an employee like the one embodied in Rule 63 and which forms part of his contract of service -- a restriction which is in his power to avoid by severing the relationship of master and servant -- is not hit by Article 19 of the Constitution.

6. In *Adler v. Board of Education of New York* (1952) 342 US 483 (C), it was argued that the Foinberg Law and the rules promulgated thereunder constituted an abridgement of the freedom of speech and assembly of persons employed or seeking employment in the public schools of the State of New York, Mr. Justice Minton delivering the judgment of the Court said:

"It is clear that such persons have the right under our law to assemble speak, think and believe as they will. It is equally clear that they have no right to work for the State in the school system on their own terms. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech or assembly? We think not."

7. In the view I have taken regarding the validity of Rule 63 and that the punishment awarded to the petitioner is justified under that rule, this petition must fail and should be dismissed.

8. The petition is hereby dismissed with costs, advocate's fee Rs. 100/-.