S. A. Venkataraman

Vs

The Union of India and Another

Petition No. 72 of 1954

(B.K. Mukherjea, S.R. Dass, N.H. Bhagwati, B. Jagannath Das, T.L. Venkatarama Ayyar JJ)

30.03.1954

JUDGMENT

MUKHERJEA J. -

This is a petition under article 32 of the Constitution, praying for a writ, in the nature of certiorari, for calling up the records of certain criminal proceedings stated against the petitioner by the Special Judge, Sessions Court, Delhi, and for quashing the same on the ground that these proceedings are without jurisdiction, having been commenced in violation of the fundamental right of the petitioner guaranteed under article 20(2) of the Constitution.

The petitioner was a member of the Indian Civil Service and till lately was employed as Secretary to the Ministry of Commerce and Industries in the Government of India. Certain imputations of misbehaviour by the petitioner, while holding offices of various descriptions under the Government of India, came to the notice of the Central Government of and the latter being satisfied that there were prima facie good grounds for making an enquiry directed a formal and public enquiry to be made as to the truth or falsity of the allegations made against the petitioner, in accordance with the provisions of the Public Servants (Inquiries) Act of 1850. The substance of the imputations was drawn up in the form of specific charges and Sir Arthur Trevor Harries, an ex-Chief Justice of the Calcutta High Court, was appointed Commissioner under section 3 of the said Act to conduct the enquiry and report to the Government on the result of the same, his opinion on the several articles of charge formulated against the petitioner. The order of the Central Government directing the enquiry is dated the 21st February, 1953. The charges were drawn up under six heads with various sub-heads under each one of them. The first charge alleged that the petitioner was guilty of misbehaviour inasmuch he showed undue favour to Messrs. Millars Timber and Trading Company Limited in the matter of issue of import and export licences, by abusing his position as a public servant in the discharge of his duties, that is, by accepting illegal gratification or valuable things for import and export licences recommended or to be recommended by him. The second charge was to the effect that the petitioner accepted or obtained valuable things for himself and other members of his family, without paying for them, on different dates from Messrs. Millars Timber and Trading Company Limited for recommending their applications for import licences and export permits. The fourth and fifth charges were similar in nature to charges 1 and 2 except that they related to the petitioner's dealings with another firm known as Sunder Das Saw Mills.

The enquiry proceeded in the manner laid down in the Public Servants (Inquiries) Act. The charges were read out to the petitioner and his plea of "not guilty" was formally recorded. Evidence was adduced both by the prosecutor and the defence and the witnesses on both sides were examined on oath and cross-examined and re-examined in the usual manner. The Commissioner found, on a

consideration of the evidence, that four of the charges under various sub-heads were proved against the petitioner and submitted a report to that effect to the Government on the 4th of May, 1953. By a letter dated the 15th of May, 1953, the Government informed the petitioner that, on careful consideration of the report, the President accepted the opinion of the commissioner and in view of the findings on the several charges arrived at by the letter, was provisionally of opinion that the petitioner should be dismissed. Opportunity was given to the petitioner by this letter in terms of article 311(2) of the Constitution to show cause against the action proposed to be taken in regard to him and it was stated that any representation, which he might desire to make, would be into consideration before the final order was passed. The petitioner, it seems, did make a representation which was considered by the Government and after consultation with the Union Public Service Commission the President finally decided to impose the penalty of dismissal upon the petitioner. The order of dismissal was passed on the 17th of September, 1953. On the 23rd February, 1954, the police submitted a charge-sheet against the petitioner before the Special Judge, Sessions Court, Delhi, charging him with offenses under sections 161/165 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act and upon that, summons were issued by the learned Judge directing the petitioner to appear before his court on the 11th of March, 1954. It is the legality of this proceeding that has been challenged before us in this writ petition. The petitioner's case, in substance, is that the proceedings that have been started against him are without jurisdiction inasmuch as they amount to fresh prosecution for offenses for which he has been prosecuted and punished already and this comes within the prohibition of article 20(2) of the Constitution. The sole point for our consideration is, whether in the events that have happened in this case, there has been a violation of the fundamental right of the petitioner under article 20(2) of the Constitution which would justify the issue of a writ for enforcement of the same ?

The scope and meaning of the guarantee implied in article 20(2) of the Constitution has been indicated with sufficient fullness in the pronouncement of this court in Maqbool Hussain v. The State of Bombay ([1953] S.C.R. 703.). The roots of the principle, which this clause enacts, are to be found in the well established rule of English law which finds expression in the maxim "Nemo debt his vexari" - a man not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of "autrefois acquit" or "autrefois convict". The corresponding provision in the Federal Constitution of the U.S.A. is contained in the Fifth Amendment, which provides inter alia : "Nor shall any person be subjected for the same offence to be put twice in jeopardy of life and limb". This principle has been recognised and adopted by the Indian Legislature and is embodied in the provisions of section 26 of the General Clauses Act and section 403 of the Criminal Procedure Code.

Although these were the materials which former the background of the guarantee of the fundamental right given in article 20(2) of the Constitution, the ambit and contents of the guarantee, as this court pointed out in the case referred to above, are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. Article 20(2) of our Constitution, it is to be noted, does not contain the principle of "autrefois acquit" at all. It seems that our Constitution makers did not think it necessary to raise one part of the common law rule to the level of a fundamental right and thus make it immune from legislative interference. This has been left to be regulated by the general law of the land. In order to enable a citizen to invoke the protection of clause (2) of article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. The position is also different under the American

Constitution. There the prohibition is not against a second punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arraignment and plea and a lawful paneling of the jury. It is not necessary to have a verdict at all (Vide Wills on Constitutional Law, p. 528.).

It has been held by this court in Maqbool Hussain's case ([1953] S.C.R. 703.) that the language of article 20 and the words actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. In that case the proceedings were taken under the Sea Customs Act before a Customs authority who ordered confiscation of goods. It was held that such proceedings were not "prosecution", nor the order of confiscation a "punishment" within the meaning of article 20(2) inasmuch as the Customs authority was not a court or a judicial tribunal and merely exercised administrative powers vested in him for revenue purposes.

The facts of this case are no doubt different and the point that requires determination is, whether the petitioner can be said to have satisfied all the conditions that are necessary to enable him to claim the protection of article 20(2). The charges, upon which the petitioner is being prosecuted now, are charges under section 161 and 165 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act. We will assume for our present purpose that the allegations which these charges are based are substantially the same which formed the subject-matter of enquiry under the Public Servants (Inquiries) Act of 1850. The question narrows down to this : whether the petitioner had already been (1) prosecuted and (2) punished for these offences ?

Mr. Basu, appearing on behalf of the petitioner, contends that his client was, in fact, prosecuted for these identical offences before the Commissioner appointed under Act XXXVII of 1850. This, it is argued, was not a mere departmental enquiry of the type referred to in Maqbool Hussain's case ([1953] S.C.R. 703.). The Commissioner was a judicial tribunal in the proper sense of the expression. He had to adjudicate on the charges judicially, on evidence, recorded on oath, which he was authorised by law to administer. The prosecution was conducted by a prosecutor appointed under the Act, charges were read out to the accused person and his plea was taken; witnesses on both sides were examined on oath and they were cross-examined and re-examined. The Commissioner had all the powers of a court; he could summon witnesses, compel production of relevant documents and punish people for contempt. At the close of the enquiry, the Commissioner did record his finding against the petitioner on some of the charges. He had undoubtedly no power to impose any punishment and had only to forward his report to the Government. Under section 22 of the Act, however, the Government was entitled to pass such orders within its authority, as it considered proper and in exercise of this authority the President did impose upon the petitioner the penalty of dismissal. It is immaterial, it is argued, for the purpose of article 20(2) of the Constitution that the prosecution was before one authority and punishment was inflicted by another. The petitioner was both prosecuted and punished an he is sought to be prosecuted on the same charges over again. This constitutes, according to the learned counsel, a clear violation of the guarantee implied in article 20(2) of the Constitution. The questions raised are undoubtedly of some important and require to be carefully examined.

It is true that the Commissioner appointed to make an enquiry under Act XXXVII of 1850 is invested with some of the powers of a court, particularly in the matter of summoning witnesses and compelling the production of documents and the report, which he has to make, has to be made on

legal evidence adduced under section of oath and tested by cross-examination. But from these facts alone the conclusion does not necessarily follow that an enquiry made and concluded under Act XXXVII of 1850 amounts to prosecution and punishment for an offence as contemplated by article 20(2) of the Constitution. In order to arrive at a proper decision on this point, it is necessary to examine the entire background of the provisions relating to enquiry into the conduct of public servants and to ascertain the exact scope and purpose of the enquiry as is contemplated by Act XXXVII of 1850 and the ultimate result that flows from it.

It is a well established principle of English law that, except where it is otherwise provided by a statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown. Their services can be terminated without assigning any reason and even if any public servant considers that he has been unjustly dismissed, his remedy is not by way of a law suit but by an appeal of an official or political character (Vide Shenton v. Smith [1895] A.C. 229.). This principle of law was applied in India ever since the advent of British rule in this country and the servants in the employ of the East India Company also came within the purview of this rule. It is to be remembered that it was during the period of the East India Company that the Public Servants (Inquiries) Act was passed in 1850. The object of the Act, as stated in the preamble, was to regulate enquiry into the behaviour of public servants, not removal from service without the sanction of the Government. The enquiry was quite optional with the Government and did not affect in any way the powers of the Government to dismiss its servants at pleasure and this was expressly provided by section 25 of the Act, the wording of which is as follows :

> "Nothing in this Act shall be construed to affect the authority of the Government to suspending or removing any public servant for any cause without an enquiry under the Act."

After assumption of the Government of India by the Crown, this rule of English common law continued unaltered till 1919 when section 96B was introduced by the amended Government of India Act of that year. Sub-section (1) of section 96B of the Government of India Act, 1919, runs as follows :

> "Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed....."

Thus one restriction imposed by this section upon the unfettered right of the Government to dismiss its servants at its pleasure, was that no servant could be dismissed by any authority subordinate to that by which he was appointed. The section by its opening words also makes the exercise of the power subject to the rules made under the Act and it was in pursuance of the provision of section 96-B(2) that the Civil Service (Classification, Control and Appeal) Rules were framed which with the later amendments are in force even now. Part XII of these rules deal with Conduct and Discipline of Civil Servants and rule 49 of this part lays down that the different penalties provided by the different clauses of the rule may, for good and sufficient reasons, be imposed upon members of the services comprised in clauses (1) to (5) in rule 14. These penalties include, amongst others, censure, withholding of increment, dismissal, reduction in rank and removal. Rule 55, which finds a place in the same chapter, lays down the procedure to be followed before passing an order of dismissal, removal or reduction in rank against any member of the service. No such order shall be

passed unless the person concerned has been informed, in writing, of the grounds on which it is proposed to take action against him and has been afforded an adequate opportunity of defending himself. An enquiry has to be made regarding his conduct and this may be done either in accordance with the provisions of the Public Servants (Inquiries) Act of 1850 or in a less formal and less public manner as is provided for in the rule itself.

These rules have no statutory force and it was held by the Privy Council that when an officer was dismissed from service without complying with the provisions of these rules, he had no right of action against the Crown (Vide Venkata Rao v. The Secretary of State for India, 64 I.A. 55.). In other words, the rules, which were not incorporated in a statute, did not impose any legal restriction upon the right of the Crown to dismiss its servants at pleasure.

The position was altered to some extent in the Government of India Act, 1935, and in addition to the restriction imposed by section 96-B(1) of the Government of India Act, 1919, that a civil servant could not be dismissed by an authority subordinate to that by which he was appointed, a further statutory provision was made (Vide section 240(3) of the Government of India Act, 1935.), that a civil servant could not be dismissed or reduced in rank unless the person concerned was given a reasonable opportunity of showing cause against the action proposed to be taken against him. Article 311(2) of the present Constitution has further added the word "removal" after "dismissal" and before "reduction in rank" and thus in all three cases which are covered by rule 55 of the Civil Services Rules, a civil servant has now a constitutional right to claim a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

As the law stands at present, the only purpose, for which an enquiry under Act XXXVII of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else. It is against this background that we will have to examine the material provisions of the Public Servants (Inquiries) Act of 1850 and see whether from the nature and result of the enquiry which the Act contemplates it is at all possible to say that the proceedings taken or concluded under the Act amount to prosecution and punishment for a criminal offence.

It may be pointed out that the words "prosecution" and "punishment" have no fixed connotation and they are susceptible of both a wider and a narrower meaning; but in article 20(2) both these words have been used with reference to an "offence" and the word "offence" has to be taken in the sense in which it is used in the General Clauses Act as meaning "an act or omission made punishable by any law for the time being in force." It follows that the prosecution must be in reference to the law which creates the offence and the punishment must also be in accordance with what that law prescribes. The acts alleged to have been committed by the petitioner in the present case and on the basis of which the charges have been framed against him do come within the definition of "offences" described in sections 161 and 165 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act. The Public Servants (Inquiries) Act does not itself create any offence nor does it provide any punishment for it. Rule 49 of the Civil Services Rules mentioned above merely speaks of imposing certain penalties upon public servants for good and sufficient reasons. The rule does not mention any particular offence and obviously can create none. It is to enable the Government to come to the conclusion as to whether good and sufficient reasons exist, within the meaning of rule 49 of the Civil Services Rules, for imposing penalties of removal, dismissal or

reduction in rank upon a public servant that an enquiry may be directed under Act XXXVII of 1850. A Commissioner appointed under this Act has no duty to investigate any offence which is punishable under the Indian Penal Code or the Prevention of Corruption Act and he has absolutely no jurisdiction to do so. The subject-matter of investigation by him is the truth or otherwise of the imputation of misbehaviour made against a public servant and it is only as instances of misbehaviour that the several articles of charge are investigated, upon which disciplinary action might be taken by the Government it so chooses. The mere fact that the word "prosecution" has been used, would not make the proceeding before the Commissioner one for prosecution of an offence. As the Commissioner has to form his opinion upon legal evidence, he has been given the power to summon witnesses, administer oath to them and also to compel production of relevant documents. These may be some of the trappings of a judicial tribunal, but they cannot make the proceeding anything more than a mere fact finding enquiry. This is conclusively established by the provisions of sections 21 and 22 of the Act. At the close of the enquiry, the Commissioner has to submit a report to the Government regarding his finding on each one of the charges made. This is a mere expression of opinion and it lacks both finality and authoritativeness which are the essential tests of a judicial pronouncement. The opinion is not even binding on the Government. Under section 22 of the Act, the Government can, after receipt of the report, call upon the Commissioner to take further evidence or give further explanation of his opinion. When Special Commissioners are appointed, their report could be referred to the court or other authority to which the officer concerned is subordinate for further advice and after taking the opinion of the different authorities and persons, the Government has to decide finally what action it should take.

Then again neither section 21 nor section 22 of the Act says anything about punishment. There is no power in the Commissioner even to express any opinion about punishment and section 22 only contemplates such order as the Government can pass in its capacity as employer in respect to servants employed by it. As has been said already, an order of dismissal of a servant cannot be regarded as a punishment for offence punishable under particular sections of the Indian Penal Code or of the Prevention of Corruption Act. A somewhat analogous case would be that of a member of the Bar whose name is struck off the rolls on grounds of professional misconduct, in exercise of disciplinary jurisdiction by the proper authority. The professional misconduct might amount to a criminal offence, but if we are to accept the petitioner's contention as correct, the man cannot be prosecuted for it, even though the authority inflicting the penalty of removal was not a competent court to investigate any criminal charge nor was the punishment imposed in exercise of disciplinary jurisdiction a punishment for an offence.

In our opinion, therefore, in an enquiry under the Public Servants (Inquiries) Act of 1850, there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence. The learned Attorney General raised a point before us that the test of the guarantee under article 20(2) is whether the person has been tried and punished, not for the same act, but for the same offence and his contention is that the offences here are different, though they may arise out of the same acts. In the view that we have taken this question does not arise for consideration at all. It is also not necessary to express any opinion on the question raised by the learned counsel for the petitioner as to whether for the purpose of attracting the operation of article 20(2) the punishment must be imposed by the same authority before which the prosecution was conducted. The result is that, in our opinion, the petition fails and is dismissed.

Petition dismissed.

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