J. Pandurangarao

Vs

Andhra Pradesh Public Service Commission

Petition No. 355 of 1961 and 1 of 1962

(CJI B. P. Sinha, T. L. Venkatarama, N. Rajgopala Ayyangar, P. B. Gajendragadkar, K. N. Wanchoo JJ)

11.04.1962

JUDGMENT

GAJENDRAGADKAR, J. -

These two petitions have been filed by Ilindra Bhaskaracharyulu Gupta and J. Pandurangarao respectively under Article 32 of the Constitution and, in substance, they challenge the validity of one of the rules framed by the Governor of Andhra in exercise of the powers conferred on him by Article 234 and the proviso to Article 309 in respect of the Andhra Judicial Service. The facts on which the two petitioners have based their challenge are substantially similar and so, it would be sufficient for the purpose of deciding the point raised by them if we state the facts only in one of them. We will accordingly state the facts in petition No. 355 of 1961. Our conclusion on the merits of the point raised by this petition will govern the decision of the other petition No. 1 of 1962.

The petitioner J. Pandurangarao belongs to a family which has been settled in the district of Guntur in Andhra Pradesh for several generations past. The petitioner himself was born, brought up and educated in the said district. He passed his B.A. examination from the Andhra Christian College at Guntur 1950. Thereafter, he took his L.L.B. Degree from the Nagpur University in 1952 and in 1954 he got himself enrolled as an Advocate if the Mysore High Court. Having thus been enrolled as an Advocate of the Mysore High Court, he set up his practice in the Court in Tenali in Guntur district and has been practising there ever since. In January, 1961, the respondent No. 1, the Andhra Pradesh Public Service Commission, invited applications for selection for the posts of District Munsifs in the State of Andhra Pradesh. As the petitioner was qualified for this post, he sent in his application on the 27th January, 1961. Respondent No. 1, however rejected his application on the 25th September, 1961 on the ground that he did not fulfil the condition set out in paragraph 4-A(1) of the Commission's notification published on the 17th December, 1960, by which applications had been invited. The said paragraph reads as follows :-

> "That at the time when the petitioner applies :
>
> (1) he is practising as an Advocate of the High Court :
>
> (2) he has been actually practising in Courts of Civil or Criminal jurisdiction in India for a period not less than three years."

According to respondent No. 1, the petitioner satisfied the second condition but did not satisfy the first since he had not been practising as an Advocate of the Andhra High Court. In his present

petition, the petitioner alleges that respondent No. 1 has misconstrued the requirement prescribed by para. 4A(1) when it assumed that the expression "the High Court" in that condition refers to the Andhra High Court and not to all the High Courts in India. In the alternative' the petitioner's contention is that if the expression "the High Court" means the Andhra High Court, then the rule prescribing the said requirement is ultra vires inasmuch as it contravenes the petitioner's fundamental rights guaranteed by articles 14 and 16(1) of the Constitution. It is on these to two alternative grounds that the petitioner challenges the decision of respondent No. I and it only if the first ground fails that the petitioner questions the validity of the impugned rule.

To this petition, the petitioner has joined respondent No. 1 and respondent No. 2, the Government of Andhra Pradesh, represented by its Chief Secretary. On behalf of the respondents, it is urged that the construction sought to be placed by the petitioner on the relevant clause in the notification is erroneous. The expression "the High Court" in the context means the Andhra High Court and no other. It is also urged that even on that construction the requirement of the notification itself which is based on a corresponding rule is valid.

It would thus be seen that though the petitioner technically did not challenge the validity of the rule on which the relevant clause in the notification itself is based, in substance, the dispute between the parties in the present proceedings ultimately resolves into a dispute as to the validity of the basic rule framed by the Governor of the Andhra Pradesh under Article 234 and the proviso to Article 309 of the Constitution. The corresponding rule is Rule 12(b). The said rule provides special qualifications and says that "no person shall be eligible for appointment to the post of District Munsif by the method specified in column (1) of the table below unless he possesses the qualifications specified in the corresponding entries in column (2) thereof". For direct recruitment as District Munsif, several qualifications are mentioned. One of them is that the applicant must be practising as an Advocate of the High Court, and other is that he must be actually practising in Courts of Civil or criminal jurisdiction in India for a period not less than three years. It would thus be seen that the relevant clauses in the notification, the validity of one of which is challenged before us, are based on these provisions in the statutory rules.

The first question which calls for our decision is : what does the expression "the High Court" mean when the rule requires that the applicant must be practising as an Advocate of the High Court ? It is urged by Mr. Sarjoo Prasad that the expression "the High Court" need not receive the narrow construction as contended for by the respondents. He suggests that the expression "the High Court" really means any High Court. In other words' his argument is that as soon as it is shown that the applicant has been practising as an Advocate is any High Court in India, that should be deemed to meet the requirement in question. We do not think that this argument is well-founded. In the context, the expression "the High Court" must, we think, mean the Andhra High Court. In construing the expression "the High Court", we must bear in mind the fact that the subject-matter of the rules is the appointment of subordinate judicial officers who would work in courts subordinate to the Andhra High Court; and so, the use of the definite pronoun "the" clearly indicates that it is not any or a High Court that is intended but it is the particular High Court of Andhra Pradesh that is in view.

Besides, the scheme of the notification issued by respondent No. 1 clearly indicates that a person practising as an Advocate of the High Court to whom the impugned rule refers, must be a person practising in the Andhra High Court. In that connection, it is significant that the notification requires that the applications should be submitted to the Commission through the High Court of Andhra Pradesh if the candidates are practising in the High Court and through the District Judge concerned

and the High Court of Andhra Pradesh if they are practising in the subordinate Courts. There can be no doubt that the High Court mentioned in the impugned rule is the Andhra High Court through which applications are required to be sent by the Advocates practising in that Court. It would be unreasonable to assume that an Advocates practising in other High Court should have been required to send his application through the Andhra High Court; but that would be the result if the expression "the High Court" in this rule is read as meaning any High Court. Therefore, it is clear the expression "the High Court" in the context means the Andhra High Court.

That immediately raises the question about the validity of the impugned rule. The petitioner argues that by prescribing the limitation that the applicant must be an Advocate of the Andhra High Court, the rule has violated his fundamental rights guaranteed under Articles 14 and 16(1) of the Constitution. As a result of the rule, persons who are not practising as Advocates of the Andhra High Court are disqualified and that amounts to unconstitutional discrimination. Article 14 which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, as well as Article 16(1) which provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, have been frequently considered by this Court. The scope and effect of the provisions of Article 14 can no longer be the subject-matter of any doubt or dispute. It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of this Court show, the classification on which the statutory provision may be founded may be referable to different consideration. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case, there must be some nexus between the basis of the classification and the object intended to be achieved by the statute, vide Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar ([1959] S.C.R. 279.). It is in the light of these principles that we must now proceed to examine the problem raised by the petitioners for our decision in the present proceedings.

The object of the rule is to recruit suitable and proper persons to the Judicial Service in the State of Andhra with a view to secure fair and efficient administration of justice, and so, there can be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said Service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post. In that connection, practice in subordinate Courts or in the High Court may also be a relevant test to prescribe. The respondents contend that the impugned rule seeks to do nothing more than to require the applicant to possess knowledge of local laws and that being so, the validity of the rule cannot be impeached on the ground of discrimination. In support of this argument, reliance is placed on the decision of the Andhra High Court in Nallanthighal Bhaktavatsalam Iyenger v. Secretary, Andhra Public Service Commission, Kurnool (A.I.R. 1956 Andhra 14.) in which the validity of the impugned rule has been upheld.

It is also contended that in considering the validity of the impugned rule, we must have regard to all the rules considered together. The argument is that it would not be fair or reasonable to pick out one rule for challenge and in that sense, to ignore the context in which the said rule along with others has been framed. In this connection, our attention has been drawn to the fact that several

qualifications have been prescribed by the rules. These relate to the educational qualifications, to the requirement as to age, to the knowledge of the local language and some other factors which undoubtedly are relevant to the appointment to the judicial post in question. Thus considered, it is urged, the validity of the impugned rule cannot be successfully challenged.

Dealing with this latter argument first, it seems to us that the plea that all the rules must be considered together is entirely misconceived. It is quite clear that in testing the validity of any one of these rules, we will have to consider the true scope and effect of the impugned rule itself and the decision of the question would have to be confined to the relevant considerations in respect of the said rule and no more. Just as the presence of one invalid rule cannot invalidate the other rules which may be valid, so the presence of a number of valid rules would not help to validate an impugned rule if it is otherwise invalid. If, while prescribing relevant tests which must be satisfied by an applicant, the rule had stated that the applicant should satisfy the test of a particular height or colour for instance, - which factors are irrelevant for judicial service - the respondents could not be heard to say that because the other rules are valid, the irrelevant rule about the requirement of the applicant's height or colour must also be treated as valid. If the height or colour of the applicant is wholly irrelevant in making an appointment to a judicial post, it must be treated as irrelevant and invalid though it may have been placed in a code of rules and the rest of the rules may be perfectly valid. Therefore, we cannot accept the argument urged by the learned Solicitor-General that the impugned rule cannot and need not be considered by itself but must be treated as a part of a bigger scheme of rules and since the other rules are valid, the impugned rule must also be treated as valid.

Does the impugned rule serve the object of requiring the applicant to possess knowledge of local law ? That is the next question to consider. It is urged by the respondents that since actual practice for three years which is the other condition prescribed, is practice in Courts of Civil or Criminal jurisdiction in India, it follows that even lawyers practising in courts outside the State of Andhra Pradesh would satisfy that test and that means that the satisfaction of the said test would not meet the requirement that the applicant should have knowledge of local laws. That is why, it is urged, the impugned condition requires that the applicant must be practising as an Advocate of the Andhra High Court. An Advocate of the Andhra High Court would generally have had the benefit of apprenticeship for one year in the Chambers of a senior Advocate and may have passed the apprenticeship examination in different subjects prescribed by the Bar Council. It is in that way that he would have acquired the knowledge of local laws which he would have to administer if he is appointed to the post of a District Munsif.

It is not clear that the impugned rule can effectively meet the alleged requirement of the knowledge of local laws. If the object intended to be achieved is that the applicant should have adequate knowledge of local laws, the usual and proper course to adopt in that behalf is to prescribe a suitable examination which candidates should pass, or adopt some other effective method. No material has been placed before us to show that the alleged requirement about the knowledge of local laws can be met on the two grounds suggested in support of the validity of the rule. Besides, study of general laws prevailing in the country as a whole, and the study of important local laws are generally included in the curriculum prescribed for the law Degree, and obtaining a Law Degree which would entitle a person to be enrolled as an Advocate, in substance, meets the requirement of the knowledge of important local laws.

There is another aspect of the problem which is very important. It is common ground that under rule 1(ii) of the Andhra Bar Council Rules, an advocate entered on the roll of Advocates of a High Court established by law in India, other than the High Court of Andhra, is entitled to practise as an

Advocate of the Andhra High Court, provided there is reciprocity between the Andhra High Court on whose roll he has been entered as an Advocate. This rule is subject to the further proviso that where any person had been admitted as an advocate of such High Court without undergoing a course of study in the chambers of a practising advocate for a period of one year, he shall be of not less that one year's standing as an advocate of such High Court. It is thus clear that an Advocate enrolled in any other High Court who is entitled to the benefit of rule 1(ii) would be eligible to practies in the Andhra High Court and as such, would satisfy the test of the impugned rule; and in such a case, the theory that the impugned rule serves the purpose of requiring the applicant to possess knowledge of local laws completely break down. By operation of rule 1(ii) which is, doubt, based on the health convention of reciprocity between the different High Court in this country, Advocate who can have no knowledge of the local laws prevailing in Andhra would satisfy the test of the impugned rule, therefore, the main argument that the object intended to be achieved by the impugned rule is that the applicant should possess knowledge of local laws, cannot be sustained.

Then it is urged that a person who has been enrolled as an Advocate of the Andhra High Court would have feelings of attachment for the institution of the Andhra High Court and would be subject to the disciplinary jurisdiction of the said High Court and that would afford a rational basis for differentiating the class of advocates of the Andhra High Court from the rest of the Advocates in this country. In our opinion, neither of the two grounds can be said to have any nexus with the object intended to be achieved by the rule. What is relevant and more important in the matter of recruiting persons to judicial Service is not only the applicant ? Loyalty and attachment to the institution of a particular High Court but their loyalty and a sense of dedication to the cases of judicial administration and this feeling and sense of dedication would be present in the minds of persons enrolled as Advocates in the Andhra High Court as much in the minds of other persons enrolled as Advocates in other High Court. The test of disciplinary jurisdiction is hardly relevant because advocates of other High Courts would likewise be subject to the disciplinary jurisdiction of their High Courts; and if a person who continues to be on the roll of the Andhra High Court can be presumed to be a person worthy to belong to the profession of law and so, eligible for the judicial post, so can a person who continues on the roll of any other High Court be entitled to claim the same status. Therefore, in our opinion, there does not appear to be any rational basis for differentiating the advocates belonged to the Andhra High Court from the rest as the impugned rule purports to do.

In this connection, it may be permissible to point out that the second condition in regard to three years' actual practice might more appropriately have required that the said three years' practice should be in the Civil or Criminal Courts subordinate to the jurisdiction of the Andhra High Court. That would have more effectively secured the object of requiring the applicants to have knowledge of local laws and to have experience in the matter of the administration of the said laws. As it happens, the said condition under the relevant rule enables advocates practising in Civil or Criminal Courts all over India to apply, and so, the requirement about the knowledge of locals laws cannot invariably be satisfied by the said condition. But as we have just pointed out, the said test cannot be said to be satisfied by the impugned rule as well.

If the basis of the impugned rule is that a person who applies for appointment to the post of a District Munsif, should have been enrolled as an Advocate of a High Court, that basis can be satisfied even if the person is enrolled as an Advocate not of the Andhra High Court but of any other High Court. All the High Courts have the same status; all of them stand for the same high traditions of the Bar and the administration of justice, and advocates enrolled in all of them are presumed to follow the same standards and to subscribe to the same spirit of serving the cause of the

administration of justice. Therefore, in our opinion, the impugned rule has introduced classification between one class of Advocates and the rest and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules. That being so, it must be held that the decision of the Andhra High Court in the case of Nallanthighal Bhaktavatsalam Iyengar is not correct.

In the result, the impugned rule and the corresponding portion of the paragraph of the notification based on it must be held to the ultra vires and unconstitutional. In that view of the matter, we issue a direction calling upon the first respondent to entertain the applications of the petitioners and to deal with them in accordance with law. We were told by the learned Solicitor-General that the Public Service Commission has already conducted the test in respect of a large number of candidates and amongst them, the petitioners' cases have also been considered. If that be so, out present decision will not affect the procedure followed by the Commission. The effect of our decision is that applications of the person like the petitioners cannot be rejected on the preliminary ground that they are not persons practising as Advocates in the Andhra High Court and that they should be considered on the merits along with the rest of the applications. The petitions are accordingly allowed with costs.

Petitions allowed.

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