O. K. Ghosh and Another

Vs

E. X. Joseph

Civil Appeals Nos. 378 and 379 of 1962

(CJI B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

30.10.1962

JUDGMENT

GAJENDRAGADKAR, J. –

The respondent E. X. Joseph is in the service of the Government of India in the Audit and accounts Department at Bombay. He was she Secretary of the Civil Accounts Association which consists of non-gazetted staff of the Accountant-General's Office. The said Association was affiliated to the All India Non-Gazetted Audit and Accounts Association. The latter Association had been recognized by the Government of India in December, 1956. In May, 1959, the Government withdrew recognition of the said Association. In spite of the withdrawal of the recognition of the said Association, the respondent continued to be its Secretary General and refused to dissociate himself from the activities of the said Association, though called upon to do so. As a result of his activities, on or about June 3, 1960, he was served with a charge-sheet for having deliberately committed breach of Rule 4(b) of the Central Civil Services (Conduct) Rules, 1955 (hereinafter called the Rules). Appellant No. 1 O. K. Ghosh, Accountant-General, Maharashtra, who held the enquiry, found the respondent guilty of the charges levelled against him. Accordingly, a notice to show cause why he should not be removed from service was served on the respondent.

On July 25, 1960, appellant No. 1 served a memo on the respondent intimating to him that it was proposed to hold an enquiry against him for having deliberately contravened the provisions of Rule 4(A) of the Rules in so far as he participated actively in various demonstrations organised in connection with the strike of Central Government employees and had taken active part in the preparations made for the said strike.

On August 8, 1960, the respondent filed a writ petition on the original side of the Bombay High Court under Art. 226 of the Constitution and prayed that a writ of certiorari should be issued to quash the charge-sheets issued against him by appellant No. 1 in respect of the alleged contravention of Rule 4(B) and 4(A) and a writ of prohibition should be issued prohibiting appellant No. 1 from proceeding further with the departmental proceedings against the respondent. In his petition, the respondent asked for other incidental reliefs.

The main ground on which the respondent challenged the validity of the departmental proceedings initiated against him was that Rules 4(A) and 4(B) were void in so far as they contravened the fundamental rights guaranteed to the respondent under Art. 19(1)(a), (b), (c) and (g). This contention was resisted by appellant No. 1 and appellant No. 2, the Union of India, who had been impleaded as respondents to the said petition. It was urged on their behalf that the impugned Rules were valid and so, the claim for a writ of certiorari or writ of prohibition was not justified.

The writ petition was heard by a Division Bench of the Bombay High Court. On January 18, 1961, the High Court rejected the petition in so far as the respondent had claimed writs in regard to the enquiry for breach of Rule 4(A); the Court held that the said Rule was valid and so, the departmental proceedings initiated against the respondent in respect of the breach of the said Rule could not be successfully impeached. In respect of the proceedings under Rule 4(B), however, the High Court held that the said Rule was invalid and so, the departmental proceedings in respect of the breach of the said Rule have been quashed. It is against this decision that the appellants, the A.G. and the Union of India, have come to this Court by Appeal No. 378/1962; whereas E. X. Joseph the respondent, has preferred Appeal No. 379/1962. Both the appeals have been brought to this Court by special leave. The appellants contend that the High Court was in error in holding that Rule 4(B) was invalid, whereas the respondent urges that Rule 4(A) was invalid and the decision of the High Court to the contrary is erroneous in law. Before dealing with the contentions of the parties, it is necessary to set out the two impugned Rules. These Rules form part of a body of Rules framed in 1955 under Art. 309, of the Constitution.

Rule 4-A provides that no Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his condition of service, whereas Rule 4-B lays down that no Government servant shall join or continue to be a member of any Service Association of Government servants : (a) which has not, within a period of six months from its formation, obtained the recognition of the Government under the Rules prescribed in that behalf, or (b) recognition in respect of which has been refused or withdrawn by the Government under the said Rules. The case against the respondent is that he has contravened both these Rules.

The question about the validity of Rule 4-A has been the subject-matter of a recent decision of this Court in Kameshwar Prasad v. The State of Bihar [[1962] Supp. 3 S.C.R. 369]. At the hearing of the said appeal, the appellants and the respondent had intervened and were heard by the Court. In that case, this Court has held that Rule 4-A in the form in which it now stands prohibiting any form of demonstration is violative of the Government servants' rights under Art. 19(1)(a) & (b) and should, therefore, be struck down. In striking down the Rule in this limited way, this Court made it clear that in so far as the said Rule prohibits a strike, it cannot be struck down for the reason that there is no fundamental right to resort to a strike. In other words, if the Rule was invoked against a Government servant on the ground that he had resorted to any form of strike specified by Rule 4-A, the Government servant would not be able to contend that the Rule was invalid in that behalf. In view of this decision, we must hold that the High Court was in error in coming to the conclusion that Rule 4-A was valid as a whole.

That takes us to the question about the validity of Rule 4-B. The High Court has held that the impugned Rule contravenes the fundamental right guaranteed to the respondent by Art. 19(1)(c). The respondent along with other Central Government servants is entitled to form Associations or Unions and in so far as this right is prejudicially controlled and adversely affected by the impugned Rule, the said Rule is invalid. The learned Solicitor General contends that in deciding the question about the validity of the Rule, we will have to take into account the provision of clause (4) in Art. 19. This clause provides that Art. 19(1)(c) will not affect the operation of any existing law in so far as it imposes, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. The argument is that the impugned Rule does nothing more than imposing a reasonable restriction on the exercise of the right which is alleged to have been contravened and, therefore, the provision of the rule is saved by clause (4).

This argument raises the problem of construction of clause (4). Can it be said that the Rule imposes

a reasonable restriction in the interests of public order ? There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of clause (4), it has to be borne in mind that the rule must be in the interests of public order and must amount to a reasonable restriction. The words "public order" occur even in clause (2), which refers, inter alia, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both clauses (2) and (4). So far as clause (2) is concerned, security of the State having been expressly and specifically provided for, public order cannot include the security of State, though in its widest sense it may be capable of including the said concept. Therefore, in clause (2), public order is virtually synonymous with public peace, safety and tranquillity. The denotation of the said words cannot be any wider in clause (4). That is one consideration which it is necessary to bear in mind. When clause (4) refers to the restriction imposed in the interests of public order, it is necessary to enquire as to what is the effect of the words "in the interests of". This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect, the restriction can be said to be in the interests of public order. A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression "in the interests of public order." This interpretation is strengthened by the other requirement of clause (4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched. That is another consideration which is relevant. Therefore, reading the two requirements of clause (4), it follows that the impugned restriction can be said to satisfy the test of clause (4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in The Superintendent Central, Prison, Fatehgarh v. Dr. Ram Manohar Lohia, [A.I.R. 1960 S.C. 633]. In the words of Patanjali Sastri J., in Rex v. Basudev [[1949] S.C.R. 657, 661], "the connection contemplated between the restriction and public order must be real and proximate, not far-fetched or problematical." It is in the light of this legal position that the validity of the impugned rule must be determined.

It is not disputed that the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Art. 33 which confers power on the parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Art. 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form Associations or Unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government Servants as soon as recognition accorded to the said Association is withdrawn or if, after the Association is formed, no recognition is accorded to it within six months. In other words, the right to form an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the recognition and continues to enjoy it, Government servants can become members of the said Association; if the Association does not secure recognition from the Government or recognition granted to it is withdrawn Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule. Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction ? In our opinion, the only answer to these questions would be in the negative. It is

difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the Association and the discipline amongst, and the efficiency of, the members of the said Association. Similarly, it is difficult to see any connection between recognition and public order.

A reference to Rule 5 of the Recognition of Service Association Rules recently made in 1959 would clearly show that there is no necessary connection between recognition or its withdrawal and public order. Rule 5 enumerates different conditions by clauses (a) to (1) which every Service Association must comply with; and Rule 7 provides that if a Service Association recognised under the said Rules has failed to comply with the conditions set out in Rule 4, 5 or 6, its recognition may be withdrawn. One of the conditions imposed by Rule 5(1) is that communications addressed by the Service Association or by any office bearer on its behalf to the Government or a Government authority shall not contain any disrespectful or improper language. Similarly, Rule 5(g) provides that the previous permission of the Government shall be taken before the Service Association seeks affiliation with any other Union, Service Association or Federation; and Rule 5(h) prohibits the Service Association from starting or publishing any periodical, magazine or bulletin without the previous approval of the Government. It is not easy to see any rational, direct or proximate connection between the observance of these conditions and public order. Therefore, even without examining the validity of all the conditions laid down by rule 4, 5 or 6, it is not difficult to hold that the granting or withdrawing of recognition may be based on considerations some of which have no connection whatever either with the efficiency or discipline amongst the Services or with public order. It might perhaps have been a different matter if the recognition or its withdrawal had been based on grounds which have a direct, proximate and rational connection with public order. That, however cannot be said about each one of the conditions prescribed by rule 4, 5 or 6. Therefore, it is quite possible that recognition may be refused or withdrawn on grounds which are wholly unconnected with public order and it is in such a set-up that the right to form Associations guaranteed by Art. 19(1)(c) is made subject to the rigorous restriction that the Association in question must secure and continue to enjoy recognition from the Government. We are, therefore, satisfied that the restriction thus imposed would make the guaranteed right under Art. 19(1)(c) ineffective and even illusory. That is why we see no reason to differ from the conclusion of the High Court that the impugned Rule 4-B is invalid. In the result, appeal No. 378/1962 fails and is dismissed.

In regard to appeal No. 379/1962, though we have partly reversed the conclusion of the High Court in respect of the validity of the whole of Rule 4-A, it appears that the departmental proceedings initiated against the respondent in respect of the alleged breach of rule 4-A have to be quashed, because the alleged contravention of the said Rule on which the said proceedings are based is contravention of that part of Rule 4-A which has been held to be invalid by this Court. The material charge against the respondent in that behalf is that he had deliberately contravened the provisions of Rule 4-A in so far as he has participated actively in the various demonstrations organised in connection with the strike Central Government employees and took part in the preparations made for the said strike. It will be noticed that the result of the decision of this Court in Kameshwar Prasad's [[1962] Supp. 3. S.C.R. 369] case is that in so far as the rule prohibits any form of demonstration, it is invalid. It is not invalid in so far as it may prohibit participation in strikes. The charge against the respondent is not that he participated in any strike; the charge is that he participated in the various demonstrations; and that is a charge based upon that part of the rule which prohibits demonstrations altogether. It is true that the demonstrations in which he is alleged to have participated actively were organised in connection with the strike; but that does not mean either in fact or in law that he participated in the strike itself. Similarly, the charge that he took active part in the preparations made for the said strike, also does not mean in fact or in law that he

participated in the strike. If he joined demonstrations organised in connection with the strikes, or if he took part in the preparations for the strike, it cannot be said that he took part in the strike as such, and so, the charge cannot be reasonably construed to mean that his conduct amounted to a contravention of the rule which prohibits strikes. Therefore, though Rule 4-A is partly, and not wholly, invalid as held by this Court in the case of Kameshwar Prasad [[1962] Supp. 3 S.C.R. 369], the particular charge against the respondent being on the basis of that part of the rule which is invalid, it must follow that the departmental proceedings based on that charge are also invalid. That is why appeal No. 379/1962 must be allowed and the departmental proceedings instituted against the respondent for the alleged contravention by him of rules 4-A and 4-B must be quashed. There would be no order as to costs.

Appeal 378/62 dismissed.

Appeal 379/62 allowed.

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