State of Jammu and Kashmir

Vs

M. S. Farooqi and Others

Civil Appeal No. 1572 of 1968

(CJI S. M. Sikri, D. G. Palekar, A. N. Grover, M. H. Beg, A. N. Ray JJ)

17.03.1972

JUDGMENT

SIKRI, C.J. -

1. This is an appeal by certificate granted by the High Court of Jammu and Kashmir from its judgment, dated October 31, 1966, allowing the writ petition filed by the petitioner-respondent, M. S. Farooqi of the Indian Police Service, and restraining the State of Jammu and Kashmir, appellant before us, from proceeding against him under the Jammu and Kashmir Government Servants' Prevention of Corruption (Commission) Act, 1962 - hereinafter referred to as the Commission Act. The High Court held that the members of an All India Service serving in a State are governed by the All India Services Act, 1951, and the rules made thereunder, and the Commission Act was not applicable to them. The High Court further held that the Commission Act was hit by Article 14 of the Constitution as "there is a clear discrimination between the members of All India Services posted elsewhere and the members of the same service posted in the State inasmuch as inquiry against the former for acts of corruption is to be held under the Central Act and the rules made thereunder while against the latter for the same acts of corruption enquiry is to be held under the Commission Act, the provisions of which are far more drastic than the Central Act and the rules made thereunder".

2. We may briefly state the relevant facts which necessitated the filing of the writ petition. The respondent before us, M. S. Farooqi, hereinafter referred to as the petitioner, is a member of the Indian Police Service which is an All India Service. He is borne on the Jammu and Kashmir cadre. On March 12, 1964, an anonymous complaint was received by the Commission, set up under the Commission Act. On March 20, 1964, the Commission asked for a report from the Deputy Inspector General of Police. The Deputy Inspector General of Police (Anti-Corruption Organisation) raised the question of the jurisdiction of the Commission. The Commission, however, held that the Commission Act was applicable in its entirety to Government servants belonging to Jammu and Kashmir cadre of the All India Services. The objection raised by the Investigating Agency was thus overruled. The Investigating Agency was directed to continue investigation of the case and submit a report. Thereupon the petitioner filed the writ petition in the High Court challenging the jurisdiction of the Commission. As stated above, the High Court allowed the petition, but later granted certificate of fitness and the appeal filed on behalf of the State of Jammu and Kashmir is now before us.

3. The learned counsel for the State contends that -

(1) The Commission Act is in pith and substance a law in respect of corruption of

Government servants of Jammu and Kashmir and only incidentally deals with members of the All India Services, and is therefore valid in its entirety;

(2) If such a legislation is valid, the Act is not discriminatory because all servants of Jammu and Kashmir Government are treated alike and the same procedure applied to them for the trial of offences of corruption;

(3) There is a valid classification on the basis of territory; and

(4) In any event, the procedure under the Commission Act is not more prejudicial than that under the All India Services Act, 1951, and the rules made thereunder.

4. The first point raised by the learned counsel does not meet the real objection to the applicability of the Commission Act to members of the Indian Police Service serving in Jammu Kashmir. This objection is that, assuming that the Commission Act is in pith and substance a law with respect to corruption of Government servants, it is repugnant to the provisions of the All India Services Act, 1951, and the All India Services (Discipline and Appeal) Rules, 1955 - hereinafter referred to as the Discipline and Appeal Rules, and it must give way to the statutory provisions.

5. It seems to us that there is force in the objection raised on behalf of the petitioner and in that view it is not necessary to decide the four points raised by the learned counsel.

6. We are here concerned with the Constitution of India as applicable to the State of Jammu and Kashmir at the relevant time. Article 370 of the Constitution of India, inter alia, provides that "the powers of Parliament to make laws for the State (of Jammu and Kashmir) shall be limited to those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the Accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State, and (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify".

7. In exercise of the powers conferred by clause (1) of Article 370, the President, with the concurrence of the Government of the State of Jammu and Kashmir, made the Constitution (Application to Jammu and Kashmir) Order, 1954. We are concerned in this case with the position as it existed on July 16, 1962, when the Commission Act received the assent of the Sardar-i-Riyasat. The position was that Parliament could legislate on List I, Entry 70, which reads : "Union Public Services; All India Services; Union Public Service Commission".

8. Article 246 of the Constitution, as applied to Jammu and Kashmir, then read :

"246(1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

9. Articles 248 and 249 of the Constitution had not been made applicable to the State of Jammu and Kashmir and, therefore, all the residuary powers rested with the State of Jammu and Kashmir. Entry 97 of List I, dealing with residuary powers, had also been omitted.

10. Article 254, as applicable to the State of Jammu and Kashmir at the relevant time, provided :

> "254. If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void."

11. At the relevant time there was no concurrent list. Certain entries in the Concurrent List seem to have been applied by the Order No. CO 66 of 1963, dated September 25, 1963, for the first time.

12. From this constitutional scheme it follows that if a provision of the Commission Act is repugnant to a provision of the Discipline and Appeal Rules, 1955, then the law made by the State of Jammu and Kashmir must give way.

13. Article 254 of the Constitution as applied above, is similar to Section 109 of the Australian Constitution which provides that "when a law of the State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall to the extent of inconsistency, be invalid".

14. The learned counsel for the State relied on various decisions of this Court interpreting article 254, as it exists in the Indian Constitution.

15. In A. S. Krishna v. State Madras, [1957 SCR 399] while interpreting Section 107 of the Government of India Act, 1935, which is similar to Article 254(1) of the Constitution, Venkatarama Ayyar, J., observed :

> "For this section to apply, two conditions must be fulfilled : (1) The provisions of the Provincial law and those of the Central Legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will, to the extent of repugnancy, become void."

16. In Deep Chand v. State of Uttar Pradesh, [1959 Supp 2 SCR 8, 41] Subba Rao, J., as he then was, seems to read clause (2) of Article 254 in a similar manner.

17. In Prem Nath Kaul v. State of Jammu and Kashmir, [1959 Supp 2 SCR 270, 300] Gajendragadkar, J., as he then was, observed :

> "Besides, it is clear that the essential condition for the application of Article 254(1) is that the existing law must be with respect to one of the matters enumerated in the Concurrent List; in other words, unless it is shown that the repugnancy is between the provisions of a subsequent law and those of an existing law in respect of the specified matters, the article would be inapplicable; and, as we have already pointed out, Schedule VII which contains the three Legislative Lists was not then extended to the State; and it is, therefore, impossible to predicate that the matter covered by the prior law is one of the matters enumerated in the Concurrent List. That is why Article 254 cannot be invoked by the appellant."

18. Article 254, as applicable to the State of Jammu and Kashmir, at the time this judgment was delivered, was in same form as in Indian Constitution. This Court was not then dealing with Article 254 in the form with which we have to deal with.

19. We may mention that this Court left open the regarding the interpretation of Article 254(1) in the following words in Ch. Tika Ramji v. State of Uttar Pradesh [1956 SCR 393, 424] :

> "We are concerned here with the repugnancy, if any, arising by reason of both Parliament and the State Legislature having operated in the same field in respect of a matter enumerated in the Concurrent List, i.e., foodstuffs comprised in Entry 33 of List III and we are, therefore, not called upon to express any opinion on the controversy which was raised in regard to the exact scope and extent of Article 254(1) in regard to "a law made by Parliament which Parliament is competent to enact", as to whether the legislative power of Parliament therein refers to List I, List III and the residuary power of legislation vested in Parliament under Article 248 or is confined merely to the matters enumerated in the Concurrent List (Vide AIR 1942 Cal 587, contra, per Sulaiman, J., in 1940 FCR 188 at p. 226)."

20. It seems to us that the above cases are not applicable as the language of Article 254 as applicable to Jammu and Kashmir is different. On the wording of Article 254, as it existed when the Commission Act was enacted, it seems to us that there is no escape from the clear wording of the article. It says in plain words that if there is any repugnancy between the law made by the State and the law made by Parliament the law made by the Legislature of the State must give way.

21. So, the only question to be determined is whether there is any repugnancy between the Discipline and Appeal Rules and the Commission Act. We may state that we are not concerned with the meaning ascribed to Article 254, as it exists in the Indian Constitution and which was interpreted by the judgments referred to above.

22. In Ch. Tika Ramji v. The State of Utter Pradesh (supra), this Court examined the question of repugnancy. It referred to various authorities and concluded that either there must be inconsistency in the actual terms of the Act enacted by Parliament and the impugned State Act or the law enacted by Parliament be intended to be a complete and exhaustive code; in other words, expressly or impliedly evince an intention to cover the whole field. Various tests have been suggested by various authorities as to how to determine whether there is any inconsistency or repugnancy. Bhagwati, J., referred to Nicholas - Australian Constitution, 2nd ed., p. 303 - who had suggested three tests of inconsistency or repugnancy, namely -

> (1) There must be inconsistency in the actual terms of the competing statutes.
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code.
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter.

23. In Deep Chand v. State of Uttar Pradesh (supra), Subba Rao, J., as he then was, speaking for the Court, observed on the question of repugnancy :

> "Repugnancy between two statutes may thus be ascertained on the basis of the following three principles -
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> (1) Whether there is direct conflict between the two provision;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

24. We may also refer to the observations of Evatt, J., in Stock Motor Plough Ltd. v. Forsyth, [(1932) 48 CLR 128, 147] which were extracted in Tika Ramji case (supra) :

"It (the rest of covering the field) is no more than a cliche for expressing the fact that, by reason of the subject-matter dealt with, and the method of dealing with it, and the nature and multiplicity of the regulations prescribed, the Federal authority has adopted a plan or scheme which will be hindered and obstructed if any additional regulations whatever are prescribed upon the subject by any other authority; if, in other words, the subject is either touched or trenched upon by State authority."

25. It has been held in Australia that Section 109 of the Australian Constitution is not limited in its application to cases where both sets of provisions deal with the same subject-matter. Wynes in his "Legislative, Executive and Judicial Powers in Australia" 4th ed. states the general principles as applicable to Australia at page 101. Some of these principle may be set out :

"1. It is essential to consider first whether the question of inconsistency arises. Thus, if the Commonwealth have no power to pass the law under consideration or the law is otherwise invalid, the matter is ended and section 109 does not arise. Similarly, Section 109 does not arise where the State law is invalid on other grounds.

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3. It matters not which Act is first in point of time.

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7. Where there is not a direct conflict or discrimination, there may still be inconsistency if the State attempts to govern conduct or to deal with a matter which has already been dealt with by a law of the Commonwealth intended to express completely, exhaustively or exclusively the law governing a certain subject-matter. The question in every case is : What is the intention of the Commonwealth Parliament ? Is it an intention to lay down the whole of the law on a certain subject ? If so, that subject is withdrawn from State control, but, as we have seen from the reasoning of Dixon, J., in the 44-hour case, it is withdrawn, not from any or all State legislation which may affect or have some connection with it, but only from State legislation which attempts to govern it in the character in virtue of which it is regulated by Commonwealth law.

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8. It is not essential to the operation of Section 109 that the two Acts considered as a whole should be upon or "with respect to" the same subject-matter, but where the inconsistency sought to be established is between Commonwealth intention to deal exclusively with a certain subject and State law dealing with conduct which may

> conceivably form a portion of that subject, the question is whether the State Act deals with such conduct as forming an element in the subject intended to be exclusively governed by Commonwealth law. This question is one which must be decided in the circumstances of each particular case."

26. The Judicial Committee of the Privy Council, in O'Sullivan v. Noarlungs Meat Ltd., [1957 AC 1, 28] approved of the following lines from the judgment of Dixon, J., in ex parte Mclean :

> "The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter."

27. In Canada this question has arisen in a number of cases and these cases are relevant because in Canada paramountcy is said to be tied up with the "trenching" doctrine in the first of the four propositions laid down in the Fish Canneries case - Attorney General, Canada v. Attorney-General, British Columbia [1930 AC 111] - and the fourth proposition was in these words :

> "There can be a domain in which provincial and Dominion legislation may overlap in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail." (see G. T. R. v. Attorney-General, Canada, [1907 AC 65]) [See Laskin Canadian Constitutional Law, 3rd Edn. p. 105].

28. Sulaiman, J., examined this question in Subrahmanyan Chettiar v. Muthuswami Goundan. [1940 FCR 188, 231, 240, 241]. He observed :

> "It seems to me that the principles of interpretation laid dawn by Their Lordships in the Canadian cases cannot be brushed aside by simply saying that they relate to a different Constitution. Those principles are not only of the greatest weight but must be a guide to us even in interpreting the Indian Constitution. Of course, we cannot interpret the language of any section in the Indian Act in the light of the interpretation of the corresponding section in the Canadian Constitution. That has to be avoided; but the principles of interpretation that have been established cannot be ignored. At the same time it would be dangerous to import only a part of the doctrine and exclude another part. Partial application may frustrate the very object for which the rule of law was deduced. The two doctrines of incidental encroachment and unoccupied field are closely related. I would go further and say that they are indissolubly connected. We cannot import the doctrine of incidental encroachment in favour of the provinces, and refuse to import the doctrine of unoccupied field which is in favour of the Centre. The two must go hand in hand. To allow Provincial Legislatures to encroach upon the exclusive Federal field, even though in an indirect way, when there is a Central legislation already occupying the field, would be to give the former a free hand in nullifying Central Acts relating to matters in the Federal List. Such a carte blanche could hardly have been contemplated. The scheme of Section 100 of the Act is to exclude completely from the authority of Provincial Legislature the power to legislate with respect to subjects in List I. If in consequence

> of certain difficulties that Provincial Legislatures would experience by a rigid enforcement of such an exclusion we must in interpreting the words "with respect to" import the Canadian doctrine of permissibility of incidental encroachment, we must then at the same time import the other allied doctrine also that such an encroachment is permissible only when the field actually unoccupied. It is only in this way that actual clash between the Centre and the Provinces can be avoided, which I think we must. This will also explain the apparent gap in Section 107(1) of the Act, that gap being filled in by the provisions of Section 100."

29. Varadachariar, J., left open the point whether the provisions of the impugned Act may also be void under Section 107 of the Constitution Act in so far as they are repugnant to the provisions of the Negotiable Instruments Act. He observed :

> "The validity of this contention will depend upon the import of the expression 'Federal Law' occurring in the opening part of sub-section (1) of Section 107. It may be conceded that the words 'which the Federal Legislature is competent to enact' may refer to the first list also and they need not be qualified by the words occurring later and referring to the Concurrent Legislative List; because, if these later words were intended to qualify the opening words of the sub-section also, it would not have been necessary to use the words 'which the Federal Legislature is competent to enact' in the earlier portion."

30. He further saw a possible anomaly in the operation of Section 107, viz., "that while provincial legislation in respect of subjects in the Concurrent List cannot override 'existing Indian law' expect when assented to by the Governor General, such legislation in respect of subjects enumerated in List II may without any such safeguard override pre-existing enactments even of the Central Legislature if they relate to subjects specified in the List I".

31. The learned counsel for the State relies on the decision of the Privy Council in Megh Raj v. Allah Rakhia, [1947 FCR 77, 85, 88] in support of his proposition that if the impugned legislation is a law not with respect to All India Services but a law with respect to corruption of Public Officers it is within the jurisdiction of the State Legislature, and no question of repugnancy arises. He relies particularly on the following observations :

> "Thus both parties rightly construed Section 107 as having no application in a case where the Province could show that it was acting wholly within its powers under the Provincial List and was not relying on any power conferred on it by the Concurrent List."

> "It follows that in Their Lordships' judgment there is no sufficient ground for holding that the impugned Act, or any part of it, was invalid. As a while it fell within the powers given to the Province by Items 2 and 21 of List II, without any necessity to invoke any powers from the Concurrent List, List III. Accordingly questions of repugnancy under Section 107 of the Constitution Act do not arise and need not be considered here."

32. But if facts are examined it would be clear that these observations do not assist the appellant. The Act which was impugned was the Punjab Restitution of Mortgaged Lands Act, 1938, and it was argued that the provisions of the impugned Act were repugnant to certain existing Indian Laws, viz.,

Indian Contract Act and the Code of Civil Procedure, which fell within Entries 8 and 10 of List III of the Government of India Act, 1935. Entry 8 dealt with "transfer of property other than agricultural land; registration of deeds and documents" and Entry 10 dealt with "Contracts including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land". The Privy Council came to the conclusion that the impugned Act was within Items 2 and 21 of List II. Their Lordships observed :

> "If, as Their Lordships think, the impugned Act is limited to agricultural land, Items 7, 8 and 10 of List III do not affect the position, since agricultural land is excluded in these entries. But in any event, the Act does not deal with wills or the transfer of property at all; it does certainly deal with mortgages, but as Their Lordships have already stated, mortgages, though not expressly mentioned in the Constitution Act, are properly to be classed not under the head of contracts, but as special transactions ancillary to the entry of 'land'."

33. In this case it was obvious that there was no conflict between legislation on entries in List II and legislation on entries in List III; the conflict if at all was with the existing Indian laws. The Privy Council had not to deal with the matter with which we are concerned, viz., when a valid State legislation comes into conflict with a competent legislation of Parliament under List I.

34. Similarly, in Prafulla Kumar Mukherjee v. Bank of Commerce, [1947 FCR 28, 34] there was alleged conflict between the Bengal Money Lenders Act, 1940, and an existing Indian law, namely, Negotiable Instruments Act. It was urged before the Privy Council that "if outside the authorized field the impugned Act conflicts with a Federal law - in the sense in which the words are used in Section 107 of the Constitution Act - it may be that its provisions would be ineffective. The answer to the suggestion that there is any such conflict here is threefold : (i) There is no conflict or inconsistency between the impugned Act and the Negotiable Instruments Act; (ii) If there is a conflict, then the Negotiable Instruments Act is not a Federal law within the meaning of Section 107 of the Constitution Act; (iii) If there is a conflict, and if the Negotiable Instruments Act is a Federal law, then the conflict is with that part of the Federal Law which is in the field of contract, which is within the power conferred by List III, the Concurrent List, and the conflict is cured by the provisions of Section 107, sub-section (2) of the Constitution Act, because this is a case where the Act was reserved for the consideration of the Governor-General, and therefore the Provincial law in the province would prevail".

35. The Privy Council posed three questions : (1) Does the Act in question deal in pith and substance with money lending ? (2) if it does, is it valid though it incidentally trenches on matters reserved for the Federal Legislature ? (3) Once it is determined whether the pith and substance is money lending, is the extent to which the Federal field invaded a material matter ? They answered the first question in the affirmative. Dealing with the second question, the Privy Council observed :

> "Moreover, the British parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several Legislatures will never overlap."

36. The Privy Council approved of certain observations of Sir Maurice Gwyer, C.J., and then observed :

> "But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, such beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with."

37. Dealing with the third question, the Privy Council observed :

> "No doubt it is an important matter, not, as Their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money lending but promissory notes or backing ?"

38. Their Lordships further observed :

> "Does the priority of the Federal Legislature prevent the Provincial Legislature from dealing with any matter which may incidentally affect any item in its list, or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character ?"

In this case there was no conflict alleged with the Federal legislation on an item in List I, and what they were considering was conflict with the existing law.

39. In A. S. Krishna v. State of Madras (supra), the conflict alleged was between the Madras Prohibition Act, 1937, on the one hand and the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1898, on the other. This Court held that the impugned Act in question was a law with respect to Entry 31, List II, and observed :

> "The Madras Prohibition Act is thus in its entirely a law within the exclusive competence of the Provincial Legislature, and the question of repugnance under Section 107(1) does not arise."

40. The Court did not address itself to the question whether assuming that it was a law with respect to Entry 31, List II and not a law with respect to Entries 5 and 2 respectively of List III, yet what is to happen if the existing laws, namely, the Evidence Act and the Criminal Procedure Code, were in fact repugnant. At any rate, this Court was then not concerned with Parliamentary Legislation under List I and also was not concerned with Article 254 in the form as it existed at the relevant time as applicable to the State of Jammu and Kashmir.

41. We may mention that this Court upheld the provisions of the Bombay Prohibition Act, 1949, under Article 254(2) in Ukha Kolhe v. State of Madras, [AIR 1963 SC 1531] in so far as they were inconsistent with the provisions of the Code of Criminal Procedure.

42. The learned counsel for the appellant referred to Calcutta Gas Company v. State of West Bengal,

[1962 Supp 3 SCR 1] but we are unable to see how it helps the appellant's case. In that case the Court was concerned with reconciling certain entries and observed that "entries in the lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislature can operate. It is well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different list or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring harmony between them". But in this case we are not concerned with any question of harmonising the entries because we have on the one hand a specific entry in List I and on the other hand a residuary list.

43. Now it remains to be seen whether the impugned Act is repugnant to the provisions of the All India Service (Discipline and Appeal) Rules, 1955. We may first notice the provisions of the Discipline and Appeal Rules. Rule 3 prescribes certain penalties, which may for good and sufficient reasons, and as hereinafter provided be imposed on a member of the Service. The penalties include censure, withholding of increments or promotion; reduction in rank, removal from service and dismissal from service, etc. The authority to institute proceedings and to impose penalties is mentioned in Rule 4. It is the Government under whom the member is serving at the time of the commission of an act or omission which renders him liable to any penalty, which is competent alone to institute disciplinary proceedings and that Government can also impose all the penalties specified in Rule 3 except the penalty of dismissal, removal or compulsory retirement which order can only be passed by an order of the Central Government. Rule 5 prescribes the procedure for imposing penalties. The grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges which shall be communicated to the member of the Service charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. A member of the Service is given reasonable time to put in a written statement of defence. It enables him to be heard if he so desires. The member of the Service is entitled to have access to official records. After the written statement is received, if such is filed, the Government may appoint a Board of Inquiry or an Inquiry Officer to enquire into the charges or the Government enquires into the charges itself.

44. In brief, detailed rules are laid down regarding the manner of holding the enquiry. Rule 6 provides for consultation with the Union Public Service Commission. Rule 7 deals with suspension during disciplinary proceeding and Rule 8 deals with subsistence allowance during suspension. Rule 9 deals with the payment of pay and allowances and treatment of service on reinstatement. A right of appeal is given against certain orders and Rule 20 provides for a memorial to be submitted to the President.

45. These rules are a complete code as far as infliction of penalties prescribed in Rule 3 is concerned.

46. The Commission Act provides for the constitution of one or more Commissions to be known as the Anti-Corruption Commissions to hold enquiry into the charges of corruption and misconduct, as defined in Sections 3 and 4 of the Commission Act, against all Government servants including members of All India Services. The Commission is provided with an investigating agency to investigate into the charges. Section 10, before its amendment, provided for an enquiry by the Commission either suo motu or on a report in writing by certain officers. Under Section 11 every person is entitled to complain to the Commission against a Government servant. Section 12 provides for a preliminary examination of the complaint. The Commission may either dismiss the complaint or, if in its opinion there are sufficient grounds for tasking further proceedings in the complaint, the

Commission shall cause the substance of the allegations to be drawn into distinct articles of charges and summon the accused to appear before it. Under sub-section (5) of Section 12, as it existed before it amendment in 1969, the Government servant had to be placed under suspension after the charges were drawn up against him by the Commission. Section 13 provides for procedure at the enquiry. Section 17 requires the Commission to record its findings on the various articles of the charge and submit its recommendation to the Sardar-i-Riyasat. If any of the charges are held to have been established against the accused, the Commission has to recommend the punishment mentioned in this section. Under sub-section (2) of Section 17 of the Commission may, in addition to the punishment referred to in sub-section (1), recommend that the accused be declared for ever or for any shorter period of time to be specified, incapable of holding or being appointed to any public office. Sub-section (3) provides that in a fit case the Commission may recommend that the accused be prosecuted for any offence in a Court of law. Sub-section (7) specifically deals with members of the All India Services and provides that in their case the Sadar-i-Riyasat may recommend the imposition of the punishment to be appropriate authority. There are various other incidental provision which we need not detail.

From the perusal of the provisions of the two statutory laws, namely, the All India Services (Discipline and Appeal) Rules, 1955, and the Jammu and Kashmir Government Servants' Prevention of Corruption (Commission) Act, 1962, it is impossible to escape from the conclusion that the two cannot go together. The impugned Act provides for additional punishments not provided in the Discipline and Appeal Rules. It also provides for suspension and infliction of some punishments. It seems to us that in so far as the Commission Act deals with the infliction of disciplinary punishments it is repugnant to the Discipline and Appeal Rules. Parliament has occupied the field and given clear indication that this was the only manner in which any disciplinary action should be taken against the members of the All India Services. In so far as the Commission Act deals with a preliminary enquiry for the purposes of enabling any prosecution to be launched it may be within the legislative competence of the Jammu and Kashmir State and not repugnant to the provisions of the Discipline and Appeal Rules. But as the provisions dealing with investigation for possible criminal prosecution are inextricably intertwined with the provisions dealing with infliction of disciplinary punishment the whole Act must be read down so as to leave the members of the All India Service outside its purview.

48. We accordingly hold that the provisions of the Commission Act do not apply to the members of the All India Services. Accordingly we dismiss the appeal. As the respondent was not represented there would be no order as to costs. We thank Mr. G. L. Sanghi for assisting us as amicus curiae.

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