The Director of Industries & Commerce, Government of Andhra Pradesh, Hyderabad and Another

Vs

V. Venkata Reddy and Others

Civil Appeal No. 993 of 1972

(Sikri, C.J.)

03.10.1972

JUDGMENT

SIKRI, C.J. -

1. This appeal by certificate granted by the High Court of Andhra Pradesh is directed against the judgment of the High Court, dated February 18, 1972, passed in Writ Appeal No. 633 of 1970, which arose out of the order of the High Court of Andhra Pradesh, dated July 9, 1969, in Writ Petition No. 2524 of 1967. Before the Division Bench of the High Court the Full Bench judgment of the High Court, dated December 9, 1970, P. L. Rao v. State of Andhra Pradesh, (AIR 1971 AP 118) was cited, but as this Full Bench decision was challenged before it and it thought that a reference of the matter to a Full Bench of five judges is advisable it directed that the papers be laid before the Hon'ble the Chief Justice of the High Court for constitution of a large Bench. The Chief Justice of the High Court accordingly constituted the Full Bench of five Judges. This Full Bench, by majority, held that "the mulki rules are not valid and operative after the formation of the State of Andhra Pradesh. In any event, they do not revive and cannot be deemed to be valid and operative in view of the decision of the Supreme Court in A. V. S. Narasimha Rao's case. ((1970) 1 SCR 115 : AIR 1970 SC 422 : (1969) 1 SCC 839 : (1970) 1 SCJ 365) The Full Bench decision in P. Lakshmana Rao's case (supra), is thus overruled. W.A. No. 633 of 1970 along with W.A.M.P. Nos. 493 of 1971 will be posted before the Division Bench for further orders."

2. Receiving this opinion, the Division Bench delivered the following judgment :

> "We have already indicated in the order of reference that if a reference to Full Bench is made, and if the decision of the Full Bench is to the effect that the Mulki Rules are not operative, then the appeal has to be allowed. Having regard to the direction previously given by us in the order of reference and in the light of the decision of the Full Bench, the Writ Appeal has to be allowed. We accordingly allow the Writ Appeal with costs.

3. In this appeal we are thus concerned with the validity of the so called Mulki Rules. Before dealing with the questions of law which have been debated before us it is necessary to give a few relevant facts. Writ Petition No. 2524 of 1967 out of which the present appeal arises was filed by 12 Extension Officers in the Department of industries, Government of Andhra Pradesh. They were appointed as Extension Officers in May, 1961, and after they underwent training, were posted in various districts. The strength of the cadre of Extension Officers was reduced and that led to the retrenchment of some of the personnel including the petitioners, who were absorbed in another cadre, viz., Senior Inspectors. This absorption resulted in diminution in their scale of pay. Their

grievance was that persons appointed later and juniors to them in service were retained as Extension Officers, whereas they, by an order, dated September 28, 1967, were retrenched and that, instead of following the rule 'last come, first go', the juniors in rank were sought to be retained as Extension officers by reason of their residence in Telangana area and that such a preferential treatment on the basis of residential qualification is discriminatory and violative of Article 16 of the Constitution.

4. It was admitted in the counter affidavit of the Government that 'except the Telangana employees who were posted only in Telangana region and to which Andhra Personnel cannot be posted", no juniors of the Petitioners were allowed to continue in their posts preference to the rights of the petitioners.

5. The Mulki Rules formed part of the Hyderabad Civil Service Regulations promulgated in obedience to His Exalted Highness the Nizam's Firman, dated 25th Ramzan 1337-H. The State of Hyderabad was then a native Indian State which had not acceded to the Dominion of India after the Indian Independence Act, 1947. Chapter III of the Regulations contained Article 39 which reads as follows :

> "39. Not person will be appointed in any Superior or inferior service without the specific sanction of His Exalted Highness, if he is not a Mulki in terms of the rules laid down in Appendix 'N'. Any person, whose domicile is cancelled under Para 9 of the Mulki Rules, will be considered to have been dismissed from his post from the date of such cancellation."

The following rules in Appendix 'N' may be set out :

> "1. A person shall be called a Mulki if -
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> (a) by birth he is a subject of the Hyderabad State, or
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> (b) by residence in the Hyderabad State he has been entitled to be Mulki, or
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> (c) his father having completed 15 years of service was in the Government service at the time of his birth, or
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> (d) she is a wife of a person who is a Mulki.
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> 3. A person shall be called a Mulki who was a permanent residence of the Hyderabad State for at least 15 years and has abandoned the idea of returning to the place of his previous residence and has obtained an affidavit to that effect on a prescribed form attested by a Magistrate.
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> Rules 7 prescribes the contents of the application to be made for grant of a Mulki certificate and required the applicant, among other things, to say :
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> #"(a) ..... (b) ..... (c) .....##
>
> (d) Where was he residing prior to his residing in the Hyderabad State.
>
> (e) Place of birth and nationality of his father and grandfather.

#(f) .....(g) .....##

(h) From what period the applicant is permanently residing in the Hyderabad State and whether he has abandoned the idea of returning to his native land.

#(i) .....##

(j) Has the applicant's father or he himself created such connections within the Hyderabad State which lead to believe that they have made Hyderabad State their native land."

Rule 9 reads as follows :

"Government in the Police Department may cancel may Mulki certificate if the Government finds that any of the entries made in the application for the Mulki certificate Rule 7 is not correct or that it is obtained by false personation or false statements and it may cancel certificates of persons mentioned in clauses (b), (c) and (d) of Rule 1 if the holder of the Mulki certificate is disloyal to H.E.H. or the Hyderabad Government in his conduct or behaviour or is directly or indirectly connected with such political activities which are detrimental or contrary to the interest of the Hyderabad Government."

6. The Constitution of India came into force on January 26, 1950, except the parts which had been enforced earlier. The relevant articles for our purposes are Articles 13, 14, 16 and 35.

7. The conditions as they prevailed in the Hyderabad State have been summarised by Madhava Reddy, J., in his judgment in the Full Bench, and we may usefully reproduce this summary, her :

"Hyderabad State was one among the several other Princely States of India. Due to Political conditions and Historical reasons the State remained isolated. There were no adequate Educational facilities afforded to the people of the State, in the result, there were very few opportunities available to the people of the Region to enter public service in competition with others from outside the state. Another contributing factor in this behalf was the use of Urdu, which was not the language of nearly ninety per cent of the people, as the Official Language in the entire administration of Hyderabad State. Similar conditions prevailed in a few other State as well. So much so, that these people were not in a position to compete with others in the matter of employment even in their own state, if no protection was afforded to them in this behalf on residence within that State."

In view of these conditions, Madhava Reddy, J., further stated that "the Constituent Assembly while guaranteeing fundamental rights in the matter of employment under the State, took notice of this vast disparity in the development of various State and felt it imperative continue that protection in the matter of employment afforded on the basis of residence within the State and made provision under Article 35(b) of the Constitution for the continuance of those laws".

8. A few more historical facts may also be noticed here. The State Re-organisation Commission set by the Central Government recommended the disintegration of the Hyderabad State and suggested the continuance of the Telangana region of the Hyderabad State as a separate State. However, an agreement was reached by the elders of the Andhra and Telangana Regions, among whom were the

Chief Minister and the Deputy Chief Minister of the State of Andhra and the Chief Minister, Revenue Minister and some other Ministers of the Hyderabad State amongst whom one later of Ministers of the State of Andhra Pradesh with a view to allay the fears of securing employment in the Region on the strength of their residence. For safeguarding their legitimate interests in certain matters the formation of a Regional Standing Committee of the State Assembly consisting of the members of the State Assembly of this Region was also agreed upon.

9. We may mention that in this agreement in Clause B Domicile Rules were dealt with as follows :

> "B. A temporary provision will be made to ensure that for a period of five years, Telangana is regarded as a unit as far as recruitment to subordinate services in the area is concerned; posts borne on the cadre of these services may be reserved for being filed by persons who satisfy the domicile conditions as prescribed under the existing Hyderabad Rules."

10. Parliament, in effect, gave statutory recognition to this agreement by making the necessary constitutional amendment in Article 371 providing for the constitution of the Telangana Regional Committee. The Constitution (Seventh Amendment) Act, 1956, inter alia, substituted a new Article 371 for the old, the relevant part of which reads as follows :

> "371. Special provision with respect to the States of Andhra Pradesh, Punjab and Bombay. - (1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh ..... provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committee."

11. The State of Andhra Pradesh was reconstituted on November 1, 1956.

12. We may now refer to the attempts made to safeguard and apply the Mulki Rules. Appendix 'N' of the Hyderabad Civil Service Regulation was amended and an explanation was inserted, which reads :

> "Explanation. - The above Mulki Rules shall be read in conjunction with the clarifications contained in the following circular letters and Notification issued by the Government of Hyderabad in the General Administration Department (reproduced)."

One of the circular letters, dated June 14, 1950, briefly state :

> "..... Government is now advised that the Mulki Rules are save to the extent of their inconsistency with the Constitution of India saved by clause (b) of Article 35. It is, therefore, necessary to put out of operation the requirements laid down by the Mulki Rules to the extent that they prescribe qualifications regarding Birth and Descent ....."

Another circular letter, dated September 18, 1951, stated that the Government had decided that "the period of Fifteen Years" Residence prescribed in the existing Mulki Rules, should be 'continuous' with the proviso that periods spent outside the State for educational or medical purposes will not

count as a 'break' in this period of 15 years, where permanent residence has been continues to be in Hyderabad State".

13. The following questions emerge from the submissions of the learned before counsel us :

> 1. Were Rule (b), read with Rule 3, of the Mulki Rules - hereinafter referred to as the impugned Mulki Rules - and Article 39 laws in force immediately before the commencement of the Constitution in the territory of India ?
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> 2. Were they continued in force by Article 35(b) of the Constitution ?
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> 3. Did they continue in force after the Constitution of the State of Andhra Pradesh under the Re-organisation of States Act, 1950 ?
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> 4. Did they stand repealed by Section 2 of the Public Employment (Requirement as to Residence) Act, 1957 (Act 44 of 1957) notwithstanding that Section 3 of the said Act was declared void in so far as it dealt with Telangana ?

14. We will deal with these questions one by one. The first question is easy to answer. On this question the Judges of the Full Bench are agreed that the answer must be in the affirmative. The words "laws in force in the territory of India" in Article 35(b) also occur in Article 372, which continue in force existing laws which existed not only in the Provinces of British India but in all Indian States.

15. It would be remarkable if it were otherwise. In the context of Article 35(b) and Article 372 that has to be seen is not whether the State of Hyderabad was part of the territory of India before the commencement of the Constitution but whether its territory is included in India, after its commencement. The same test applies to the old provinces or part of Provinces of British India. This Court's decision in Janardan Reddy v. The State, (1950 SCR 940 : AIR 1951 SCJ 98) on the construction of Article 136 of the Constitution proceeded on the basis that to Article 136 "the normal mode of interpreting a legislation as prospective" should be applied. We are not concerned with any such consideration while interpreting Article 35(b) of the Constitution.

16. The second question also does not give much difficulty. Article 35(b), in term, saves any law in force immediately before the commencement of the Constitution if it is a law "with respect to" a matter referred to in Article 35(a)(i). The matter referred to for our purposes is a matter under clause (3) of Article 16 which may be provided for by law made by Parliament. What is then the matter that can be provided for under Article 16(3) ? The matter is "any requirement as to residence within a State in regard class or classes of employment or appointment to an office under the Government or any local or other authority". This Court interpreted Article 16(3) in Narasimha Rao v. The State of Andhra Pradesh (supra), to mean that it speaks of a whole State as the venue for residential qualifications. It cannot be said that the impugned Mulki Rules could not be provided for the Parliament under Article 16(3). They are with respect to the matter referred to in Article 16(3). Article 16(3) confers legislative power on Parliament with respect to a matter mentioned therein. It confers no less power than Articles 245-246 do, read with List I and List III. The impugned rules prescribed requirements as to residence within the whole of Hyderabad State and therefore are saved and continued in force by Article 35(b).

17. It was, however, urged that the impugned rules formed part of a number of other rules which became void on the commencement of the Constitution; all the Mulki rules constituted one

integrated scheme regulating appointments to services and posts under the old Hyderabad State; and if the other rules are void the impugned rules would also fall. But this principle of interpretation cannot be applied to Article 35(b), for it expressly saves law like the impugned Mulki Rules. If we were to apply the suggested principle of interpretation we would be rendering Article 35(b) nugatory, for ordinarily rules like the impugned rules would form part of Civil Service Regulations or laws dealing with appointments especially in the old Indian States. We must give effect to the intention clearly expressed in Article 35(b). The judges of the Full Bench also came to the same conclusion and in agreement with them we hold that the impugned rules were continued in force by article 35(b) of the Constitution.

18. The third question is not so easy to answer as divergent view have been expressed by judges of the Andhra Pradesh High Court. It seems to us that here too we must give effect to the intention of the founders of the Constitution as evinced in Article 35(b). On the terms of Article 35(B) the only proper question to be asked is : "Has Parliament in exercise of its power under Article 35(b), read with Article 16(3), altered or repealed or amended the impugned rules ?". That this is the proper question follow from the words "notwithstanding anything in the Constitution". This expression equally applies to Article 35(a) and Article 35(b). In Article 35(b) the effect of these words is not only to continue the impugned rules but to continue them until Parliament repeals, amends or alters them. It seems to us that the effect of reorganisation of States made under Article 3 and 4 of making Telangana a part of a new State has to be ignored under Article 35(b); other wise a fundamental right conferred on persons under Article 35(b) - it must be remembered that Article 35(b) is a part of the Chapter on Fundamental Rights - would be liable to be taken away by the re-organisation of States. It cannot be denied that the purpose of reorganisation of States is not to take away fundamental rights.

19. Accordingly we are of the view that the impugned rules continued in force even after the constitution of the State of Andhra Pradesh under the Re-organisation of States Act, 1956.

20. The fourth question again is not free from difficulty. In this connection it is necessary to give a few more facts and the provisions of the Public Employment (Requirement as to Residence) Act, 1957. This Act received the assent of the President on December 7, 1957. The Preamble read :

> "An act to make in pursuance of clause (3) of Article 16 of the Constitution special provisions for requirement as to residence in regard to certain classes of public employment in certain areas and to repeal existing laws prescribing any such requirement."

The object, it is clear from this recital, is two-fold; one, to make provisions in pursuance of Article 16(3) and, two to repeal the existing law relevant thereto. The Act did not come into force immediately because it provided in Section 1(2) that it shall come into force on such date as the Central Government may by notification in the Official Gazette appoint. Section 2 contained the repeal clause and it is in the following terms :

> "2. Upon the commencement of this Act, any law then in force in any State or Union territory by virtue of clause (b) of Article 35 of the Constitution prescribing, in regard to a class or classes of employment or appointment to an officer under the Government of, or any local or other authority within, that State or Union territory, any requirement as to residence therein prior to such employment or appointment shall case to have effect and is hereby repealed."

21. There is no doubt that the impugned Mulki Rules fall within Section 2 and if there was nothing more they would stand repealed. But the second purpose of Parliament was achieved by enacting Section 3 which provide :

> "3. (1) The Central Government may, by notification in the Official Gazette, make rules prescribing, in regard to appointment to -
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> (a) any subordinate service or post under the State Government of Andhra Pradesh, or
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> (b) any subordinate service or post under the control of the Administrator of Himachal Pradesh, Manipur or Tripura, or
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> (c) any service or post under a local or other authority (other than a contonment board) within the Telangana area of Andhra Pradesh or within the Union territory of Himachal Pradesh, Manipur or Tripura.
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> any requirement as to residence within the Telangana area or the said Union territory, as the case may be prior to such appointment."

22. Section 4 provided for Parliament scrutiny of rules and Section 5 dealt with duration of rules. Section 5, as originally enacted, provided :

> "Section 3 and all rules made thereunder shall cease to have effect on the expiration of five years from the commencement of this Act, but such cesser shall not effect the validity of any appointment previously made in pursuance of the said rules.
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> 23. The words "five years" had subsequently been substituted by the words "fifteen years".

24. In pursuance of this Act certain rules, called the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959 were made. The act and the Rules were challenged before this Court in Narasimha Rao v. State of Andhra Pradesh (supra). This Court held that Section 3 of the Public Employment (Requirement as to Residence) Act, 1957 in so far as it related to Telangana - we say nothing about the other parts - and Rule 3 of the rules made under this Act were ultra vires the Constitution.

25. No opinion was expressed in this judgment on the point whether the Mulki Rules existing in the former Hyderabad State should continue to operate by virtue of Article 35(b).

26. It is urged before us that if Section 3 is void, so is Section 2 because Section 2 and Section 3 of the said Act form one scheme; in other words, it was not the intention of Parliament to simply repeal the existing laws in Telangana dealing with residential requirements for the purposes of appointment, the intention being to substitute other rules in place of the earlier rules.

27. It is quite clear that Parliament had made up its mind that rules requiring residence as qualification for appointment to services or offices shall continue because the Public Employment Act enables the Central Government to make such rules. Not only that, but Section 5 assumes that rules will be made and it is this assumption that Section 5 originally proceeded to give a life of five years to them from the commencement of the Act. It is impossible to read Section 5 and Section 3

together without coming to the conclusion that it was the intention of Parliament that Central Government would make the necessary rules. The Central Government also understood the intention to be the same because it acted made Section 1(2) and Section 3 simultaneously. In other words, the date of commencement of the Act was fixed as March 21, 1959, and the rules also came into force on the same date.

28. A number of authorities of this Court and other authorities have been cited before us in order to make us determine whether Section 2 is not severable from Section 3 of the Public Employment Act. It is not necessary to refer to them here because the principles are well-known and have been reiterated in a number of cases of this Court, including R. M. D. Chamarbaugwala v. Union of India, (1957 SCR 930 : AIR 1957 SC 628 : 1957 SCJ 593) It seems to us that principles 1 and 3, mentioned in this judgment at p. 950, apply to the facts of this case. In our view it is clear that Parliament would not have enacted Section 2 without Section 3 as far as Telangana is concerned. The whole history of the legislation, its object, title and the Preamble to it, point to that conclusion. Further the Constitution (Seventh Amendment) Act, 1956, substituting new Article 371 for the old also shows that it was intended to give special consideration to the Telangana region.

29. We may mention that earlier Full Bench came to the same conclusion in P. Lakshmana Rao v. State of Andhra Pradesh (supra).

30. It was urged before us that Section 2 insofar as it dealt with Telangana region cannot be given an independent existence. We are unable to accede to this. It is only a matter of drafting and if the Telangana region had been dealt with separately in a separate Cct we could have had not hesitation in holding that Section 2 would fall with Section 3. The fact that Section 2 deals with laws and rules in various states would not prevent us from separating the valid portion from the invalid portion. This Court specifically held that Section 3 was bad insofar as it dealt with the Telangana region. We hold that Section 2 is also bad insofar as it dealt with Telangana area.

31. We may mention that we are not concerned with the interpretation of the Mulki Rules and their applicability after the adoptation. No such question was answered by the Full Bench or was dealt with the Division Bench.

32. In the result the appeal is allowed the judgments of the Full Bench and the Division Bench are set aside and Writ Petition No. 2524 of 1967 is dismissed.

33. It was suggested by the respondents in the appeal that the impugned Mulki Rules are unjust to them. This was strongly denied by the appellants. This is a matter for Parliament and not for us. We are only concerned with their validity. In the circumstances the parties will bear own costs throughout.

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