

Union of India

Vs

G. R. Prabhavalkar and Others

W.H. Deshmukh and Others

Vs

Gopal Ramchandra and Others

Civil Appeals Nos. 2303 and 2304 of 1969

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

16.03.1973

JUDGMENT

VAIDIALINGAM, J. -

1. These two appeals, by special leave, are directed against the judgment and order, dated February 25/26, 1969, of the Bombay High Court in Miscellaneous Petition No. 75 of 1967, quashing the orders of the Central Government as well as certain other orders equating the post of Sales Tax Officer of old Madhya Pradesh with the post of Sales Tax Officer, Grade-II, of old Bombay. Civil Appeal No. 2303 of 1969 is by the Union of India and Civil Appeal No. 2304 of 1969 is by some of the Sale Tax Officers of the old Madhya Pradesh State. They are also respondents in the Union's appeal. The appellants, in the latter appeal, support the Union Government in all respects. In the course of the judgment, we will refer to the array of parties as in Civil Appeal No. 2303 of 1969.

2. Respondents Nos. 8 to 13 and 15, alongwith 6 others, were serving as Sales Tax Officers in the State of Madhya Pradesh. On the reorganisation of states as from November 1, 1956, these 13 Officers were allotted to the bilingual State of Bombay. By notification, dated November 16, 1957, the State Government issued an order for equation of the various posts. The Sales Tax Officers from Madhya Pradesh were equated with Sales Tax Officers, Grade III of Bombay. At this stage it may be mentioned that in Bombay there were three Grades of Sales Tax Officers, being Grades I, II and III. On the basis of the equation adopted by the State Government, a seniority list was published on May 21, 1959. In the meanwhile, the Sales Tax Officers allotted from Madhya Pradesh, not satisfied with the decision of the State Government equating them with Grade III Officers of Bombay, had made representations to the Central Government. Their grievance was that they should have been equated with Grade II Officers of Bombay. The Central Government, having due regard to the principles formulated earlier in consultation with the State Governments and after consulting the Central Advisory Committee constituted for the purpose, accepted the representation of the erstwhile Madhya Pradesh Officers and equated them with the Sales Tax Officers, Grade II, in the reconstituted Bombay State. This decision was conveyed by the Central Government to the State authorities by its letter, dated April 23, 1960. The State Government gave effect to the decision of the Central Government by its resolution, dated April 27, 1961, and on that basis published also a seniority list on October 10, 1963, and invited representations and objections from all the officers.

In this seniority list, the erstwhile Sales Tax Officers of the Madhya Pradesh State were equated with Grade II officers of the Maharashtra State and they were also given suitable ranks. From the records it is seen that only the first respondent, who was already a Sales Tax Officer in the Bombay State, filed a representation. His representation was rejected by the Central Government.

3. Respondents Nos. 1 to 7 and one G. S. Kochrekar (since deceased) filed Miscellaneous Petition No. 75 of 1967 in the High Court, under Article 226, challenging the decision of the Central Government and the State equating the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade II, of the Bombay State. Their main ground of attack appears to have been that in arriving at the decision the Central Government did not give an opportunity to the Bombay Officers to make their representations and that the decision has been arrived at taking into consideration irrelevant and extraneous matters. The Writ Petition was opposed by the Madhya Pradesh Officers. The Central Government was also added as a party at a later stage of the proceedings before the High Court. On behalf of the Central Government, an affidavit was filed by the Deputy Secretary, Ministry of Home Affairs, detailing reasons for passing the order of April 23, 1960. The proceedings were adjourned by the High Court to enable the Central Government to consider the representations that may be made by the concerned Officers. Ultimately the Central Government, by its order, dated February 15, 1969, expressed the view that the equation already made was correct.

4. The High Court has quashed the decisions of the Central Government, dated April 23, 1960 and February 15, 1969 as also the Resolution, dated April 27, 1961 and the seniority list published by the State Government. The two grounds on which the High Court has quashed these orders and Notification are :

(1) if the matters relevant to be considered for the purpose of equation, are taken into account, the equation made by the Central Government is not a rational one; and

(2) in equating the Sales Tax Officers of Madhya Pradesh with Sales Tax Officers, Grade II, of Bombay, the Central Government have taken into account irrelevant and extraneous matters.

5. It is now necessary to advert to the relevant provisions of the statute, as also the various orders passed by the Central and State Governments. The States Reorganisation Act, 1956 (hereinafter to be referred to as the Act) was passed on August 31, 1956. Under Section 2(a), November 1, 1956, is the 'appointed day'. Part X contains provisions as to services. Section 114 deals with all India Services. Section 115 contains provisions relating to other services. The provision relevant in this section is sub-section 5, clause (b), which is as follows :

"115. Provisions relating to other services. -

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(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to

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(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representation made by such person."

Section 117, which confers power on the Central Government to give directions, is as follows :

"117. Power of Central Government to give direction. - The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions."

In the affidavit of the Deputy Secretary to the Government of India, Ministry of Home Affairs, filed before the High Court, it has been stated that conferences were held in May, 1956 between the representatives of the State Governments and the Government of India in New Delhi and it was unanimously agreed that in determining the equation of posts, the following factors should be borne in mind :

- (1) the nature and duties of a post;
- (2) the responsibilities and powers exercised by the Officer holding a post; the extent of the territorial or other charge held or responsibilities discharged;
- (3) the minimum qualifications, if any, prescribed for recruitment to the post; and
- (4) the salary of the post.

That such a decision was taken is also clear from the circular of the State Government, dated December 11, 1957. This circular was published for the information of the Officers that the general principles to be borne in mind and referred to earlier, were to be followed in the equation of posts. Those principles, it is further stated, were settled at a conference convened by the Government of India in May, 1956, which was attended, among others, by the representatives of the former States of Bombay, Madhya Pradesh, Hyderabad, Saurashtra and Kutch. It is further stated that the factors decided upon were also considered by the Integration Committee of Ministers and were found suitable and that the State Government was making equation of posts having due regard to these factors.

6. The State Government by its Resolution, dated November 16, 1957, equated the Sales Tax Officers of Madhya Pradesh with Sales Tax Officers Grade III of Bombay. This led to representations being made by the Madhya Pradesh Officers to the Central Government. In the affidavit of the Deputy Secretary, it is stated that under the provisions of Section 115(5) of the Act, the Central Government had constituted the Central Advisory Committee for the purpose of assisting it in giving proper consideration to the representations that are made by officers of gazetted cadres. The Committee consisted of the Chairman of the Union Public Service Commission as its Chairman, Shri P. N. Saprú, Member, Rajya Sabha and a retired Judge of the Allahabad High Court and Shri K. Y. Bhandarkar, retired Law Secretary to the Government of India. It is further stated that the representations received from the ex-Madhya Pradesh Sales Tax Officers claiming equation with Grade II Officers of Bombay were referred to the said Advisory Committee for their consideration and advice. It is further stated that after taking into consideration the points raised by the Officers in their representations, the comments of the State Government, the recommendations of the Advisory Committee and other relevant factors, the Central Government decided that the post of Sales Tax Officer, Madhya Pradesh (Rs. 225-600) was to be equated with the post of Sales Tax Officer, Grade II, Bombay (Rs. 300-650). It is further stated in the affidavit that this decision was

conveyed to the State of Bombay by the Ministry of Home Affairs Government of India, in its letter, dated April 23, 1960. A perusal of the order, dated April 23, 1960, of the Central Government also bears out the above facts.

7. On April 27, 1961, the State Government amended its previous Resolution of 1957 so as to accord with the decision of the Central Government as contained in its letter, dated April 23, 1960. On the basis of this equation, the State Government also published a seniority list on October 10, 1963, and called for objections. The only representation, dated January 9, 1964, received from the first respondent, who pressed his claim to be put in Grade II, was rejected ultimately by the Central Government and this led to the filing of the Writ Petition by the first respondent as well as certain other Officers of the Bombay State.

8. The High Court has discussed at great length the set-up and the scheme of the Sales Tax Officers in the two States, the nature of the duties and powers exercised by them as well as their salary, method of recruitment, chances of promotion and other matters. The High Court took the four factors, which have been directed to be borne in mind as a result of the conference held between the representatives of the State Governments and the Central Government and has come to the conclusion that these factors, if correctly applied, will not justify the equation of the Madhya Pradesh Officers with the Sales Tax Officers, Grade II, of Bombay. In fact the view of the High Court is that on an overall assessment, the Sales Tax Officers, in Madhya Pradesh area were in an inferior position and that even the Sales Tax Officers, Grade III, of old Bombay State are superior to the Sales Tax Officers of Madhya Pradesh. In another context, the learned Judges observe that no satisfactory material has been made available to the Court to show the superiority of the Sales Tax Officers of Madhya Pradesh over the Sales Tax Officers, Grade III, of Bombay. The sum and substance of the reasoning of the High Court is that as the salary of the old Madhya Pradesh Officers is assured by the Act, they should be satisfied if they are equated with Sales Tax Officers, Grade III, of Bombay State. The orders were finally struck down on the ground that the relevant factors for equation have not been properly considered and that irrelevant matters have been taken into account.

9. It is seen from the judgment of the High Court that on March 19, 1968, the proceedings were adjourned to enable the Central Government to consider the representations of the Bombay Officers. The order of the High Court, dated March 19, 1968, states that the counsel for the Union Government made a representation that it was willing to review the equation of posts of Sales Tax Officers from the erstwhile State of Madhya Pradesh after hearing the affected Officers from the various integrating areas. The Government of India passed an order on February 15, 1969 in and by which the original decision, dated April 23, 1960, equating the Madhya Pradesh Officers with Sales Tax Officers, Grade II, of Bombay, was allowed to stand.

10. There is a reference in the judgment that this letter, dated February 15, 1969, was given to the learned Judges and that it was also agreed to be shown to the counsel for the Writ Petitioners. That the High Court has looked into this letter is also clear from the fact that it says that outside matters, like the hierarchy of the Revenue Officers under the Land Revenue Code, have been taken into account by the Central Government. There is no other indication in the judgment as to what attack was made on this decision on behalf of the Bombay Officers. This order of the Central Government also has been quashed by the High Court.

11. On behalf of the Union, the learned Additional Solicitor-General has urged that the High Court has grossly-mis-appreciated the nature of the jurisdiction that it was, exercising in such matters. It

was pressed before us that the Central Government, having due regard to the principles that have been laid down for the purpose of equation of posts and after a proper consideration of the representations of the Officers and the recommendations of the Advisory Committee, have equated the Madhya Pradesh Sales Tax Officers with the Sales Tax Officers, Grade II, Bombay. In arriving at this decision, it is pointed out that no irrelevant factor has been taken into account and the decision is the only possible one that could be arrived at in the circumstances. The representations made by the Officers concerned have been properly considered as is mandatory under the provisions of the Act. The Central Government has acted according to the provisions of the Act. Under those circumstances, the learned Additional Solicitor General urged that the order of the High Court quashing the orders in question was not justified. Mr. S. J. Deshpande, learned counsel for the appellants in Civil Appeal No. 2304 of 1969 and Mr. B. D. Sharma, learned counsel, for the State of Bombay in both these matters have adopted the arguments of the Additional Solicitor General.

12. Mr. K. K. Singhvi, learned counsel for the Bombay Officers, has pointed out that the orders of the Central Government have been passed in violation of the principles of natural justice inasmuch as no opportunity given to the Officers concerned to make their representation and they were not given a personal hearing before the Central Government decided against them. Even the decisions arrived at, as pointed out by the High Court, are based on a consideration of irrelevant and extraneous factors. He pointed out that the principles formulated by the Central Government, in consultation with the State Government, for equation of posts have not been given due regard. The counsel further urged that the equation made by the Central Government, if allowed to stand, will work great hardship to the Sales Tax Officers of Bombay, as it will materially affect their chances of promotion. He further pointed out that the State Government has, in accordance with the decision of the High Court, modified the decision equating the Madhya Pradesh Officers with Sales Tax Officers, Grade II, of Bombay and, therefore, these appeals have become infructuous.

13. In our opinion, the contentions of the learned Additional Solicitor General are well founded. The Central Government, under Section 115 of the Act, has to determine the principles governing equation of posts and prepare a common gradation list by integration of services. They assist it in the task of integration of services and for a proper consideration of representations, the Central Government is empowered to establish Advisory Committees. The Central Government is bound to ensure a fair and equitable treatment to Officers in the matter of integration of services and preparation of gradation lists. It has also to give a full and fair opportunity to the parties affected to make their representations; and the Central Government has also to give a proper consideration to those representations. So long as the Central Government has acted properly according to the provisions of the Act, we are of the view, that a Court cannot go into the merits or otherwise of equation of posts which is a matter within the province of the Central Government.

14. It is no doubt true that the Central Government must have due regard to the principle enunciated by it in consultation with the states for the purpose of equation of posts. It must not only give an opportunity to the concerned officers to make representations, but it must also give those representations a proper consideration. It is not within the province of the Courts to lay down what are the principles to be adopted for purposes of equation. That falls within the purview of the statute concerned and the authorities charged with such duty. The power of the Courts is only to see that an authority has acted properly in accordance with the statute. If that is established, the decision of the authorities concerned will have to stand. If a particular decision is mala fide or arrived at on totally irrelevant and extraneous considerations, such a decision can be interfered with by Courts. In this case, no mala fides are alleged. As to whether any extraneous or irrelevant factors have been taken into account will be dealt with later.

15. The High Court is of the view that the equation settled by the Central Government affects prejudicially the Officers of Bombay. By Madhya Pradesh Officers being equated with Grade II Officers of Bombay State, the High Court observed that -

(a) Bombay Officers acting in Grade II have to revert to Grade III;

(b) Madhya Pradesh Sales Tax Officers have got large jumps in salary; and

(c) even the little chance of promotion is lost to the Bombay Officers till all the 13 Officers from Madhya Pradesh retire or are exhausted.

16. In our view, the High Court has grossly erred. In the case of equation of posts, especially among officers who are allotted from other States, it cannot be done with any mathematical accuracy. There will be some hardship or other caused to the officers of one particular region or other. That is inevitable when the service conditions of the officers coming from different regions vary. When the Central Government was impleaded as a party in the Writ Petition before the High Court, an affidavit of the Deputy Secretary, Home Affairs, was filed. That affidavit very exhaustively deals with the circumstances under which the Sales Tax Officers of Madhya Pradesh were equated with Sales Tax Officers, Grade II, of Bombay, by the Central Government's order, dated April 23, 1960. The Central Government had constituted the Central Advisory Committee as is required under subsection 5 of Section 115 of the Act. The composition of the Committee has been referred to earlier. It was, after taking into account the views of the Central Advisory Committee and having due regard to the comments of the State Governments, and the representations made by the Officers concerned that the Central Government took the decision. The factors which had to be taken into account as per the decision taken at the conference held in May, 1956, were all duly stated to have been considered by the Central Government. We do not find that any irrelevant or extraneous matters have influenced the decision of the Central Government.

17. It is true that a decision taken by the Central Government without giving an opportunity to the Officers affected to make representations, is not a valid one. It has been so held by this Court in *Union of India and Another v. R. K. Roy and Others*. ((1969) 2 SCR 186 : AIR 1968 SC 850: (1968) 2 SCJ 503). The jurisdiction and powers of the Central Government under the Act have also been laid down in *N. Subba Rao Etc. v. Union of India and Others*, ((1972) 2 SCC 862 : 1973 SCC (L & S) 38) and *Dr. Rajiah Raj and Others v. Union of India and Others*. ((1973) 1 SCC 61 : 1973 SCC (L & S) 71). One of the points that has been stressed by Mr. Singhvi is that the decision of the Central Government, dated April 23, 1960, is opposed to the principles of natural justice inasmuch as the Bombay Officers had no opportunity of making any representations before the said order was passed. We have already referred to the fact that originally the State Government equated the Madhya Pradesh Officers with Sales Tax Officers, Grade III, of Bombay. The Madhya Pradesh Officers filed representations to the Central Government against this equation. It is not clear from the records whether any counter representations were received by the Central Government from the Bombay Officers. Nor is it clear whether the Central Government called upon the Bombay Officers to offer their comments or views on the claims made by the Madhya Pradesh Officers. Anyhow the order came to be passed on April 23, 1960. This order has been struck down by the High Court, not on the ground that the Bombay Officers have not been given an opportunity to make representations, but on other grounds.

18. Assuming that the Central Government did not give an opportunity to the Bombay Officers to make their representations before passing the order of April 23, 1960, the defect in this regard

stands rectified by the fresh order passed on February 15, 1969. We have already referred to the fact that during the hearing of the Writ Petition, after the Central Government was impleaded, a representation was made on its behalf that the Union Government was willing to review the equation of posts of Sales Tax Officers from the erstwhile State of Madhya Pradesh after hearing the affected Officers from the various integrating areas. This representation was incorporated in an order of Court, dated March 19, 1968 and the proceedings stood adjourned. There is no controversy that all the Officers concerned, including the Bombay Officers made representations to the Central Government. The Bombay Officers wanted the order of April 23, 1960, to be modified by equating the Madhya Pradesh Officers with the Sales Tax Officers, Grade III, of Bombay, as was originally done by the State Government. The Madhya Pradesh Officers, on the other hand, reinforced their claim to sustain the order of April 23, 1960. The Central Government passed the order on February 15, 1969, which was made known to the learned Judges hearing the Writ Petition. In fact this is also one of the orders that has been struck down by the High Court. When the order has been struck down, it is quite reasonable to infer that the Court and all parties were fully aware of the very elaborate reasons given by the Central Government for equating the Madhya Pradesh Sales Tax Officers with the Sales Tax Officers, Grade II, of Bombay. There was no attack, so far as we could see, levelled by the Writ Petitioners against this order of the Central Government excepting that a personal hearing was not given to them by the Central Government. The High Court brushed aside this order by a mere statement that the additional matter that was considered by the Central Government related to the hierarchy of Revenue Officers under the Land Revenue Code and that the said matter is outside those to be considered according to the minutes of the joint conference of the representatives of the State and the Central Governments.

19. The order, dated February 15, 1969, passed by the Central Government, together with the enclosures, is a very lengthy one. It clearly shows that they had taken into account the representations made by the officers both in the former State of Madhya Pradesh and the State of Bombay, the various affidavits and counter-affidavits filed in the High Court, the representations made by the Bombay Officers, the comments of the State Government on those representations and the recommendations of the Central Advisory Committee. It is after a consideration of these matters that the Central Government decided to equate the Sales Tax Officers of old Madhya Pradesh with Sales Tax Officers, Grade II, of old Bombay. A copy of the explanatory memorandum to the recommendations of the Central Advisory Committee has also been forwarded by the Central Government to the State Government. The entire proceedings resulting in the order of February 15, 1969, leave on doubt in our minds that the Central Government have considered only very relevant factors and the decision has also been taken in conformity with the provisions of the Act. They also show that the Central Government has given a proper consideration to the representations made by the Bombay and Madhya Pradesh Officers. The order deals with every one of the points raised in both sets of representations and it also gives elaborately the reasons for rejecting the representations of the Bombay Officers and for accepting those of the Madhya Pradesh Officers.

20. The learned Additional Solicitor General pointed out that it is only necessary that the authorities concerned should bear in mind the four factors, referred to earlier, in the matter of equation of posts. According to him, when once these factors have been properly taken into account, the mere fact that certain other additional or incidental matters relevant to the question have also been considered, will not vitiate the orders passed by the Central Government. In this connection the learned Additional Solicitor General drew our attention to the decision of the Judicial Committee in *Ryots of Garabandho and Other Villagers v. Zamindar of Parlakimedi and Another.* (LR 70 IA 129). The provision that the Judicial Committee had to consider was contained in sub-section (2) of Section 168 of the Madras Estates Land Act, 1908, that in settling rents the collector "shall have regard to

the provisions of this Act". The Judicial Committee held that these provisions only require that they must be taken into consideration by the Officers concerned and it is impossible to say that there is a duty on the part of the Officers to keep rigidly within the limits imposed by these provisions. Based upon this decision, the contention of the learned Additional Solicitor General was that even if certain other additional matters relevant to the question have been taken into account by the Central Government, its order cannot be considered to be erroneous. In our view, the earlier order, dated April 23, 1960, as well as the latter order, dated February 15, 1969, have both been passed by the Central Government having due regard to the principles settled for purposes of equation of posts. In this view, it is not necessary for us to consider the point raised by the learned Additional Solicitor General based upon the decision of the Judicial Committee.

21. This order of February 15, 1969, has not, in our view, received due consideration at the hands of the High Court. On the other hand, the High Court has dealt mainly with the order, dated April 23, 1960, as well as the consequential orders passed by the State Government. As we are satisfied that the order of February 15, 1969, has been passed by the Central Government on a proper consideration of all relevant factors and materials, it is not necessary for us to deal elaborately with the reasons given by the High Court for striking down the previous order, except to say that the High Court's view in respect of those matters is not justified. Even the grievance that the Bombay Officers did not have an opportunity to make any representation before the order, dated April 23, 1960, was passed, has now been removed by the Central Government furnishing the said opportunity before it passed the order of February 15, 1969. Even before us, the learned counsel for respondents Nos. 1 to 7, has not been able to point out infirmities, if any, in this order.

22. The criticism of Mr. Singhvi, learned counsel, levelled against the order of February 15, 1969 that the Central Government did not give a personal hearing to the Bombay Officers before passing the order, need not detain us long. Though such a grievance was made faintly during the arguments in the Writ Petition, the High Court has not struck down even this order on this ground. The High Court, in the judgment, has stated that the proceedings were adjourned on March 19, 1968, to enable "the Central Government to consider the representations of the Writ Petitioners". Therefore the High Court, which passed the order of March 19, 1968, adjourning the proceedings had understood that the object of the said adjournment was to enable the Writ Petitioners to "make representations" and that the Central Government should properly consider the same. Admittedly, representations were made by the Writ Petitioners and, as stated earlier by us, they have been dealt with by the Central Government in its order, dated February 15, 1969. Section 115(5)(b) refers to a proper consideration of any representation made by any Officer. This is satisfied in this case. Mr. Singhvi, learned counsel, drew our attention to the decision of this Court in *N. Subba Rao, Etc. v. Union of India and Others* (supra), and urged that it is implicit in the said decision that there is an obligation on the Central Government to give personal hearing to the Officers concerned under the Act. We have gone through the decision carefully and we do not find any basis for this contention. Therefore, there is no substance in this criticism of Mr. Singhvi.

23. Mr. Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III, of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous.

24. In the result the judgment and order, dated February 25/26, 1969, of the High Court are set aside and Civil Appeals Nos. 2303 and 2304 of 1969 are allowed. There will be no order as to costs in both the appeals.

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