

A. Panduranga Rao

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 2059 of 1974

(A.Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

02.09.1975

JUDGMENT

UNTWALIA, J. -

1. In this appeal by special leave we are once again called upon to law down the meaning and scope of Article 233 of the Constitution of India relating to the appointment of District Judges. This Article along with other Articles in Chapter I of Part I of the Constitution came up for consideration and was interpreted by this Court on several occasions in the past, yet, a Bench of the High Court of Andhra Pradesh in its judgment under appeal felt persuaded to take a wholly erroneous view as to the meaning of the Article and committed a serious error in the application of the principles of law settled by this Court to the facts of the instant case.

2. We shall state the facts in a narrow compass shorn of unnecessary details. On January 3, 1972 the Government of Andhra Pradesh, respondent No. 1 was requested by the High Court, respondent No. 2, to take and Sessions Judges, Grade II for direct recruitment". By a D.O. letter dated September 14, 1972 the first respondent informed the second respondent that the six vacancies were being notified for direct recruitment. They were actually notified in the Gazette of that date. With the approval of the High Court, an advertisement was published on August 1, 1972 in the Deccan Chronicle. The total number of applications received in response to the advertisement was 381. Twenty-six applications were found to be not in order and rejected. The remaining 355 candidates were called by the High Court for interviewed (sic) by the Selection Committee of the High Court on various dates. Shri A. Panduranga Rao, the sole appellant in this appeal was one of the candidates interviewed on June 14, 1973.

3. The High Court eventually made its recommendations in its D.O. letter dated July 13, 1973 recommending in order of merit six persons "as most suitable candidates from among the applicants, for being appointed as District and Sessions Judges, Grade II". This letter was written by the Registrar of the High Court as directed "by the Hon'ble the Chief Justice, and the Hon'ble the Chief Justice, and the Hon'ble Judges of the Andhra Pradesh High Court". The appellant's name was the fifth amongst the six names recommended.

4. Although it is not very relevant to say so, just to complete the link in the chain of relevant events, it may be stated here that the recommendations made by the High Court seems to have leaked out. Whoever might have been responsible for this leakage it was all the same a very unfortunate thing. This led the Bar Association City Civil Court, Hyderabad and the High Court Bar Association to pass certain resolutions and to send certain memoranda to the Government even to the extent of making some adverse comments against some of the persons recommended by the High Court for

appointment. On receipt of the same government wrote a D. O. letter to the High Court on July 24, 1973 expressing surprise at the leakage of secret information but at the same time inviting reply and comments in its D.O. letter dated July 26, 1973 pointing out that the leakage of the secret information could not be possible at the High Court end. It is not necessary for us to advert to the comments or resolutions of the Bar Association or the views of the High Court expressed in its letter dated July 26, 1973.

5. We now come to the relevant letters in question. A.D.O. letter dated July 26, 1973 was written by the Government to the High Court with reference to the latter's letter of recommendation dated July 13, 1973. We may point out here that this letter dated July 26, 1973 was written by the Government without any reference to, and in all probability, before the receipt of the High Court's letter dated July 26, 1973 in reply to the Government's of July 24, 1973. In the Government's letter dated July 26, 1973 attention of the High Court was invited to Instruction 12(4) of the Secretariat instructions and a request was made.

to send the list of persons whom the High Court considered to have reasonable claims to the appointment or suitable therefor the posts of District and Sessions judge, Grade II along with remarks regarding the qualifications and claims of the several persons in the list.

It may be stated here that as usual the correspondence was going on between the Chief Secretary on behalf of the Government and the Registrar on behalf of the High Court. The letter in reply to former's letter dated July 26, 1973 sent the following reply on August 1, 1973 :

Your letter reached me on July 28, 1973. With reference to your above letter dated July 26, 1973, I have been directed to forward the entire list of the candidates interviewed by the High Court, with the remarks obtained by them. The High Court has no further remarks to offer. All the applications of the candidates sent by you are returned separately.

6. Thereupon the Government wrote D.O. letter dated November 30, 1973 to the Chief Justice of the High Court intimating that Government had decided to select the six candidates mentioned in that letter for filling up the six vacancies. Out of the persons so selected two were those who had been recommended by the High Court along with four others in its letter dated July 13, 1973. They were serial Nos. 1 and 4. Four out of the six were not appointed and in their place, as it appears, treating the entire list of 263 as a list recommended by the High Court in order of merit persons at serial Nos. 9, 12, 13 and 16 were selected by the Government for appointment. And finally orders appointing the six persons so selected were issued on December 7, 1973. Several writ applications were filed in the High Court to challenge the appointments made by the Government. We are in this appeal concerned with the judgment of the High Court dismissing the Writ Petition No. 895/1974 filed by the appellant to challenge the appointment of only four viz. respondents Nos. 3 to 6 and the non-appointment of the appellant. His case was that respondents Nos. 3 to 6 were appointed in violation of the constitutional provision contained in Article 233 and that he was not appointed on grounds which are unmsustainable in law. The High Court has taken the view that the appointments have been made by the Government consistent with the requirement of Article 233(2) out of the entire list of 263 recommended by the High Court. The appellant's claim on merits for appointment to the post has not found favour with the High Court. In the view which we take as to the violation of Article 233 in this case, we would not like, nor is it necessary to do so, to examine the claim of the appellant for appointment in one of the six vacancies.

7. It would be convenient to read once again Article 233 of the Constitution :

As pointed out at page 89 by this Court in Chandra Mohan v. State of U. P. ((1967) 1 SCR 77 : AIR 1966 SC 1987 : (1967) 1 LLJ 412) :

There are two sources of recruitment namely, (i) service of the Union of the State, and (ii) members of the Bar. The said Judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court.

8. A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word "recommended". But the literal meaning given in the Concise Oxford Dictionary is quite simple and apposite. It means "suggest as fit for employment". In case of appointment from, the Bar it is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court.

9. The recommendation of the High Court for filling up the six vacancies was contained in its letter dated July 13, 1973. Government was not bound to accept all the recommendations but could tell the High Court its reasons for not accepting the High Court's recommendations in regard too certain persons. If the High Court agreed with the reasons in case of a particular person the recommendation in his case stood withdrawn and there was no question of appointing him. Even if the High Court did not agree the final authority was the Government in the matter of appointment and for good reasons it could reject the High Court's recommendations. In either event it could ask the High Court to make more recommendations in place of those who have been rejected. But surely it was wrong and incompetent for the Government to write a letter like the one dated July 26, 1973 inviting the High Court's attention to Instruction 12(5) of the Secretariat instructions and on the basis of the furore created by the two Bar Associations of Hyderabad and the High Court considered to have reasonable claims to the appointment. On the basis of the furore created by the two Bar Associations of Hyderabad and the High Court's letter dated July 26, 1973 written in reply to the Government's letter dated July 24, 1973 no person's candidature recommended by the High Court had been rejected when the letter dated July 26, 1973 was written by the Government. Even after rejection the Government could not ask the High Court to send the list of all persons whom the High Court considered to have reasonable claim to the appointment. We fell distressed to find that instead of pointing out the correct position of law to the Government and itself acting according to it, a letter like the one dated August 1, 1973 was sent by the High Court in reply to the dated August 1, 1973 was sent by the High Court in reply to the Government's letter dated July 26, 1973. It is not clear from this letter whether it was written under the directions of Chief Justice and the other judges of the High Court as in the case of the letter dated July 13, 1973. But surely it was very much wrong on the part of the High Court to forward the entire list of the candidates interviewed with the marks obtained by them and adding at the same time that the High Court had no further remarks to offer. We could not understand the reason for writing such a letter by the High Court. But if we may hazard a surmise it seems to have been written in utter disgust at the Government's unreasonable attitude displayed in its letter dated July 26, 1973. By no means could it be, nor was it, a recommendation by the High Court of all he 263 candidates interviewed, that all of them had a reasonable claim, or in other words, were fit to be appointed District Judges. We must express our displeasure at and disapproval of all that happened between the Government and the High Court - in the former writing the letter dated July 26, 1973 and the latter sending the reply dated August 1, 1973.

10. Then comes the letter dated November 30, 1973. After tracing the history of the

recommendations made by the High Court in its letter dated July 13, 1973 and "in the light of further information about these candidates as required from High Court", Government decided to select the six candidates mentioned therein including respondents Nos. 3 to 6 as if they were from "the list recommended by the High Court". It was further stated in this letter "Reasons for not selecting candidates placed by the High Court higher than those now selected are given in the annexure enclosed to this D.O. letter". The High Court, to be more accurate, the Chief Justice to whom the letter dated November 30, 1973 was addressed seems to have not resented or protested against the selection so made by the Government in clear violation of Article 233 of the Constitution. We find it intriguing that the letter written by the Registrar to the High Court on August 1, 1973 was treated as a recommendation of all the 263 candidates as having been found fit for appointment as district Judges. By no means could it be so. It was not so. And yet the High Court or the Chief Justice did not object to the appointment of respondents Nos. 3 to 6 as District Judges. They were not eligible to be so appointed as their names had never been recommended.

11. In the result we allow this appeal and set aside the judgment of the High Court. The writ application filed by the appellants succeeds only to this extent that the appointments of respondents Nos. 3 to 6 are quashed. The four posts manned by them are declared vacant. There will be no order as to costs.

</html