

S. Prakasha Rao and Another

Vs

Commissioner of Commercial Taxes and Others

Civil Appeal No. 1259 of 1990

(Ranganath Misra, M.M. Punchhi, K. Ramaswami JJ)

23.02.1990

JUDGMENT

K. RAMASWAMY, J. -

1. Special leave granted.

2. This appeal under Article 136 is against the order dated October 6, 1989 made in R.P. No. 2403 of 1987. The facts are as under :

Respondents 4 and 5, B. Kumara Swamy and G. Amarender, in this appeal filed R.P. No. 1615 of 1984 before the Andhra Pradesh Administrative Tribunal, Hyderabad, contending for promotion from Senior Assistant to Assistant Commercial Taxes Officer; zonal seniority of Warangal local area comprising of Warangal, Khammam, Karimnagar and Adilabad is the criteria. The Adilabad division consisting of Adilabad and Karimnagar Districts of the Commercial Taxes Division cannot be treated to be a zone and the divisional seniority prepared by the department is bad in law. It was held by the Tribunal or order dated February 18, 1986, that the zonal seniority is the criteria. Though, for the administrative convenience a division consisting of the revenue districts of Adilabad and Karimnagar may be treated as one division and Warangal and Khammam as Warangal division may be served out, for the purpose of promotion zonal seniority has to be maintained. Accordingly, the Tribunal allowed the representation petition. The Government of Andhra Pradesh in exercising its power under clause (5) of Article 371-D annulled that order which had given rise to filing of W.P. No. 998 of 1986 in this Court under Article 32 of the Constitution. This Court declared clause (5) of Article 371-D of the Constitution as ultra vires violating the basic structure. The State Government filed S.L.P. No. 8868 of 1987 against order in R.P. No. 1615 of 1984 which was dismissed by this Court on December 7, 1987. Subsequently, the petitioner impleading respondents 4 and 5 and respondent 6, G. Satya Rao, filed R.P. No. 2403 of 1987, which was dismissed by the Tribunal. The appellants filed Civil Appeal No. 3203 of 1989 which was allowed by this Court and remitted to the Tribunal and directed, "to examine the legal effect of the Government Order in GOMs No. 1648 dated November 20, 1982 after again hearing the parties". Thereafter, the Tribunal after considering the effects of the GO held that in the impugned order that GOMs No. 1648 was issued under Para 5(2)(c) of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 for that "the 'order'". No allotment of cadre in terms of para 4 of the order was issued. The GOMs No. 1648 and GOMs

No. 1900 do not mention the constitution of new local cadre of Adilabad Division and no order was issued constituting a separate cadre in terms of 'the order'. Accordingly, it reiterated the original order dated April 29, 1988.

3. The Constitution (Thirty-second Amendment) Act, 1973 through Section 3 thereof brought into the Constitution Article 371-D with effect from July 1, 1974. This is a special provision in respect of the State of Andhra Pradesh empowering the President, having regard to the requirements of the State as a whole for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State to make an order, in particular -

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedures as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area -

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government ...

(Other clauses are not relevant for the purpose of this case. Hence omitted.)

4. In exercise of the power under clause (1) and clause (2) of Article 371-D the President issued 'the order' in G.S.R. No. 524-E dated October 18, 1975 which was notified through GOMs No. 674 dated October 20, 1975. Para 2(1)(c) interpretation clause defines 'local area' in relation to local cadre thus :

"2(1)(c) 'local area', in relation to any local cadre, means the local area specified in paragraph 6 for direct recruitment to posts in such local cadre, and includes, in respect of posts belonging to the category of Civil Assistant Surgeons, the local area specified in sub-paragraph (5) of paragraph 8 of this Order."

5. Para 2(1)(e) defines 'local cadre' :

"2(1)(e) 'local cadre' means any local cadre of posts under the State Government organised in pursuance of paragraph 3, or constituted otherwise, for any part of the State."

6. Para 2(1)(m) defines 'zone' :

"2(1)(m) 'zone' means a zone specified in the Second Schedule comprising the territories mentioned therein."

7. Para 3(1) provides organisation of local cadres :

"3.(1) The State Government shall, within a period of twelve months from the commencement of this Order, organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of

the State to the extent, and in the manner, hereinafter provided."

8. The proviso thereto was added and was published through GOMs No. 34, GA (SPF. A.) Deptt. dated January 24, 1981, which reads thus :

"Provided that, notwithstanding the expiration of the said period, the President may by order, require the State Government, whenever he considers it expedient so to do, to organise any classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State."

9. Sub-paragraph (2) provides that the posts belonging to the category of lower division clerk (now redesignated as Junior Assistant), and to each of the other categories equivalent to, or lower than that of a lower division clerk, in each department in each district shall be organised into a separate cadre. Sub-paragraph (3) provides the posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each zone shall be organised into a separate cadre. Sub-paragraph (4) provides, the post belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre. Paragraph 3(5) with a non-obstinate clause provides that :

"Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may where it considers it expedient so to do and with the approval of the Central Government organise the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more continuous zones into a single cadre."

[Sub-paragraph (6) is not material. Hence omitted].

10. Sub-paragraph (7) provides :

"3.(7) In organising a separate cadre in respect of any category of posts in any department for any part of the State, nothing in this Order shall be deemed to prevent the State Government from organising or continuing more than one cadre in respect of such category in such department for such part of the State."

(Paragraph 3(8) is also not necessary. Hence omitted.)

11. Paragraph 4 provides mode of allotment of persons, holding posts required to be organised into local cadres in accordance with the principles and procedure laid down therein, the details of which are not material. Hence omitted.

12. Paragraph 5 declares that :

"5.(1) Each part of the State, for which a local cadre has been organised, in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts."

(Other sub-paragraphs relate to transfer of persons and are not relevant for the purpose of this case. Hence omitted.) Paragraph 6 deals with local areas :

"6.(1) Each district shall be regarded as a local area -

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of a lower division clerk or to any other category equivalent to or lower than that of a lower division clerk (Junior Assistant).

(ii) for direct recruitment to posts in any local authority within that district, carrying a scale of pay, the minimum of which does not exceed the minimum of the scale of pay of a lower division clerk or a fixed pay not exceeding that amount.

(2) Each zone shall be regarded as a local area - (the details of which are not material. Hence omitted.)"

13. In the Table local area and the ratio in the Schedule, the State of Andhra Pradesh was divided into seven zones and Zone V consists of the revenue districts of Adilabad, Karimnagar, Warangal and Khammam. Instructions have been issued for implementation of the order through GOMs No. 728 dated November 1, 1975, in organising the local cadres. Para 3 thereof postulates, after quoting paragraph 3(1) of the Order referred to hereinbefore, thus :

"A local cadre is a cadre comprising the posts belonging to a category in a department and located within a specified part of the State. The concept of the local cadre is thus related to the concept of the unit of appointment under the service rules; the part of the State for which a local cadre is organised in respect of any category will serve as a unit of appointment etc., for that category. The scheme of organisation of local cadres under the Presidential Order applies generally to all non-gazetted categories, other than those specifically exempted under Government of India Notification GSR No. 529(E), dated October 18, 1975 issued under paragraph 3(8) of the Order, as also to the specified gazetted categories, i.e., the gazetted categories listed in the Third Schedule to the Order and those that may be notified in pursuance of paragraph 2(i)(j) of the Order by the Central Government."

14. Instruction 4(a) says that the lower division clerks or equivalent categories or lower than that were designated as a District Cadre. Posts belonging to other non-gazetted categories were designated as zonal cadre and specified gazetted cadres were also designated as zonal cadres. Instruction 7 provides thus :

"More than one local cadre permissible within local area. - It should be borne in mind that where the State Government is required to organise a local cadre for any part of the State, there is no objection to organising or continuing more than one local cadre for such part of the State [vide paragraph 3(7) of the order]. There is, therefore, no objection to having more than one cadre in Revenue District in respect of a post belonging to the category of Lower Division Clerk (Junior Assistant) or below or to having more than one cadre in a zone in respect of a higher category."

15. Instruction 9(e) provides readjustment of territorial jurisdiction, thus :

"In several departments, the unit of appointment in respect of non-gazetted categories is linked to the territorial jurisdiction of an authority or officer subordinate to the Head of Department. For instance, the unit of appointment of Upper Division Clerks

(Senior Assistants) in the Commercial Taxes Department is the division in charge of Deputy Commissioner. In the case of such departments if it becomes necessary to alter the units of appointment in order to bring them into conformity with the Presidential Order, a corresponding adjustment in the territorial jurisdiction of the departmental authority may also become necessary and will have to be made ..."

16. Thus, it is seen that pursuant to the power given under clauses (1) and (2) of Article 371-D the President had issued the order organising local cadres and Zone V consists of Adilabad, Warangal, Karimnagar and Khammam revenue districts. It is the local area for the local cadres. The post of the Junior Assistant is the district cadre post and the post of Senior Assistant and Assistant Commercial Taxes Offices, etc. are the zonal posts. The State Government is empowered under the Presidential Order to organise the local cadres within a period of twelve months from October 20, 1975. In pursuance thereof the State Government in Commercial Taxes Department issued order GOMs No. 581 dated May 24, 1976 organising zones for the purpose of Commercial Taxes Department, namely, Visakhapatnam, Kakinada, Krishna, Guntur, Tripathi, Karnool, Warangal, Hyderabad I and Hyderabad II. Warangal and Khammam. Thus, the Warangal zone of Commercial Taxes Department for the purpose of recruitment, seniority, promotion, transfer, etc. of local cadres is co-terminus with the Zone V of the Presidential Order. The Junior Assistant in each revenue district in Warangal zone is a separate district post, but for the purpose of promotion to the post of Senior Assistants and Assistant Commercial Taxes Officers, which are zonal posts common seniority of the Junior Assistants, Senior Assistants working in all the four revenue districts shall have to be maintained and promotions made in accordance with Ministerial Service Rules or the Commercial Taxes Subordinate Service Rules issued under proviso to Article 309 of the Constitution as the case may be. It would be subject to rule of reservation for local candidates as adumbrated in para 8 of the Order and the general rule of reservation made in Rule 22 in Andhra Pradesh State and Subordinate Service Rules.

17. It would appear from the record that the government intended to reorganise, for the purpose of efficient administration of the Commercial Taxes Department and create separate divisions within the zones and issued through GOMs No. 1900 dated December 22, 1981 carving out Adilabad and Karimnagar as Adilabad division and Warangal and Khammam as Warangal division with the administrative control of the concerned Deputy Commissioner of Commercial Taxes at Adilabad and Warangal. As a follow up action options have been called for from the employees and they have been allotted in GOMs No. 1648 dated November 22, 1982 to the respective divisions. It is not disputed that the allotment and transfer were not made in terms of Para 4 of the Order. As stated earlier this action had given rise to the above representation petitions and the orders passed by the Tribunal and the results ensued there under.

18. Dr. L. M. Singhvi, the learned senior counsel for the appellants, contends that paragraph 3(7) of the Order empowers the State Government to create a zone within the Warangal zone for the purpose of recruitment, seniority and promotion. The State Government has inherent power in that regard. There is no express prohibition in that regard in the Order. The phrase 'or constituted otherwise' engrafted in the definition of local cadre in paragraph 2 (e) read with paragraph 3(7) gives ample power to the State Government to organise any local cadre within the zone for the Commercial Taxes Department. The action thus taken by the State Government is clearly within its power. The contra finding recorded by the Tribunal is illegal. He placed strong reliance on a decision of a single member tribunal made in R.P. No. 101 of 1982 and batch dated April 1, 1982. He further contended that in maintaining harmony in Center-State relationship, the State Government shall continue to have its inherent power to organise its local cadre to meet the

exigencies of its administrative needs. The prior approval or concurrence of the Central Government is redundant. We find no force in these contentions. It is already seen that in exercise of the power under paragraph 3(1) of the Order the State Government shall, within a period of twelve months from the date of the commencement of the Order, organise class or classes of posts in the civil services of, and class or classes of civil posts, under the State into different local cadres for different parts of the State in the manner therein provided. It is already seen that through GOMs No. 581, the State Government in fact had organised the Commercial Taxes Departments by constituting different local cadres and Warangal zone comprised of the four revenue districts, namely, Adilabad, Karimnagar, Khammam and Warangal was declared as local area for local cadres of the department. Having done so, the question emerged whether the State Government has further power to reorganise the local cadre within the zone. In our considered view, we have no hesitation to hold that once the State Government has organised the class or classes of posts in the civil services of and class or classes of civil posts, under the State as local cadres, it ceases to have any power to bifurcate or reorganise a zone within a zone, cadre or cadres therein. In exercise of the power under proviso to paragraph 3(1), it is for the President notwithstanding the expiry of the period of twelve months prescribed in sub-paragraph (1) of paragraph 3, by an order require the State Government whenever he considers it expedient so to do to have the power under paragraph 3(1) exercised. Thereby, it is clear that the State Government shall have to place necessary material before the President; the President shall consider that it is expedient to organise any class or classes of posts in the civil services of and class or classes of civil posts, under the State into a further local cadre within the local cadre in the zone already prescribed and to pass an order in that regard requiring the State Government to so organise it. It is made clear that for the purpose of efficient administration or convenience, the State Government may create division/divisions within the local area or local cadre. But for the purpose of recruitment, seniority, promotion, discharge, etc. the local cadre once organised under paragraph 3(1) shall be final and continue to be operative until action is taken under proviso to sub-paragraph (1) of paragraph 3 of the Order. When we inquired the learned counsel for the State, Shri Madhava Reddy candidly conceded that on order of the President, as provided under the proviso, was made. Therefore, the action taken by the State Government in issuing GOMs No. 1648 dated November 22, 1982 is clearly illegal and invalid contravening the proviso to sub-paragraph (1) of paragraph 3, undoubtedly it contravened para 4 of the Order.

19. It is seen that the order was made pursuant to the power given to the President under Article 371-D, which is a special provision made under the Constitution (Thirty-second Amendment) Act, 1973 peculiar to the State of Andhra Pradesh due to historical background. Therefore, the State Government have no inherent power in creating a zone or organising local cadre within the zones except in accordance with the provisions made in the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation for Direct Recruitment) Order. It is true that the clause 'or constituted otherwise' defined in paragraph 2(e) is of wide import, but is only relatable to the power given by the President to the State Government to organise local cadre. Paragraph 3(1) is the source of that power, but the exercise thereof is hedged with a limitation of twelve months from the date of commencement of the Order. Therefore, the power to organise class or classes of post of civil services of, and class or classes of civil posts, under the State into different local cadres should be exercised by the State Government in accordance with paragraph 3(1) before the expiry of the twelve months from October 20, 1975. If the exercise of the power is not circumscribed within limitation, certainly under General Clauses Act the power could be exercised from time to time in organising local cadres to meet the administrative exigencies. The prescription of limitation is a fetter put on the exercise of power by the State Government. Obviously, realising this reality and the need to organise local cadres, subsequent thereto the amendment was made and was published in

GOMs No. 34 G.A. dated January 24, 1981 introducing proviso to paragraph 3(1). Thereunder, notwithstanding the expiry of the said period, the President alone has been given power to organise local cadres in respect of class or classes of posts in civil services and class or classes of civil posts, under the State. That too subject to the conditions precedent laid therein. Thus, it is the President and the President alone who has been given power under proviso by an order to require the State Government to organise the local cadres in relation to any class or classes of posts in the civil services of and class or classes of civil posts under the State into different local cadres. It could be considered in yet another perspective. Paragraph 2(e) indicates that President himself may create a local cadre instead of requiring the State Government to organise local cadre. For instance, paragraph 3(6) empowered the President to create local cadre for the city of Hyderabad. Similarly, under proviso to paragraph 3(1) the President may require the State Government to create a local cadre within a zone. So the phrase 'or constituted otherwise' cannot be understood de hors the scheme of the Presidential Order. No doubt in common parlance, the word 'otherwise' is of 'wide' amplitude. This Court in *K. K. Kochuni v. States of Madras and Kerala* (AIR 1960 SC 1080 : (1960) 3 SCR 887 : 1960 Ker LT 31), Subba Rao, J., as he then was, speaking per majority in paragraph 50 while construing the word 'otherwise' held that it must be confined to things analogous to right or contract such as lost grant, immemorial user et. The word 'otherwise' in the context only means whatever may be the origin of the receipt of maintenance. The ratio thereunder, cannot be extended in the contextual circumstances obtainable on the facts in this case. Similarly, in *Lilavati Bai v. State of Bombay* (1957 SCR 721, 735 : AIR 1957 SC 521), Sinha J., as he then was, speaking for the Constitution Bench interpreting Explanation (a) to Section 6 of Bombay Land Requisition Act, 1948, as amended in 1950 and repelling the application of ejusdem generis doctrine laid the law thus :

"The legislature has been cautious and thoroughgoing enough to bar all avenues of escape by using the words 'or otherwise'. Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the legislature, when it used the words 'or otherwise', apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever."

Thus, contextual interpretation to the words 'or otherwise' was given by this Court. Therefore, the phrase 'constituted otherwise' is to be understood in that context and purpose which Article 371-D and the Presidential Order seek to achieve. If the interpretation given by the appellants is given acceptance it amounts to giving blanket power to the State Government to create local cadres at its will tending to defeat the object of Article 371-D and the Presidential Order. Accordingly, we have no hesitation to reject the interpretation of wider connotation. The ratio in these decisions does not render any assistance to the appellants.

20. Similarly, the power given to the State Government in sub-paragraph (7) of paragraph 3 of the Order is only to organise a separate cadre in respect of any category of posts in any department when more than one cadre in respect of such category exists in each department; so the State Government may organise one cadre when more than one cadre in respect of different categories of posts exist in a zone under paragraph 3(1) of the Order. It is clear when we see the language in

paragraph 3(7) which says that : "nothing in this order shall be deemed to prevent the State from organising". Take for instance while creating local cadre co-terminus with the administrative control of the Deputy Commissioner, Commercial Taxes, local cadre for Senior Assistants may be created. It is also made manifest by instructions 7 and 9(e) of the instructions contained in GOMs No. 728 GAD dated November 1, 1975. But, as stated earlier, it is only for the purpose of administrative convenience, not for the purpose of recruitment, seniority or promotion, etc., as the case may be. Thus, we have no hesitation to hold that the creation of a division and maintaining separate seniority of Junior Assistants and Senior Assistants for Adilabad and Warangal Divisions are illegal, contrary to order issued in GOMs No. 581 and the Andhra Pradesh Employment (Organisation of Local Cadre and Regulation of Direct Recruitment) Order, 1975. The single member of the Tribunal in R.P. No. 101 of 1982 dated April 1, 1982 did not consider the effect of the order in proper perspective and is illegal.

21. Accordingly, the impugned order of the Administrative Tribunal is not vitiated by any manifest error of law warranting interference.

22. The appeal is accordingly dismissed, but without costs.

</html