

SUPREME COURT OF INDIA

(Dr. A.S. Anand, CJI. with S. Rajendra Babu and Doraiswamy Raju, JJ.)

Special Reference No. 1 of 1997 with I.A. No. 2.

29.03.2000

JUDGMENT

Dr. A.S. Anand, CJI. - Founding Fathers of the Indian Constitution relying upon the experience in other countries wherever democratic institutions exist, intended to secure an efficient civil service. This is the genesis for setting up an autonomous and independent bodies like the Public Service Commission at the Centre and in the States. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their role and functions.

2. The Constitution has made provisions to protect civil service, as far as possible, for political or personal influence and give it that position of stability and security, which is vital to its successful working as an impartial and efficient instrument of the State.

3. To enable the Public Service Commissions to discharge their constitutional duties and obligations in a full measure, the framers of the Constitution not only armed them with enhanced powers and increased functions, but also provided security of tenure for the Chairman and Members. Strict judicial procedure contained in Article 317(1) and the Rules framed thereunder by this Court and the requirement that the President must have the supporting report of the Supreme Court in order to suspend or remove the Chairman or Member of a Public Service Commission are undoubtedly intended to also provide safeguard to the Chairman and Members of the Commission against motivated or wrong charges of misbehaviour, in the larger interest of the administration of civil services in the country.

4. Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and Members of Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and Members of the Commission, like Caesar's wife must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and Members of Public Service Commissions.

5. Chairman of the Public Service Commission is in the position of a constitutional trustee and the morals of a constitutional trustee have to be tested in a much stricter sense than the morals of a common man in the market place. Most sensitive standard of behaviour is expected from such a constitutional trustee. His behaviour has to be exemplary, his actions transparent, his functioning has to be objective and in

performance of all his duties he has to be fair, detached and impartial.

6. Article 317 of the Constitution of India deals with removal and suspension of Chairman or any other member of Public Service Commission and lays down:

"317(1) - Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be ought on any such ground to be removed."

In exercise of the powers under Article 317(1) of the Constitution (supra), the President, Republic of India, on 22nd January, 1997 made the following reference to this Court for conducting an enquiry and submitting a report as to whether Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission, ought, on the ground of misbehaviour, be removed from the Office of the Chairman of the Commission:

"Whereas Dr. Jagannath Mishra, then MLA and Leader of the Opposition, Bihar sent a letter in February, 1994 enclosing list containing 32 specific charges against Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission (hereinafter referred to as the Commission) and seeking action against him under clause (1) of article 317 of the Constitution (a copy whereof is set out in Annexure 1 hereto).

Whereas the Governor of Bihar obtained reply of the Chairman of the Commission on the various charges levelled by Dr. Mishra and also forwarded his comments after perusing the reply of the Chairman of the Commission (copies whereof are set out in Annexures II and III respectively).

And Whereas I am satisfied from above referred material before me that it is necessary to enquire into the various charges levelled by Dr. Mishra, other than those listed at paragraphs 5, 6, 8 10, 21 and 22 of the enclosure to his letter.

Now, therefore, in exercise of the powers conferred upon me by clause (1) of Article 317 of the Constitution, I Shankar Dayal Sharma, President of India, hereby refer to the Supreme Court of India for enquiry and report as to whether Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission, ought, on the ground of misbehaviour, to be removed from the office of the Chairman of the Commission."

The circumstances under which the reference came to be made deserve a notice at this stage.

7. Dr. Jagannath Mishra, the then Leader of Opposition, Bihar Legislative Assembly on 25.2.1994 addressed a communication to the President of India for taking action under Article 317 of the Constitution of India against Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission listing as many as

32 charges against Dr. Yadav. Along with the communication, various documents were also enclosed.

8. A copy of the communication together with its enclosures was forwarded by the Joint Secretary to the Government of India, Department of Personnel to the OSD to the Governor, State of Bihar, requesting him to forward the comments of the Governor in the matter after seeking version of Dr. Yadav on various charges for consideration if the President of India, with a view to decide whether it is a fit case for making a reference to the Supreme Court of India under Article 317 of the Constitution of India. On July 26, 1994, the Governor of Bihar vide D.O. No. 277/GB/94 submitted his detailed comments, after obtaining reply of Dr. Ram Ashray Yadav, on each of the 32 charges.

9. On receipt of the comments of the Governor together with the enclosures appended thereto, including the reply of the Chairman to the Commission, Dr. Yadav, the President made the above reference to this Court to enquire into various charges levelled by Dr. Mishra other than those listed in paragraphs 5, 6, 8, 10, 21, 22.

10. After receipt of the reference, on 3.10.1997, notice was issued to the Bihar Public Service Commission, Dr. Ram Ashray Yadav, the Attorney General of India and the Advocate General for the State of Bihar. The reference was admitted to hearing on 23.2.1998 and parties were granted leave to file their affidavits. At this stage, it would be relevant to notice the order made by the Court on 30.4.1998. That order reads thus:

"Mr. Kapil Sibal, learned Senior Counsel for Dr. Ram Ashray Yadav says that certain judgments and orders of the Courts have, in the meantime, come by, which may have some reflection on the question referred to this Court by the President of India. On that basis, it is claimed that the matter may have to be sent back to the President of India for reconsideration. Before such a plea can be entertained, Mr. Soli J. Sorabjee, learned Attorney General has come forth to examine such documents as Mr. Sibal might place before him in order to assist this Court in that behalf. The Bihar Public Service Commission, too, is at liberty to do likewise in placing documents before Mr. Sorabjee.

Thus, on joint request of the parties, this matter is adjourned to be listed after summer vacation."

11. With a view to save judicial time of the Court and to crystallize the issues, the learned Attorney General was requested to examine the entire material, including the documents to be filed on behalf of Dr. Yadav, to assist the Court further. The learned Attorney General held discussions with concerned officials. He also considered the notes of submission submitted by the learned counsel for Dr. Yadav as well as by the learned counsel for Bihar Public Service Commission. On 9.12.1999, the learned Attorney General submitted a short report dealing with various charges. He indicated which of the charges, in his opinion, required to be enquired into and which of the charges did not require to be pursued or probed any further, together with brief reasons therefor.

According to the report of the learned Attorney General dated 9.12.1999, only charges 3, 4, 9, 11, 12, 13 and 28 require consideration and warrant an inquiry and that all other charges do not merit any enquiry even. Copy of the report of the learned Attorney General was furnished to learned counsel appearing for Dr. Yadav as well as Bihar Public Service Commission and they were given an opportunity to file their responses to the report. Comments by way of response were accordingly filed by learned counsel to the report to the Attorney General.

12. On 1.2.2000, when the matter was taken up for further consideration, learned Attorney General, very fairly submitted that after going through the comments and response filed by Dr. Yadav and the Bihar Public Service Commission to his report dated 9.12.1999, only charges 3, 9, 12, 13 and 28 merited consideration and needed to be enquired into while all other charges did not merit any enquiry because those charges were covered by various decisions of a competent Court, rendered in litigation, which had either upheld the action or accorded its approval to the decisions taken by the Bihar Public Service Commission and there was no adverse indictment of Dr. Yadav in any of those decisions. It was submitted that any enquiry into those charges could have the effect of doubting and undermining judicial decisions rendered in the matters and such an exercise is not advisable. We were taken through various decisions rendered by the High Court and this Court and we are in agreement with the submission made by the learned Attorney General that keeping in view the sensitivity of the matter, great care shall have to be taken to consider some of the charges.

The charges, which according to the learned Attorney General require further consideration and enquiry, are charges 3, 9, 12 and 28. According to learned counsel for Dr. Yadav, Shri Sinha and Dr. Dhawan appearing for Bihar Public Service Commission, even these charges do not need to be probed any further and that none of those charges can stand scrutiny and become basis for holding Dr. Yadav, guilty of such misbehaviour as may warrant any action against him in terms of Article 317 of the Constitution.

We shall take up for consideration these charges seriatim.

Charge No. 3

13. This charge relates to the allegation that the wife of the Personal Assistant to the Chief Minister was shown a special favour by suppressing the academic marks of a better candidate. The learned Attorney General as well as learned counsel appearing for Dr. Yadav and BPSA addressed lengthy arguments on this charge, which is essentially based on some observations made in ***Smt. Urmila Kumari v. State of Bihar and others, 1993(1) PLJR 226.***

(a). A perusal of the above judgment shows that in the said case one Smt. Urmila Kumari challenged the appointment of Respondent No. 3, who was the wife of the then Personal Assistant to the Chief Minister as Parabhilakhpal/Research Assistant in the scale of Rs. 800-1510/- ignoring her claim to appointment against one of the posts reserved for backward category

candidates.

(b). The High Court has adversely commented upon the conduct of the Commission in recommending Respondent No. 3 in that case. Relevant portion of para 10 of the judgment read thus: ission i.e. (1) Dr. R.S. Singh; (2) Shri Bindeshwari Singh; (3) Shri B. Ram; and (4) Dr. S.J. Thakur. The selection of respondent No. 3 took place as a result of the deliberations at that interview. A selection list was prepared by the interview board and indeed, Dr. Yadav, also did sign the final selection list, being the Chairman of the Commission but admittedly he had not participated in the selection process, not being present at the time of the interview where Respondent No. 3 in that case was selected. The High Court on 11.4.1991 found that the selection had not been fair and proper and the manner in which selection was made by the Commission based on the manner of conducting interview was objectionable. The High Court, accordingly, set aside the appointment of Respondent No. 3 and directed BPSK to recommend the name of Mrs. Urmila Kumari on the basis of substituted mark sheet produced by her, subsequently on 11.4.1991. This direction of the High Court was duly complied with by the Commission.

(d). A critical analysis of the judgment in Urmila Kumari's case shows that while Commission, as a whole, was indicted, no adverse comment of any personal nature had been made by the High Court against the Chairman, Dr. Yadav. There is no specific indictment of the Chairman, Dr. Yadav, as such. There is no finding that Dr. Yadav had in any manner influenced the selection of respondent No. 3 in that case. It would be wholly conjectural to hold that merely because Dr. Yadav had signed the final selection list as Chairman (which he was obliged to do in discharge of his official duties), he should be deemed to have influenced other members of the Selection Committee including the outside experts. The indictment, even otherwise was of the procedure which was followed by the Commission and not of any action of the Chairman. We are informed that after the judgment in Urmila Kumari's case, the procedure for selection has been modified and corrected. In the absence of any indictment of Dr. Yadav, in his personal, official or individual capacity or any other material to show that he had personally influenced the interview Committee, (where he was not even present) to act in a particular manner, it would be unfair to hold that Dr. Yadav had committed any misbehaviour in that selection process. We agree with Dr. Dhawan that no misfeasance on the part of Dr. Yadav has even been remotely established insofar as this charge is concerned.

Charge 9

14. According to this charge, the Chairman, Dr. Yadav allegedly instigated the State Government to file a false affidavit in this Court in ***Jai Shankar Prasad v. State of Bihar and Ors., 1993 (2) S.C.R. 517 : 1993(2) SCT 725 (SC)***. According to the complainant, Dr. Yadav has proved himself a 'Frankenstein'. Let us examine this judgment to find out if Dr. Yadav can be said to have committed any misbehaviour, as alleged.

(a). Shri Jai Shankar Prasad, the petitioner in this Court had filed a petition in

the nature of public interest litigation under Article 226 of the Constitution in the High Court of Patna praying for a writ of quo warranto challenging the appointment of respondent No. 6, Dr. Shiva Jatan Thakur, as a Member of the Bihar State Public Service Commission. The challenge to the appointment of respondent No. 6, Dr. Shiva Jatan Thakur was essentially based on two grounds : (1) that the total strength of the Commission including the Chairman, at the relevant time, was eleven and non-service member could only be accommodated to the extent of six yet Dr. Shiva Jatan Thakur was 'favoured' and appointed as the seventh non-service member; and (2) that Dr. Shiva Jatan Thakur was totally blind even prior to his appointment and was, therefore, unfit to be appointed, by reason of the said physical infirmity a member of the Commission and this aspect was 'concealed' to favour him. The High Court, dismissed the writ petition. The writ petitioner filed a Special Leave Petition in this Court. After notice was issued, the State of Bihar filed a counter affidavit. Dr. Shiva Jatan Thakur also filed a counter affidavit wherein he asserted that he had fallen out with the Chairman who wanted him 'removed' from the Commission and that the whole case had been engineered by the Chairman. On behalf of the State Government, Shri R.C. Vaish, Resident Commissioner of the State of Bihar at New Delhi filed an affidavit together with a letter which stated that the draft affidavit had been approved by the Chief Minister of the State. This Court examined the counter affidavits filed in some detail and opined that "there is, therefore, no doubt in our mind that the affidavit has been filed but the only purpose is seeking somehow the removal of respondent No. 6. Respondent No. 6 in his affidavit has alleged that he had since fallen out with respondent No. 5, the Chairman of the Commission and the Chairman is bent upon ousting him from the Commission".

The Court went on to say that

"the belated claim of the State Government that the appointment of respondent No. 6 is invalid and that his blindness hampers the discharge of his duties has its obvious roots in the strained relations between him on the one hand and the Chairman and the State Government on the other."

(b). The appeal, by special leave, was dismissed and respondent No. 6, Dr. Thakur was awarded costs. From this judgment the complainant has culled out charge No. 9 to assert that since the affidavit filed by the State has been found to have been filed for somehow to seek 'removal' of respondent No. 6, who had fallen out with the 'Chairman', it was Dr. Yadav, who had made the State to file a false affidavit. A perusal of the judgment in *Jai Shankar* (supra) shows that the Court has not at all opined that the affidavit filed by the State, which has been adversely commented upon by this Court, had been instigated by the Chairman, Dr. Yadav, much less that Dr. Yadav had persuaded the State Government to file a false affidavit before this Court. According to the deponent of the Affidavit, draft affidavit had been approved by the Chief Minister of the State. It is, therefore, wholly conjectural to allege that the Chairman, Dr. Yadav, had instigated the State to file a false affidavit. The allegation appears to be based on some suspicion that since Dr. Thakur had 'fallen out with the Chairman' but we do not find any justifiable base for that suspicion. The allegation could be based

on a misguided suspicion and in any event is too bald to justify any further probe against Dr. Yadav. We, therefore, do not find this charge to have been established against Dr. Yadav. The allegation that Dr. Yadav had proved himself to be a "frankenstein" needs a notice only to be rejected. No misbehaviour can be attributed to Dr. Yadav insofar as this charge is concerned.

Charge 12

15. The substance of this charge is that the Chairman, Dr. Yadav had reduced the Commission to the status of a private company by throwing constitutional mandates, laws, statutory rules and procedure to the winds. Reference, in support of the allegations has been made to the judgment of the High Court in CWJC No. 1192/92.

(a) To say the least the charge is extremely indefinite and vague. Dr. Dhawan appearing for the BPSC has stoutly refuted the charge that the Commission had been reduced to the status of a "private company" by anyone. Dr. Dhawan has referred to some of the observations made by this Court in ***Bihar Public Service Commission v. Manoj Kumar Pandey, (1996)11 SCC 664 : 1997(1) SCT 858 (SC)***, and asserted that the effort to malign the Chairman Dr. Yadav and the Commission, as a whole, is unfortunate as it has the tendency to shake the confidence of the public in a Public Service Commission and this Court should deprecate such practices.

(b) From a perusal of the record, we find that before the commencement of 37th combined competitive examination which was conducted by the Bihar Public Service Commission, the Chairman of the Commission had decided to introduce a system of centralised evaluation of answerbooks. That system was assailed in a writ petition filed before the Patna High Court in ***Sanjay Kumar v. Bihar Public Service Commission, (1994) 2 PLJR 414***. The High Court found that the decision regarding change of mode of evaluation, had been taken by the Chairman alone and not by the entire Commission; that the Chairman was not competent to take such a decision; that such a decision could be taken only by the entire Commission comprising the Chairman and all Members. The High Court accepted the challenge and opined that because of the above infirmity the changed system of evaluation of marks was not valid. The High Court, however, noticed that over the years, a major and substantial role regarding taking of decisions in such matters had been left in the hands of the Chairman alone and that no Member had ever objected to it and that the change of system of evaluation was one such matter which had been left to be decided by the Chairman. It was found that even at the time of the 37th Examination, except for one member, no other member had raised any objection regarding the decision of the Chairman to change the mode of evaluation. It was also found that the Chairman had acted as per past practice and convention. The High Court, therefore, did not interfere with the result of 37th Examination but directed the Commission to evolve a proper procedure for the conduct of examinations and evaluation of marks for future, which must be "both reasonable and in conformity with law and that rules be framed for ensuring that the entire body of the Commission fully participates in the decision-making

process on basic issues and policy matters". As regards the centralized evaluation system, introduced by the Chairman, Dr. Yadav, the High Court observed that the reasons cited for introducing the system were 'good and valid' and no fault could be found with the same. This Court has dealt with the matter and observed in Manoj Kumar's case (supra):

"The conduct of the Chairman of the Commission in not convening a meeting of the Full Commission to reconsider the decision dated 18.9.1993 for introducing centralized evaluation has been adversely commented upon by the High Court and it has been observed that it verges on mala fide. *We are unable to endorse these observations.* As mentioned earlier in Sanjay Kumar (supra) the High Court had not found any fault with the centralised evaluation system that was introduced by the Chairman for the 37th Combined Competitive Examination. In the impugned judgment also the High Court has observed :

'I should not be understood as condemning outright the system of centralised evaluation. Materials have not been produced before us either in its favour or against it. I am not aware of the recent trends in the field of public administration in this regard.'"

(Emphasis supplied)

(c) From the observations of this Court in Manoj Kumar Pandey's case (supra), it appears that the Chairman had acted as per the prevalent practice and procedure till rules were framed. In our opinion, the introduction of the changed mode of evaluation by the Chairman was neither 'motivated' nor '*mala fide*'. The system of centralised evaluation, introduced by the Chairman has not been condemned outright either by the High Court or by this Court. All that the Courts have said is that notwithstanding any past practice, issues relating to policy matters and other basic issues must be decided by the entire Commission and not left to the decision of Chairman alone. This is no indictment of the Chairman, Dr. Yadav.

(d) The Commission has since framed rules of procedure on 3.11.1993 and forwarded the same to the Government. We find force in the submission of Mr. Sinha that the charge essentially pertains to the manner of functioning of the Commission and delegation of too much authority to the Chairman by the Commission as per 'past practice' and does not amount to any misbehaviour on the part of the Chairman, Dr. Yadav.

(e) Thus, from what we have noticed above, we are of the opinion that this charge does not amount to any misbehaviour on the part of Dr. Yadav as such. It is also relevant to point out that this charge is quite similar to Charge No. 21 which the President of India has himself deleted while making a Reference to this Court.

Charge No. 28

16. It is alleged that Dr. Yadav misused Commission's Telephone No. 234387 in

talking to persons in U.S.A., England and Kuwait for personal and private purposes and that in the month of October, 1991, the Commission had to pay a sum of Rs. 18,154/- as telephone bill of Dr. Yadav. This charge, thus, essentially speaking, pertains to some alleged impropriety of Dr. Yadav of misusing the telephone facilities. Dr. Dhawan appearing for the Bihar Public Service Commission drew our attention to the letter dated 12th of September, 1998 which the Commission had addressed to the learned Attorney General concerning the allegations under consideration. In that letter, it was pointed out by the Commission that during 1991-92, for telephone charges an amount of Rs. 1,05,000/- had been allocated and that against that sanctioned amount, the total expenditure incurred by the Chairman was only Rs. 1,04,948/- including the so called 'objectionable' bill for October, 1991. The letter further states that there was no excessive amount which the Commission had been called upon to pay for the use of telephone by the Chairman during 1991-92. According to Mr. Sinha, the allegation, even otherwise, is divorced from facts because the bill of Rs. 18,154/- dated 1.10.1991 was not a bill for one month only as alleged but for two months of August and September, 1991. It is further submitted that making of telephone calls by the Chairman, as alleged, without furnishing further details and the purpose of telephone calls, even if made to 'private persons' abroad, could not be construed as any "misbehaviour" on the part of Dr. Yadav at all. It was submitted that the Chairman, by the very nature of his duties, may require to speak on telephone to people (not necessarily only officials) overseas in connection with the work of the Commission and that the allegations made in this charge seek a fishing and roving enquiry, which should not be permitted. In our opinion, this charge does not require any further probe as admittedly the amount spent fell within the sanctioned amount for the purpose and Dr. Yadav cannot be said to be guilty of any misbehaviour on this count either.

17. Having dealt with all such charges, which the learned Attorney General conceded alone required to be examined and hearing learned counsel for the parties, we, however, find that all does not appear to be well with the manner of functioning of the Bihar Public Service Commission, during the period under consideration. The Chairman of the Commission, Dr. Yadav, appears at times, did not exhibit exemplary behaviour or conduct, expected of him, but none of the allegations which have been made against him in various charges, which may, at best, amount to lapses, can be said to be such which amount to "misbehaviour" within the meaning of Article 317 of the Constitution inviting action of his removal from office under Article 317(1).

18. The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service

Commission must for ever remain vigilant and conscious of these necessary adjuncts.

19. Since, in our opinion no charge of misbehaviour has been established against Dr. Yadav, no action is called for against him. We understand that the term of Office of then Chairman, Dr. Yadav, has since expired and he stands relieved of his duties. There is, thus, no question of reinstatement of Dr. Yadav (who was under suspension), but he should be given all such dues etc. to which he is entitled to under rules.

We make our report to the President accordingly.

Order accordingly.