

Banarsi Das And Ors. vs State Of Uttar Pradesh And Ors. on 24 August, 1954

Equivalent citations: AIR1954ALL813, AIR 1955 ALLAHABAD 33, AIR 1954 ALLAHABAD 813

JUDGMENT

Malik, C.J.

1. In these four writ petitions, besides the points that were raised in Writ Petition No. 45 of 1954, two other points were raised. As regards the points raised by Mr. Pathak in Writ Petition No. 45 of 1954 no further arguments were raised by learned counsel and our decision in that case would govern these writ petitions also.

2. Writ Petition No. 827 of 1953 was filed on behalf of Raghubar Dayal and 4 others against the State of Uttar Pradesh, the District Magistrate, Jhansi, and 5 other persons who had been appointed Lekhpals. Writ Petition No. 431 of 1954 was filed on behalf of Chhotan Lal and 6,999 others against the State of Uttar Pradesh, Minister for Revenue and Agriculture, U. P., the Land Reforms Commissioner, U. P. 34 Collectors of various districts, and 105 Sub-Divisional Officers of various Tehsils. Writ Petition No. 194 of 1954 was filed on behalf of Ganga Sahai and 209 ex-Patwaris of District Bareilly, against the State of Uttar Pradesh through Minister for Revenue and Agriculture, the Land Reforms Commissioner, the Collector of Bareilly and 5 Sub-Divisional Officers of various Tehsils in the district of Bareilly. Writ Petition No. 433 of 1954 was filed on behalf of Prem Narain and 432 others against the State of Uttar Pradesh, Minister for Revenue and Agriculture, the Land Reforms Commissioner, Collectors of 7 districts and Sub-Divisional Officers of 15 Tehsils.

3. The two new points raised in these petitions are:

1. that under Art. 320 of the Constitution consultation with the Public Service Commission was necessary relating to methods of recruitment to civil services and for civil posts, and as there was no such consultation the appointment of Lekhpals was invalid; and
2. that the new rules for the appointment of Lekhpals contravene the provisions of the Land Revenue Act and the Land Records Manual and are, therefore, invalid.

4. In the counter-affidavit filed in Writ Petition No. 827 of 1953 a point has been taken that these petitioners were not entitled to challenge the appointment of Lekhpals as they had no 'locus standi

having no interest in the matter, they having already been disqualified by reason of their resignations having been accepted. It is not necessary for us to go into the objection as to the maintainability of the writ petition, as on the merits also we are against the petitioners.

5. Taking up the first point, the relevant portions of Article 320(3) of the Constitution are as follows:

".....the State Public Service Commission.....shall be consulted--

(a) on all matters relating to methods of recruitment to civil services and for civil posts;.....

Provided.....the Governor.....as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Relevant portions of Clause (5) of Article 320 may also be quoted and they are as follows:

"All regulations made under the proviso to Clause (3) by.....the Governor.....shall be laid for not less than fourteen days before.....the Legislature of the State.....as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as.....both Houses of Legislature of the State may make during the session in which they are so laid."

6. In exercise of the powers conferred by the proviso to Clause (3) of Article 320 of the Constitution, quoted above, the Governor of Uttar Pradesh has made the regulations known as "The Uttar Pradesh Public Service Commission (Limitation of Functions) Regulations, 1954" which have been published in the U. P. Gazette dated 6-2-1954, at page 397. Regulation 3(a) of these Regulations provides that it will not be necessary to consult the Public Service Commission "When the appointing authority in respect of the service or post concerned is an authority other than Governor, unless in any particular case, Government have directed or may, after consultation with the Commission, direct that the service or post in question shall be within the purview of the Commission."

The Patwaris are not appointed under the authority of the Governor and these Regulations would, therefore, have applied if the appointments had been made after the Regulations were made on 29-1-1954. The appointments, in the cases before us, were, however, made in 1953 and these Regulations cannot, therefore, apply to those appointments.

7. The learned Advocate General has relied on the Regulations issued in the year 1941 under Section 266(3), Government of India Act, 1935, which was analogous to Art. 320 of the Constitution. Section 266 of the Government of India Act, 1935, is as follows:

"The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section, the Federal Commission or as the case may be, the Provincial Commission shall be consulted:-

(a) on all matters relating to methods of recruitment to civil services and for civil posts....."

In exercise of the powers conferred by Sub-section.

(3) of Section 266, Government of India Act, 1935, the Governor made the regulations which were published in the U. P. Gazette dated 18-10-1941, at page 309. Regulation 3(1) provides that:

"It shall not be necessary to consult the Commission in matters relating to methods of recruitment to civil services and posts, or the principles to be followed in making appointments to such services and posts, or the suitability of candidates for such appointments, in the following cases, namely: '

(a) when an appointment is to be made by an authority other than the Governor except in regard to services and posts mentioned in the Schedule;....."

The post of Patwari or Lekhpal was not mentioned in the Schedule, nor were appointments made to those posts by the Governor.

8. The learned Advocate General has urged that under Article 372(1) of the Constitution these Regulations continued to remain in force till the new Regulations were made. Article 372(1) of the Constitution provides:

"Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

'Law in force' has been defined in the Explanation I as including a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed. The words 'law in force' have not been defined in Art. 366 of the Constitution but in Article 366(10) 'existing law' is defined as meaning any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of the Constitution by

any Legislature, authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation.

9. Learned counsel for the petitioners have urged that since the expression 'existing law' has been defined as meaning any law, Ordinance, order, bye-law, rule or regulation, while the expression 'law in force' means a law passed or made by a Legislature or other competent authority, the Regulations made by the Governor should not be included in the term 'law in force'. We do not see why that should be so. The Regulations made by the Governor were under Section 266, Government of India Act, 1935, and had the force of law, and the Explanation to Article 372(3) includes within the expression 'law in force' not only laws made by a Legislature but also by 'other competent authority'. The term 'other competent authority' is wide enough to include the Governor or any other authority which has been empowered to make rules and regulations having the force of law. (10) We, therefore, think that the Regulations made in the year 1941 under Section 266, Government of India Act, 1935, were in force at the time when the Lekhpals were appointed by the various Sub-Divisional Officers or Collectors, and the question of consultation with the Public Service Commission did not arise.

11. Learned counsel then urged that the Regulations made in 1941 were not placed before the Legislature within fourteen days after they were made. So far as we can find, there was no section analogous to Article 320(5) in the Government of India Act, 1935, and Article 320(5) would not apply to Regulations not made under the proviso to Clause (3) of Article 320 of the Constitution. It has already been held by a Bench of this Court--Mootham and Chaturvedi JJ.--in -- 'Jagannath Prasad Sharma v. State of U. P.', AIR 1954 All 629 (A) that Art. 320(5) does not apply to Regulations made under Section 266, Government of India Act, nor does it invalidate the said Regulations, as Art. 320(5) can only apply to Regulations made under Art. 320(3) of the Constitution. We are bound by that decision.

12. Taking up now the second point raised on behalf of the petitioners that the appointment of Lekhpals was invalid, the learned Standing Counsel for the State has relied on the proviso to Art. 309 of the Constitution as giving power to the Governor to make rules regulating the recruitment and condition of service of persons appointed to posts in connection with the affairs of the Union. Article 309 is as follows:

"Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor or Rajpramukh of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the

provisions of any such Act."

13. In the affidavits attached to several of these writ petitions extracts from a letter from the Secretary to Government, U. P. to the Land Reforms Commissioner, Uttar Pradesh, dated, 7-3-1953, have been made a part of the affidavit. They deal with the recruitment of Lekhpals as a result of the reorganisation of the service of Patwaris. The first paragraph of the letter is as follows:

"Sir, In continuation of my demi-official letter No. 2627/IB, dated 5-3-1953, I am directed to communicate the orders of the Governor regarding the reorganisation of the service of Patwaris in the context of their mass resignations."

The portion quoted above has been omitted from the extracts filed and the learned Standing Counsel had taken time to produce before us the original, copies of which have been placed today on the record which show that the reorganisation of the service was made under the orders of the Governor.

This was followed by a letter dated 27-4-1953, which finally laid down the conditions of service of Lekh pals. This letter also starts with the words:

"Sir, I am directed to communicate the following orders of the Governor regarding the recruitment of service of Lekhpals....."

No objection has been taken by counsel for the other side to our looking into these papers and we have, therefore, placed the two copies on the record of the Civil Miscellaneous Writ No. 827 of 1953. From these letters it is apparent that the service was constituted under the orders of the Governor and that should satisfy the requirements of the proviso to Art. 309 of the Constitution so long as an Act is not passed by an appropriate-Legislature,

14. Learned counsel for the petitioners have urged that Article 309 of the Constitution may allow the Governor to constitute a fresh service but it cannot give him the power to change the conditions of an already existing service, and they have taken us through the rules framed under the orders of the Governor quoted in the letter dated 27-4-1953, and the rules for the appointment of Patwaris in the Land Records Manual, Learned counsel themselves pointed out the difference between the two. They first referred us to Rule 2 and pointed out that the appointment is not to be now confined to the list prepared by the Collector under paragraph 1; the age also is not between 18 and 25 but 18 and 40; the qualifications also are now different.

The minimum educational qualification now is Hindustani Middle or Junior High School Examination. Paragraph 5 has also been amended and now the period of probation is two years. Paragraph 7 has been amended and the salaries have been increased. Paragraph 10 has been amended and a Patwari can now be transferred from one 'halka' to another even in another district. Paragraph 12 has been amended as regards the travelling allowance. Paragraph 17 has been amended and now there are no appeals. There have been certain additions to Chapter II due to the two important departments having been opened--the Planning and the Development Departments.

There are thus certain substantial changes though most of the work that was being done by the Patwaris will now be done by the Lekhpals.

As a result of the abolition of zamindari the whole system of revenue administration has changed giving rise to new problems and new conditions. Moreover, the State Government has undertaken schemes of development in the rural areas for which men specially trained and with new outlook might have been needed. It by reason of these considerations the State Government decided, when they found that a vast majority of Patwaris had resigned, to reconstitute the service on new lines by reducing the number, increasing the emoluments, changing the qualifications for appointment, providing for special training and assigning to them other work besides the work that was originally allotted to the Patwaris, so that they may be of real help in the progress of the rural areas, the mere fact that some of the duties were the same as were performed by the old Patwaris, or even if most of the duties were the same, it would not mean that it was not a new service that had been constituted.

It must in this connection be remembered that to this new service were freshly appointed the old Patwaris who had not resigned and the new rules provided that they were to get a pay in the new scale at the stage that they had reached in the old scale for the Patwaris. If it was not intended to be a new service, no question of re-appointment of old Patwaris, who had never resigned, could arise. The Patwaris who had resigned but had withdrawn their resignations before 4-3-1953, had also to be reappointed, but in their case there was an additional qualification that their service record should have been satisfactory and they should not have attained a certain age. Considering all these facts and circumstances we feel satisfied that it was a new service that was constituted and since it was done under the orders of the Governor, the proviso to Article 309 of the Constitution gave him that power.

15. Learned counsel have referred us to a number of letters from the Land Reforms Commissioner and to certain other schedules attached to the affidavits to show that several changes were made in the rules from time to time. That is hardly of any importance for the decision of these cases, but none of the letters etc., written by the Land Reforms Commissioner was after 27-1-1953, when the final rules were framed under the orders of the Governor. Mere frequent changes in the rules will not affect their validity and we need not, therefore, go into this matter in detail.

16. As regards Section 23, Land Revenue Act, it no doubt provides for appointment of Patwaris to each 'halka' and that section has not yet been amended, but it does not take away the right of the Governor to create a new service for each 'halka' or group of 'halkas' if he so desires. The grievance in these writ petitions is not that the provisions of Section 23, Land Revenue Act, have not been given effect to and Patwaris have not been appointed. The challenge has been made to the appointment of the Lekhpals and to the fact that the petitioners have been excluded from being considered for appointment to that service.

17. In the alternative, even if it be considered to be the same service the mere fact that it has been given a new name would not necessarily affect the question of the validity of the rules framed under Section 234(b), Land Revenue Act. Reference has been made to the fact that throughout in the Land Revenue Act (3 of 1901) and the Land Records Manual the word used is 'Patwari' and not 'Lekhpal'.

Section 23, Land Revenue Act, provides for appointment of a Patwari to each 'halka'. Section 234 gives the State Government power to make rules consistent with the Act regulating the appointment and transfer of Kanungos and Patwaris, their salaries, qualifications, duties, removal, punishment, suspension and dismissal.

18. Learned counsel for the petitioners took us through the first and the second Chapters of the Land Records Manual to show what were the rules for recruitment and the conditions of service of Patwaris and their duties, with the object of making it out that Lekhpals did not belong to a new service but it was the old service of Patwaris to which a new name was given. The argument in short is that the State Government was really making fresh appointments to the posts of Patwaris but gave the service a new name, which it was not entitled to do. It was suggested that there was something very sinister behind it, but what exactly could be the sinister motive was not at all clear to us.

Out of 28,000 Patwaris about 26,000 and odd had resigned. The Government could have appointed as many new men in their places as it liked and it could also have amended the rules framed under Section 234, Land Revenue Act (3 of 1901). It has been admitted that the conditions of service and the emoluments attached thereto, as also the number to be appointed and the duties to be assigned to them, could all be altered under Section 234, Land Revenue Act, by the State Government by rules framed under that section, but it is said that those appointments could be only to the posts of Patwaris and the service could not be given a new name of Lekhpals so long as Section 23, Land Revenue Act, was not amended.

There is no special mode prescribed for making rules under Section 234, Land Revenue Act. Under Section 21, U. P. General Clauses Act of 1904), power to make rules includes power to add to, amend, vary, or rescind any notifications, orders, rules or bye-laws so issued; and Section 23 relates to a power to make rules or bye-laws which have to be made after previous publication. There was no such provision as regards previous publication in Section 234, Land Revenue Act, and so no question of publication of the new rules in the Official Gazette would arise. The mere fact that a new name was given, because the old name had certain unsavoury associations around it, would not invalidate the rules even if they were to be treated as amending the previous rules made under S, 234, Land Revenue Act.

19. The result, therefore, is that there is no force in the two points raised in these writ petitions and for the reasons given in our judgment in Writ Petition No. 45 of 1954 and the reasons given above these writ petitions are also dismissed, but -for the reasons already mentioned we make no order as to costs,