The State Of West Bengal And Ors. vs Bata Krishna Burman on 17 November, 1970

Equivalent citations: AIR1971SC156, 1971LABLC23, (1970)IILLJ698SC, (1970)3SCC612, 1971(III)UJ78(SC), AIR 1971 SUPREME COURT 156, 1971 LAB. I. C. 23, 1971 2 LABLJ 698, 1971 UJ (SC) 78, 1971 SERVLR 600

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Bench: C.A.Vaidialingam, J.M. Shelat

JUDGMENT

J.M. Shelat, J.

1. This appeal, founded on a certificate, is against the judgment and order passed by the Letters Patent Bench of the High Court of Calcutta which, setting aside the judgment and order of a learned Judge, allowed the writ petition filed by the respondent and issued a mandamus directing the appellant-State not to enforce its orders issued Under Rule 20(1) and Rule 23(1)(i) of the Government Servants' Conduct Rules, 1926.

2. The respondent was appointed in June 1945 as a sub-inspector under the Director General (Transportation & Storage) of the Civil Supplies Department of West Bengal Government. In December 1951, he was attached to the movement section under the Directorate of Transportation in the Department of Food. He was placed under suspension by an order dated December 21, 1951. That order provided that he would be paid 25% of his basic pay during the period of suspension. On January 19/21, 1952 he was served with a charge-sheet containing four charges : (1) that he published a certain pamphlet without obtaining the previous sanction required by Rule 20 of the said Rules, (2) that the said pamphlet contained criticism of the Government capable of embarrassing the relations between the Government and the public, thus violating Rule 20(1)(a), (3) that the pamphlet showed that he was taking active part in politics in breach of Rule 23, and (4) that the said publication constituted propaganda in connection with general elections, and therefore, was in breach of Rule 23 and the standing orders of the Government in that regard. The rules on which the. charges were thus founded were Rules 20(1)(a) and (2), and Rule 23(1)(i) of the said Rules. Though the charges mentioned standing orders of the Government, it was conceded in the High Court that there were no such standing orders.

3. The explanation of the respondent was that he had neither printed nor published the said pamphlet, that a pamphlet of kind mentioned in the charge-sheet was printed by one M.K. Mukhopadhyaya and that his name (the respodent's) was printed therein as its publisher without his

knowledge or consent As regards the rest of the charges, he denied them all. Since they flowed from the first charge, and that charge depended upon his having published the said pamphlet, those charges, according to him, were not sustainable in view of his not having been responsible for its publication.

4. After a departmental enquiry, the Directorate of Transportation passed an order dated June 7, 1952 allowing the respondent to resume duty with effect from the date when the order would be served upon him. The order however, provided that :

> For his period of suspension at the rate admissible under the rules, as a disciplinary measure.
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> The period of this suspension will be treated as on duty.
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> Along with this order, and as was conceded in the High Court, as part of it, a warning also was administered to the respondent drawing his attention to Rule 23 and directing him not to take part in any political activities in future.

5. It may be noticed that the order did not contain any finding on the four charges served on the respondent or any one of them. It did not also state that the respondent had published the said pamphlet or that in consequence of his having published it, he was responsible for embarrassing the Government in its relations with the public or any section there of, or that the publication by him constituted his participating actively in politics, or that because of such alleged publication by him he was guilty of carrying on propaganda in connection with any general 'elections, or that he was, therefore, guilty of breach of Rules 20 and 23 of the said rules.

6. As appearing from the counter-affidavit, filed by the Director (Transportation), no such finding was possible as none of the said charges was brought home to the respondent. Indeed, the Director, in the said affidavit, could only say that the documentary and oral evidence adduced in the said enquiry showed; (a) that the petitioner was the secretary of the Arya Samaj at whose Instance the said pamphlet had been printed and the respondent's name was printed as its publisher, (b) that it was admitted by the respondent that the books and pamphlets of the Arya Samaj were printed at the Satyanarain Press and (c) that the respondent had actively been participating in politics. He conceded that the only conclusion he could come to was that "the petitioner (i e. the respondent) was politically connected although it was difficult to establish the same from the available records and as a disciplinary measure the petitioner was granted a subsistence allowance during the period of his suspension and warned not to take part in any political activities." It is clear from this concession that it was not possible for the Director to hold, on the available date before him, the respondent guilty of any of the four charges preferred against him. A fortiori, he could not be held guilty of having violated Rule 20 or Rule 23. That being so, it is impossible to understand how the order of suspension, the payment to the respondent of only 25% of his basic pay and the warning administered to him, all as disciplinary measures, i. e., as penalties, could possible be passed.

7. Rule 20(1) prohibits a Government servant from making any statement of fact or opinion in a document published under his own name or in any public utterances delivered by him which is capable of embarrassing; (a) the relations between the Government and the people of India, or any section thereof, or (b) the relations between His Majesty's Government or the Governor-General in Council and any foreign country or the ruler of any State in India. Sub-rule (2) provides that a Government servant, who intends to publish any document under his name or deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions under Sub-rule (1) may arise, shall submit to the Government a copy or draft of the document which he intends to publish or of the utterance which he intends to deliver and shall not publish the document or deliver such utterance save with the sanction of the Government. Rule 23(1)(i) provides that subject to the provisions of Rule 22 or of any general or special order of the local Government, no Government servant shall take part in, subscribe in aid of or assist in any way any political movement in India or relating to Indian affairs. The explanation to that rule lays down that the expression "political movement" includes any movement or activity tending, directly, or indirectly, to excite disaffection against, or to embarrass the Government as by law established or to promote feelings of hatred or enmity between different classes of His Majesty's subjects or to disturb the public faith.

8. Assuming for the time being the validity of Rules 20 and 23, Rule 20 could not be invoked against the respondent for the simple reason that there was no finding, as the counter-affidavit filed by the Director shows, that the respondent was responsible for the publication of the said pamphlet. It is true, as the counter-affidavit stated, that the respondent was the secretary of the Arya Samaj at whose instance the said pamphlet had been printed and the respondent's name was published there in as its publisher. But the respondent's case all throughout was that his name was mentioned in the said pamphlet as its publisher without his knowledge or consent. There was no finding that the respondent's case was future. In the absence of such a finding and holding the respondent responsible for the publication of the said pamphlet, the charge of violating Rule 20 against him was clearly unsustainable. Further, there was no finding that the said, pamphlet contained any statement of fact or opinion which was capable of embarrassing the relations between the Government and the people of India or any section thereof, or the relations between the Government on the one hand and any foreign country or the ruler of any State in India as required by Rule (2)(1).

9. The position in regard to Rule 23 was even less sustainable. None of the four charges preferred against him alleged that he had taken part in or subscribed in aid of or assisted in any way any political movement in India or relating to Indian affairs. There was no finding, nor was there any allegation in the Director's said counter-affidavit that the Arya Samaj, of which the respondent was the secretary, was a political movement in which the respondent had taken part or had rendered any assistance. There being no such charge or finding, the respondent obviously could not be held guilty of any breach of Rule 23. As already stated, the only conclusion arrived at by the Director, stated, the only conclusion arrived at by the Director if it could at all be characterised as a conclusion, was that the respondent was "politically connected". Such a statement was not a conclusion because the Director did not specify with what movement or party or organisation the respondent was politically connected. The only connection referred to was with the Arya Samaj which was not found or named

by the Doctor as a political movement or a political organisation. The statement, therefore, was not only vague but was a mere speculation on the part of the Director since it was not based on any evidence and as the Director himself confessed in his counter-affidavit "it was difficult to establish, the same from the available records". Such a finding was, therefore, no finding based on any evidence, and could not be depended upon and made the basis for any disciplinary penalty.

10. There was, therefore, no question of either Rule 20 or Rule 23 being enforced against the respondent. The order imposing the penalty of withholding 3/4th of the basic pay and directing to pay to the respondent and 1/4th thereof and the warning issued to him both as and by way of penalties was without any basis and was therefore bad. The Letters Patent Bench of the Higher Court, therefore, was right in allowing the respondent's with petition and setting aside the order even on the assumption that the said two rules were valid.

11. The aforesaid conclusion of the Letters Patent Bench really concluded the matter and the respondent's writ petition had to be allowed. But the learned Single Judge, as also the learned Judges forming the Letters Patent Bench, went into the question of the validity of the said rules. That, in our view, was not necessary for the purposes of the case It is true that the learned Single Judge went into the question of the validity of the said rules as it was contended before him that the said rules placed unreasonable restrictions on the respondent's freedom of speech and expression guaranteed by Article 19(1)(a) and (b), and were not saved by Clause (2) of that article Reliance was placed before him on an earlier decision of Sinha, J. in Krishna C Chatterjee v. Chief Superintendent, Central Telegraph Office where the words in Rule 20(1), namely, "capable of embarrassing were held to be vague and the freedom of speech and expression having been made therein subject to "the arbitrary subjective satisfaction" of a few persons in authority. In the opinion of the learned Single Judge, the word "embarrassing" could not be regarded as vague or uncertain as expressions such as "tending to embarrass the administration of justice" and "calculated to prejudice the fair trial of a case" were well-known judicial expressions used in cases of contempt of Court, and therefore, Rule 20(1), according to him, could not be held to be vague or uncertain. On merits, he found that the impugned order itself showed that the Director had not wholly condoned "the misconduct" of the respondent and that on the other hand, he had been administered a warning not to take part in politics in future. Therefore, the grant of 25V of his pay only during the suspension period was justified. In this view he dismissed the respondent's writ petition. The Letters Patent Bench disagreed with the reasoning of the learned Single Judge and though that the decisions of this Court in Kameshwar Prasad v. The State of Bihar 1962 Supp. (3) SCR 369 G.K. Ghosh v. E.X. Joseph 1963 Supp. (1) SCR 789 in relation to Rule 4(A) of the Bihar Govt. Servants' Conduct Rules, 1956 and Rules 4(A) and 4(B) of the Central Civil Services (Conduct) Rules, 1955, applied against Rule 23(1)(i) of the rules in question, and held that that rule violated Article 19(1)(a) and (b) and was not protected by Clause (2) of that article, and consequently, held that rule to be invalid.

12. We are of the opinion that in view of the clear statement made by the Director in his counter-affidavit the respondent could not be held responsible for the publication of the said pamphlet. As aforesaid, there was not and could not be such a finding, and therefore, Rule 20 could not be invoked against him. Similarly, since even according to the Director, the respondent was

connected only with the Arya Samaj, in the absence of any finding that the Arya Samaj was either a political movement or a political organisation, Rule 23 also could not be invoked against him. That being the position, the impugned order passed as a disciplinary measure against him was not sustainable under either of the said two rules and had, therefore, to be quashed. In this view the Letters Patent Bench could have concluded the appeal before it without going into the question as to the validity of the said two rules.

13. It is true that the learned Single Judge had cast doubt on the correctness of the decision of Sinha, J. on Rule 20 of the said Rules in the case of Krishna C Chatterjee AIR (1955) Cal. 75. But he had not based his decision in the present case on any finding that the respondent had published the said pamphlet and was therefore guilty of breach of Rule 20. Consequently, Rule 20 could not be applied by him against the respondent in the absence of any finding by the Director that the respondent had published the said pamphlet. It was, therefore, not necessary for the Letters Patent Bench to go into the question of Rule 20. Regarding Rule 23, that rule was not the subject matter in the case of Krishna C. Chatterjee AIR (1955) Cal. 75. For the reasons already set out above, Rule 23 also could not be pressed into service against the respondent. The learned Single Judge, no doubt, upheld the impugned order but that was on an assumption by him that the respondent was guilty of misconduct, i. e., misconduct of being politically connected. But that assumption was unjustified as there was no such charge against the respondent nor was any finding that he was connected or associated with any political organisation or party. On this ground alone the judgment of the learned Single Judge was liable to be reversed. Thus it was not necessary for the Letters Patent Bench to decide the question of validity of either Rule 20 or Rule 23 and that question was only academic.

14. In these circumstances, we ourselves do not feel called upon to go into the question of the validity of the said two rules on which, we feel, much can be said by both the sides. It may be that the view taken by the Letters Patent Bench will bind the State Government whenever it seeks to take action against any one of its servants in future. But the correctness of the view taken by the Bench in this case can be challenged in future by the Government, if it considers it necessary, in a more suitable case. So far as the present case is concerned, the controversy is altogether academic as on merits neither of the two rules could be invoked against the respondent.

15. For the reasons stated above, we are in agreement with the Letters Patent Bench of the Higher Court that the impugned order could not be sustained on merits and the writ petition of the respondent was rightly allowed.

16. The appeal fails and is dismissed.