Madras High Court
K. Sethumadhava Rao vs Collector Of South Arcot Dt. ... on 18 January, 1955
Equivalent citations: AIR 1955 Mad 468, (1955) IILLJ 473 Mad
Author: Rajagopalan
Bench: Rajagopalan
ORDER Rajagopalan, J.

1. The petitioner was a Taluk Head Accountant in the Revenue Subordinate Service in South Arcot District. He was also the President of the Non-gazetted Officers' Association, Tindivanam. The petitioner was charged with contravention of Rule 6 of the Government Servants Conduct Rules framed by the Government of Madras. The petitioner admitted the truth of the charge, that, while he was employed as a Taluk Head Accountant at Tindivanam, he sold tickets for a dramatic performance held on 5-6-1952 and helped to collect funds for his association, without obtaining the permission required by Rule 6 of the Government Servants Conduct Rules. The Collector punished the petitioner by ordering a temporary reduction in rank for a period of three months. It was the validity of that order that the petitioner challenged in his application under Article 226 of the Constitution for the issue of a writ of certiorari.

2. The contention of the petitioner, that the procedure adopted by the Collector was in contravention of Article 320(3)(c) of the Constitution, has no substance. Article 320(3)(c) requires that the State Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of the State in a civil capacity. But the relevant portion of the proviso to Article 320(3) runs:

"Provided . . . the Governed ... as respects other services and posts in connection with the affairs of the Slate may make regulations specifying 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 he consulted."

Rule 18 of the Madras Public Service Commission Regulations, promulgated under this proviso, specifies the class of cases with reference to disciplinary matters affecting a person serving in connection with the affairs of the State on which alone the Commission need be consulted and disciplinary proceedings taken against a member of the Revenue Subordinate Service is not one of them. Therefore Rule 18 is a sufficient answer to the plea of the petitioner, that the provisions of Article 320(3)(c) had been violated.

3. The main contention of the petitioner was that Rule 6 of the Government Servants Conduct Rules was unconstitutional as it offended the fundamental right of the petitioner guaranteed by Article 19(1)(c) of the Constitution.

Rule 6 of the Government Servants Conduct Rules runs :

"Except with the previous sanction of the State Government if he is the head of a department, or of the head of his department in other cases, no Government servant shall ask for or accept or in any

way participate in the raising of any subscription or other pecuniary assistance in pursuance of any object whatsoever".

Subsidiary Rule : Except with the permission of the authority specified in the above rule, a Government is forbidden to take any part in the collections of money for any public or local purpose.

Such permission may, after due consideration, be accorded in all cases before the State Government support the institution by way of grant or otherwise."

4. What Article 19(1)(c) of the Constitution guarantees is the right of a citizen to form associations or unions. The learned counsel for the petitioner contended that the right to collect funds by all lawful means was incidental to the right to form an association guaranteed by Article 19 of the Constitution. The learned counsel referred to -- Raja Kulkami v. State of Bombay', (A). At p. 114 Ravdckar J. observed :

". . . . it is contended before us that it is no use the Constitution guaranteeing to all citizens the right to form among others a Trade Union, in case the right is rendered illusory. That we are prepared to accept. If a Legislature were at any time to enact a law which, while normally allowing formation of a Union, would make the light to form a Union illusory by preventing the Union from doing anything in the interests of the members, then the legislation would be rendering the right which was guaranteed by Article 19(1)(c) illusory and the legislation could be impugned on the ground that it would affect the fundamental right referred to."

I respectfully agree. But it is not necessary for me to consider on this case what are all the rights incidental to the right to form an association guaranteed by Article 19(1)(c). That right, in my opinion, is not rendered in any way illusory by Rule 6 of the Government Servants Conduct Rules. In my opinion, the fundamental right guaranteed by Article 19(1)(c) does not include a right to solicit monies by sale of tickets to members of the public unconnected with the association, to join which the petitioner had the fundamental right, even if the object of such sale was to raise funds for that association, and such sale was not by itself unlawful. In my opinion, such a right is not protected by any Constitutional provision. Since no fundamental right of the petitioner was invaded by the order of the respondent, the Collector, the petitioner is not entitled to these proceedings initiated under Article 226 of the Constitution, to challenge the constitutionality of Rule 6.

5. There is yet another bar, as I see it, which disentitles the petitioner to any, relief in these proceedings under Article 226. In -- 'McAuliffe v. New Bedford', (1892) 155 Mass 216 (B), the rule, the constitutionality of which was challenged by a policeman, was that "no member of the department shall be allowed to solicit money or any aid on any pretence for any political purpose whatsoever". Holmes J, observed :

"There is nothing in the Constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner, may have a constitutional right to talk politics, but he has no constitutional right to be a polceman. There arc few employments for hire in which the servant does not agree to suspend

his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain as he takes the employment on the terms which are offered him. On the same principle, the city may impose any reasonable condition upon holding offices within its control. This condition seems to us reasonable, if that be a question open to revision here."

(See extracts at pages 791-92 of (1946) 91 Law Ed. 754, 'United Public Workers of America v. Mitchell (C)').

The petitioner has no constitutional right to any appointment under the Government in the Revenue Subordinate service. Having accepted an appointment in that service, subject among other terms of his service, to the Government Servants Conduct Rules, and having had the benefit of that appointment all these years, the petitioner cannot be heard :p contend, as incidental to the exercise of discretion in his favour under Article 226 of the Constitution, that the rule is unconstitutional.

6. Though normally, when no relief can be granted to the petitioner, the validity of a statute or a rule will not be gone into by a court, since the validity of Rule 6 was debated at length before me, and also since the learned Advocate General on behalf of the State sought an adjudication, I shall set out my reasons for my opinion, that Rule 6 of the Government Servants Conduct Rules is 'intra vires', in the sense that it is not unconstitutional and does not offend Article 19 of the Constitution.

7. At page 755 of his Constitutional law. Prof. Willis has recorded that "for the maintenance of political liberty the right of association is fully as important as the right of assemblage. The right of assemblage and the right of free association are parts of the personal liberty of individuals, both protected by the due process clause and one by a separate clause. (In our Constitution each of these rights is specifically guaranteed by a separate clause of Article 19). But in the exercise of the police power where these forms of personal liberty do not tend to aid general political progress, Governments may regulate them for the purpose of protecting the members of the association and of the public."

8. In (1946) 91 Law Ed 754 (C), the Supreme Court of the United States upheld the validity of the Hatch Act. That Act made it unlawful for employees in the executive branch of the Federal Government to take any active part in political management or in political commissions out of as well as in working hours, and a regulation of the Civil Service Commission made such conduct ground for removal of civil service employees Reed J. who delivered the opinion of the majority of the court observed at p. 774:

"The do termination of the extent to which political activities of Governmental employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of Governmental power. That conception develops from practice, history and changing educational, social and economic conditions . . . Congress and the administrative agencies have authority over the discipline and efficiency of the public service. When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these

restrictions are unconstitutional."

At page 771, Heed J. quoted with approval the principle enunciated - in Ex parte Curtis (1882) 27, Law Ed 232 (D);

"The evident purpose of the Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties and to maintain the proper discipline in the public service. Clearly such a purpose is within the just scope of the legislative power, and it is not easy to see why the Act now under consideration does not come fairly within the legitimate means to such an end."

In (1882) 27 Law Ed 232 (D), it was held that the right to contribute money through fellow employees to advance the contributor's political theories was not protected by any constitutional provisions.

9. These principles can well be applied with reference to Article 19(4) of the Constitution. It runs:

"Nothing in Sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

I shall assume without deciding it, that Rule 6 of the Government Servants Conduct Rules does abridge the freedom guaranteed by Article 19(1)(c) of the Constitution. Even so that stands the test of a reasonable restriction, for which Article 19(4) specifically provides.

10. It should be remembered that Rule 6 applies only to a section of the community, that is, those in the employ of the Government in the civil services. But within that class the rule applies to all equally. In deciding whether such a restraint on the freedom guaranteed by Article 19(1)(c) of the Constitution to Government servants as citizens of the Republic is reasonable, the Court has to balance the extent of the guarantee of freedom against the rules framed by a competent authority to protect a democratic society against a supposed evil of permitting any one in the civil services from soliciting or receiving monies for any purpose unconnected with the office which he holds under the Government The integrity of the personnel of the Civil services and their reputation for integrity are as essential to a democracy as the freedom of association guaranteed by Article 19(1)(c). It is not difficult to visualise the evil Rule 6 is designed to prevent. Rule. 6 applies to all Government servants, whatever be the position an individual officer holds in the official heirarchy. It is obviously in the interests of the democratic community as a whole to maintain purity of public administration carried on with the help of the civil services.

With the position the Government servant holds, an appeal to the public for voluntary contributions to an association of which he is a member, or for the support of any cause in which he is interested, may often degenerate to a levy, which a member of the public can reasonably apprehend that he can avoid only at his peril; official favours or frowns should not even have the appearance of being traced to a contribution paid or refused. That would apply, even if the means of raising funds,

raising subscriptions within the meaning of Rule 6, is by sale of tickets for entertainment, dramatic, or otherwise, offered in exchange. The evident purpose of this rule is to maintain efficiency and integrity in the discharge of the official duties of the Government servants and to maintain proper discipline in public services. Besides, it should be remembered that such a rule governing the conduct of Government servants was in existence even before the date on which the Constitution came into force. The need to maintain the integrity of Government servants and their reputation unimpaired obviously continues even after the Constitution has come into force; and as far as I can see the background of society against which the nued for such restraint on the conduct of government servants continues to be the same even after the Constitution came into force.

11. Such resraint as Rule 6 imposes on those in the employ of the Government, without any discrimination as between them, is wholly desirable in the interests of the State itself. At is wholly necessary in the interests of purity and efficiency of adiministra-tion. In my opinion, it is legally permissible & well within the scope of Article 19(4) of the Constitution.

12. The learned counsel for the petitioner referred to -- Ramakrishnaiah v. President District Board, Nellore', (E), where a Division Bench of this Court held that the guaranteed freedom cannot be abridged or abrogated by the exercise of official discretion. The principle that underlay that decision may not apply to Rule 6. Rule 6, as it stands, contains an absolute prohibition the only qualification being the power of the Government to grant permission in appropriate cases, which is really analogous to a power to exempt any individual from the operation of the Rule. The subsidiary rules themselves framed under Rule 6 make that clear. The power of exemption has been held to be valid, and such a provision by itself does not make what is reasonable under Article 19(4), an unreasonable restraint.

13. This petition fails and is dismissed, but in the circumstances without costs.