Supreme Court of India
State Of A.P. & Anr vs T. Ramakrishna Rao & Ors on 14 December, 1971
Bench: S.M. Sikri (Cj), J.M. Shelat, I.D. Dua, H.R. Khanna, G.K. Mitter

CASE NO.:
Appeal (civil) 1461 of 1971

PETITIONER:
STATE OF A.P. & ANR.

RESPONDENT:
T. RAMAKRISHNA RAO & ORS.

DATE OF JUDGMENT: 14/12/1971

BENCH:
S.M. SIKRI (CJ) & J.M. SHELAT & I.D. DUA & H.R. KHANNA & G.K. MITTER

JUDGMENT:

JUDGMENT 1972 AIR 2175 = 1972 (4) SCC 830 The Judgment was delivered by J. M. SHELAT, J Per J. M. Shelat, J This appeal, by special leave, is directed against the judgment of the High Court of Andhra Pradesh in Writ Petition No. 1915 of 1971. That was filed by the respondents herein, who were candidates for the posts of District Munsifs in the Andhra Pradesh State Judicial Service which were to be filed in by direct recruitment as distinguished from recruitment by promotion.

2. The respondents are advocates enrolled by the High Court of Andhra Pradesh. In pursuance of an advertisement dated November 8, 1968, issued by the State Public Service Commission, they and certain others applied for the said posts for which at the time there were sixty vacancies. One of the qualifications required of such applicants was that they should be below the age of 32 years on July 1, 1961. The Commission was to hold the examination on the 7th and 8th May, 1969. The examination, however, could not be held as the examinees staged a walk out on the ground that the question paper in civil law was at variance with the "Information for candidates" previously issued by the Commission. The Commission thereafter issued another notice, dated July 5, 1969 for holding another examination on July 25, 1969. Thereupon these respondents and ten others filed a Writ Petition No. 2484 of 1969 in the High Court for a direction restraining the Commission from holding the written examination and for a further direction to fill up the said posts by oral test only.

3. Under the rules, dated December 4, 1962, made by the Governor in exercise of powers under Art. 234 read with Arts. 309 and 237 of the Constitution, the Andhra Pradesh State Judicial Service consists of three categories, (1) Subordinate Judges, (2) District Munsifs, and (3) Judicial Second Class Magistrates. The mode of appointment to the post of District Munsifs, as provided by Rule 4 of the said Rules, was by (a) direct recruitment, (b) by transfer from certain categories of public servants, and (c) by promotion from the Judicial Second Class Magistrates. Rule 5 empowered the Commission to prepare a list of persons considered fit for appointment in accordance with the rules and regulations as from time to time made by the Governor "after holding such examination, if any, as the Governor may think necessary, for the candidates for appointments by direct recruitment or transfer to the post of District Munsif in the State"

4. There were in all 71 vacancies, out of which 60 were to be filled in by direct recruitment, and the rest by transfer. The selection to the posts to be filed in by direct recruitment was to be made on the basis of a written as well as an oral test. The written test was to consist of three papers of 100 marks each in civil law, criminal law and language, and 200 marks were earmarked for the oral test.

5. The contention of these respondents then was that the said rules did not provide for a written examination, that such an examination was provided only by the said 'Information for candidates' issued by the Commission and that the said Rules did not also provide for the maximum and minimum marks and the requisite percentage of marks required for selection. Therefore, the said "information", the written examination proposed to be held thereunder, the requirement of certain percentage of marks etc. were all ultra vires and invalid. According to the State, the Governor had issued certain Government orders, the requirements of which the Commission had incorporated in the said "information". Since those Government orders were issued in pursuance of Rule 5 of the said Rules, the Commission was competent to hold the examination and select candidates for the list to be prepared under Rule 5 in accordance with the qualifying marks required under the said orders.

6. There was no dispute that the said Rules were made by the Governor in consultation with the High Court and the Public Service Commission as provided by Art. 234. Rule 5, amongst them, empowered the Commission to prepare a list of persons considered fit for the appointment to the post of District Munsifs "after holding such examination, if any, as the Governor may think necessary"

. Rule 5 thus conferred on the Governor the discretion to decide whether an examination should be held or not, or if held, whether it should be written or oral. The Rules also did not provide for the subjects in which the examination should be held, nor the maximum and minimum marks to be obtained by the candidates to be qualified for being called for interview, nor the qualifying total marks required for selection. These matters were provided for in the said Government orders.

7. The High Court rejected the contention urged by the State counsel that Rule 5 was a conditional legislation properly promulgated in exercise of power under Art. 234 and after consulting the High Court and the Commission, or that the said Government orders issued thereunder prescribing the pattern of examination and the maximum and qualifying marks constituted delegated legislation. The High Court held that Rule 5, in so far as it empowered the Government to determine whether an examination was necessary or not, and the pattern of such an examination, contravened Art. 234, and was, therefore, void. It further held that the said Government orders made under Rule 5 were also void having been issued under an invalid rule. In this view, the High Court held that the Commission could not hold the examination under the said Government orders and issued a direction upon the Commission to that effect.

8. The defects in Rule 5 pointed out by the High Court in its said judgment were thereafter removed. The Governor issued an amended Rule 5 after consultation with the High Court and the Commission as enjoined by the High Court in the said judgment. The Commission then proposed to call fresh applications and hold an examination for the purpose of filling in vacancies in the post of District Munsifs which by now were 200. Thereupon these nine respondents filed another writ

petition from which this appeal arises.

9. The contentions of these respondents were, firstly, that they could not be subjected to a written examination under the amended Rule as it was prospective, and, therefore, their applications should be proceeded with on the basis of oral test only; secondly, that even if a written test could be validly held, the provision in the amended rule prescribing 200 marks of the written test and an equal number of marks for oral test was not valid; thirdly, that the Rule did not lay down any guidelines or critieria on the basis of which such an oral test should be conducted and marks awarded. Consequently, the provision for 200 marks for such an oral test should be quashed as there was scope for discrimination in awarding the marks.

10. The High Court rejected the contention as regards the written and the oral test, and held that the Commission was entitled to make selection by first screening the candidates through the written test and make selection by oral test from amongst those who qualified for being called for interview.

11. At the time when the Commission first invited applications in November, 1968 there were, as aforesaid, only 60 vacancies to be filled in. By now the number had increased to 200. The Commission was desirous to call for fresh applications for all the 200 posts and hold a fresh examination under the amended Rule 5. The High Court, however, turned down this proposal and directed the Commission to hold a separate examination for those who had applied in 1968 under the unamended Rule in respect of the original 60 vacancies and to call separate applications and hold a separate examination for the remaining 140 vacancies. The reason given for such a direction was that if the respondents were required to file fresh applications and made to appear in the examination along with the rest of the applicants there would be violation of Art. 16. The direction thus given would compel the Commission to hold two separate examinations, one for the respondents and others who had applied in 1968 for selection to the said 60 posts and another for the remaining 140 posts.

12. We fail to see either the justification or the necessity for such a direction. The unamended Rule 5, as it stood in 1968, having been held invalid, the notice issued thereunder by the Commission calling for applications, the applications received in pursuance of that notice and the examination sought to be held thereunder and indeed all actions taken by the Commission thereunder fell through and must be regarded as invalid. The rule having then been struck down, the only way the Commission could prepare a list for appointment would be under the amended Rule 5. Obviously, that could only be done by calling for fresh applications and holding an examination under the amended rule, there being no other rule available to the Commission after Rule 5 had been struck down, In these circumstances, there was no question of any breach of Art. 16, firstly, because there were no valid applications before the Commission since the applications filed by the respondents and others in 1968 were bad as they had been called and made under an invalid rule. Secondly, the respondents had not acquired any right by merely applying for the posts either under that rule or otherwise, to be selected for the post. The Commission, therefore, was perfectly justified in treating the earlier applications of the respondents as invalid on the ground that they had been invited under an illegal rule, and calling for fresh applications and holding a fresh examination in respect of all the 200 vacancies. There was thus no question of any breach of Art. 16, nor of any violation of any right of

the respondents as none was acquired by them. Equally, there was no question of the amended Rule 5 being prospective or retrospective as the Commission had to act afresh under the amended rule, the unamended rule having been struck down and there being, therefore, no basis on which the applications of the respondents made in 1968 could be treated as valid applications.

13. The directions given by the High Court being thus unsustainable have to be set aside. In our view, the Commission and the State were perfectly justified in fixing a date for the examination and calling for fresh applications for all the vacancies to enable the Commission to prepare an approved list under and in accordance with the provisions of the amended Rule 5. The only direction which becomes necessary is that if any of the respondents or other candidates who had applied in 1968 has by this time become age barred by reason of the delay in holding the examination, he should not be disqualified from appearing in the examination if he was of the qualified age at the time when he had filed his application.

14. The appeal, for the foregoing reasons, is allowed and the High Court's judgment is set aside, but in the circumstances of the case there will be no order as to costs.