Supreme Court of India
M.H. Devendrappa vs The Karnataka State Small ... on 17 February, 1998
Author: M S Manohar.
Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
M.H. DEVENDRAPPA

Vs.

RESPONDENT:
THE KARNATAKA STATE SMALL INDUSTRIESDEVELOPMENT CORPORATION

DATE OF JUDGMENT: 17/02/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 17TH DAY OF FEBRUARY, 1998 Present:

Hon'ble Mrs. Justice Sujata V.Manohar Hon'ble Mrs. Justice D.P. Wadhwa Mr. S.S. Javali, Sr. Advocate and Mr. P.R. Ramasesh, Advocate with him for the respondent.

J U D G M E N T The following Judgment of the Court was delivered: Mrs. Sujata V. Manohar. J.

At the material time the appellant was the Assistant Manager of the respondent-karnataka State Small Industries Development Corporation (KSSIDC), Bangalore. He was also the President of the Karnataka State Small Industries Development Corporation Employees' Welfare Association, Bangalore.

On 3rd of June, 1977 the appellant addressed a letter to the Governor of Karnataka on behalf of the Karnataka State Small Industries Development Corporation Employees' Welfare Association in which he stated that the KSSIDC Corporation was likely to be wound up on account of bad administration, corruption and nepotism. He said that till 1977 the Corporation was running at a profit. However, since then it was sustaining continuous losses. In the letter it was alleged that several persons were being appointed in the Corporation who were not properly qualified at the

instance of political leaders and ministers. The letter set out some instances of these kinds of appointments. There were also allegations in the letter about the nexus between contractors for various projects and the management of the Corporation. There were also some allegations about cement purchased form the Corporation being diverted and various such alleged malpractices in general terms. The letter requested the Governor to arrange to investigate the working conditions of the said Corporation. The letter had no connection which the service conditions of the employees or the objects of the Employees' welfare Association.

On 31st of December 1977, the appellant issued a press statement which was published in a Kannada Daily called Samyuktha Karnataka of the same date. The appellant isued a statement welcoming the dismissal of Mr. S.C. Venkatesh, who was then the Chairman of the appellant-Corporation from the Presidentship of the Bangalore City District Congress Committee. The appellant also expressed the hope that political leaders would prevail upon the Government and remove Mr. S.C. Venkatesh from the Presidentship of the respondent-Corporation thereby saving lakhs or rupees as Mr. S.C. Venkatesh was doing illegal activities.

In January, 1978 the respondent wrote to the appellant seeking confirmation about the authorship of the letter which had been sent to the Governor and asking for his explanation as to why disciplinary action should not be taken against him. Thereupon the appellant went on leave from 9th of January 1978 till 31st of January, 1978. The appellant absented himself from duty from 9th of January, 1978 and on 12th of January, 1978 he sent a telegram to the respondent seeking commuted leave from 9.1.1978 to 31.1.1978. On 1st of February, 1978 the respondent published a notice in the newspaper calling upon the appellant to report back for duty within seven days. By letter of 9th of February, 1978, the appellant was asked to show cause in writing as to why disciplinary action should not be taken as per Rule 22 of the Service Rules of the Corporation. The appellant sent a reply dated 17.2.1978.

Thereafter on 11.4.19778 three articles of charge were served on the appellant. The charges were to the following effect:

Charge No.1 was to the effect that he had written a letter dated 3.6.1977 to the Governor of Karnataka pointing out mismanagement in the respondent-Corporation. Being an employee of the Corporation he could not address the letter to the Governor without permission of the management. This amounted to violation of Rule 22 of the Service Rules of the Corporation, since it was misconduct and knowingly doing something detrimental to the interests and the prestige of the Corporation.

Charge No.2 was to the effect that the appellant had issued a statement in Samyukta Karnataka Kannada Daily dated 31.112.1997 attributing motives to the then Chairman of the respondent-Corporation and welcoming his dismissal from the Presidentship of the Bangalore District Congress Committee. Being an employee of the Corporation he could not issue a press statement of a political nature of indulge in political activities which amounted to gross misconduct and knowingly committing an action detrimental to the interests or prestige of the Corporation.

The third charge was to the effect that his act of leaving the office unauthorisedly with effect from 9.1.1978 and staying away from his legitimate work amounted to misconduct.

The appellant submitted a written statement dated 27.4.1978 in which he stated that he had already filed a suit before the District Court, Bangalore for a Declaration and injunction. He stated that all his actions were in his capacity as the President of the respondent-Employees' Welfare Association and that the enquiry against him was illegal and without jurisdiction and was in mala fide exercise of power. He also sought to justify what he stated in the letter to the Governor.

In the Civil suit no injunction was granted. The enquiry proceeded. On 31.5.1978 the appellant stated before the Enquiry Officer that he would not participate in the enquiry. Thereafter the enquiry against him was held ex parte and he was held guilty. On receipt of the report of the Enquiry Officer, the disciplinary authority issued a show cause notice to the appellant dated 19.6.1978 in which it was pointed out that the first two charges had been held proved against him while the third charge had been held as partly proved. In view thereof the appellant was asked to show cause why action should not be taken against him dismissing him from service. The appellant sent a reply dated 24.6.1978.

On 14.7.1972 an order was passed dismissing the appellant from service. The appellant filed a writ petition before the High Court of Karnataka challenging the order of dismissal. A learned Single Judge of the High Court dismissed the writ petition. The appeal of the appellant before a Division Bench of the High Court has also been dismissed. Hence the present appeal has been filed.

Rule 22 of the Service Rules of the respondent- Corporation as set out by the appellant in his special leave petition before this Court, is as follows:-

> "An employee, who commits a breach of these rules or displays negligence, inefficiency or in-
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> subordination, who knowing does anything detrimental to the interests or prestige of the Corporation or in conflict with official instructions or is quality of any instructions or is guilty of any activity of misconduct or misbehavior shall be liable to one or more of the following penalties."
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> The other relevant Rule 18 Rule 19 which is as follows: "19. Participation in Politics:
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> No employee shall be a member of or otherwise associate with any political party in politics nor shall he take part in, subscribe in aid of, or assist in any political movement or activity."

It is the contention of the appellant that in writing the letter of 3rd June, 1977 to the Governor of Karnataka and releasing the press statement of 31.12.1977 he had exercised his fundamental right of freedom of speech and expression under Article 19(1) (a) as also he had exercised his right to form associations or unions under Article 19(1)(c) of the Constitution and that he could not be dismissed

from service when he had exercised his fundamental rights under Article 19(1)(a) and 199(1)(c). This is the issue that needs to be examined.

The right to freedom of speech and expression is subject to reasonable restrictions under Article 19(2). Such restrictions can be in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly, Article 19(1)(c) is also subject to reasonable restrictions under Article 19(4). Such reasonable restrictions can be made, inter alia, in the interest of public order or morality. Article 19(2) or 19(4) may not be directly relevant in the present case in view of the provisions contained in Rule 22 of the Service Rules. Rule 22 of the Service Rules is not meant to curtail freedom of speech or expression or the freedom to form associations or unions. It is clearly meant to maintain discipline within the service, to ensure efficient performance of duty by the employees of the Corporation, and to protect the interests and prestige of the Corporation. Therefore, under Rule 22 an employee who disobeys the service Rules or displays negligence, inefficiency or in-subordination or does anything detrimental to the interests or prestige of the Corporation or acts in conflict with official instructions or is quality of misconduct, is liable to disciplinary action. Rule 22 is not primarily or even essentially designed to restrict, in any way, freedom of speech or expression or the right to form association or unions. A Rule which is not primarily designed to restrict any of the fundamental rights cannot be called in question as violating Article 19(1)(a) or 19(1)(c). In fact, in the present proceedings the constitutional validity of Rule 22 is not under challenge. What is under challenge is the order of dismissal passed for violating Rule 22 when the impugned conduct which violates Rule 22 is held out as an exercise of a right under Article 19(1)(a) or 19(1)(c).

In the case of P. Balakotaiah vs. The Union of India & Ors. (1958 SCR 1052) certain railway employees who belonged to a Workers' Union sponsored by the Communists carried on agitation for a general strike in order to paralyse communications and movement of essential supplies. They were charge-sheeted and their services were terminated. The charges showed that the action was taken against the employees not because they were Communists or trade- unionists but because they were engaged in subversive activities. This Court said that there is no contravention of Article 10(1)(c) by the impugned order. The impugned order did not prevent the workers from continuing to be Communists or trade-unionists. Their right in that behalf remained as before. The real complaint of the workers was that their services had been terminated and this did not involve infringement of any of their constitutional rights apart from Article 311. This court said, "The appellants have not doubt a fundamental right to form associations under Article 19(1)(c) but they have to fundamental right to be continued in employment by the Stat e and when their services are terminated by the State they cannot complain of the infringement of any of their constitutional rights when no question of violation of Article 311 arises" (page 1064).

However, in the case of Kameshwar Prasad & ors. vs. The State of Bihar & Anr. [(1962) Supp. 3 SCR 369], Balakothaiah's case (supra) was distinguished on the ground that the Service Rules had not been challenged as ultra vires in that case. In Kameshwar Prasad's case (supra) there was a challenge to Rule 4A of the Bihar Government Servants Conduct Rules in so far as it prohibited any form of demonstrations by Government servants. This court said that a Government servant, by

accepting Government service, did not lose his fundamental rights under Article 19 and that, Rule 4A in so far as it prohibited all kinds of demonstrations, whether orderly or disorderly, would be violative of Article 19(1)(b) which secured the right to assemble peaceably and without arms. The Court felt that the Rule was so worded that it was not possible to make a distinction under the Rule between demonstrations which could be peaceful and demonstrations which could be violent. So that it was not possible to say that to the extent that the Rule prohibited violent demonstrations, which may result in breach of public order, the Rule was valid. The entire Rule, therefore, in so far as it prohibited demonstrations, was struck down. However, while doing so, the Court said the following (page 384):

> "We have rejected the broad contention that persons in the service of Government form a class apart to whom the rights guaranteed by Part III do not, in general, apply. By accepting the contention that the freedoms guaranteed by Part III and in particular those in Article 19(1)(a) apply to the servants of Government, we should not be taken to imply that in relation to this class of citizens the responsibility arising from official position would not be itself impose some limitations on the exercise of their rights as citizens."

[underlining ours] Illustrations would be, the duty to maintain the secrecy of voting by an officer or clerk engaged in election duty, the duty to maintain confidentiality of defence strategies, and so on. Therefore, in Kameshwar Prasad's case (supra) this Court made it clear that it was not in any manner affecting by the said Judgment, the Rules of Government service designed for proper discharge of duties and obligations by Government servants, although they may curtail or impose limitations on their rights under Part III of the Constitution.

In the case of O.K. Ghosh & Anr. V. E.X. Joseph [(1963) Supp. 1 SCR 789 at 794], the respondent, a Central Government servant, who was the Secretary of the Civil Accounts Association was departmentally proceeded against under Rules 4(A) and 4(8) of the Central Civil Services (Conduct) Rules, 1955, for participating in demonstrations in preparation of a general strike and for refusing to dissociate from the Association after the Government had withdrawn its recognition of it. This Court set aside Rule 4(B) as invalid and violative of Article 19(1)(c). The Rule provided that no Government servant shall join or continue to be a member of any services association which the Government did not recognise or in respect of which recognition had been refused or withdrawn by it. This Court said that Rule 4(B) imposed a restriction on the undoubted right of a Government servant under Article 19(1)(c) which was neither reasonable nor in the interest of "public order" under Article 19(4). Because, in granting or withdrawing the recognition, the Government might be actuated by considerations other than those of efficiency or discipline amongst the services or consideration of public order. However, Government servants can be subjected to Rules which are intended to maintain discipline within their ranks and which lead to an efficient discharge of their duties. The Court observed, (page 794): "There can be no doubt that Government servants can be subjected to Rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of clause (4), it has to be borne in mind that the Rule must be in the interests of public order and must amount to a

reasonable restriction..... A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct."

In all these cases, this Court has been at pains to point out that Service Rules can be framed to maintain efficiency and discipline within the ranks of Government servants. in the case of O.K.Ghosh (supra), this Court considered such Rules as being saved by the "public order" clause under Article 19(4). In the present case, the restraint is against doing anything which is detrimental to the interests or prestige of the employer. The detrimental action may consist of writing a letter or making a speech. It may consist of holding a violent demonstration or it may consist of joining a political organisation contrary to the Service Rules. Any action which is detrimental to the interests or prestige of the employer clearly underlines discipline within the organisation and also the efficient functioning of that organisation. Such a Rule could be construed as falling under "public order" clause as envisaged by O.K. Ghosh (Supra).

The same requirements of Rule 22 can be better looked at from the point of view of Article 19(1)(9) as requirements in furtherance of the proper discharge of the public duties of Government services. Rules which are directly linked to and are essential for proper discharge of duties of a public office would be protected under Article 19(1)(g) as in public interest. If these Rules are alleged to violate other freedoms under Article 19, such as, freedom of speech or expression or the freedom to form associations or unions or the freedom to assemble peaceably and without arms, the freedoms have to be read harmoniously so that Rules which are reasonably required in furtherance of one freedom are not struck down as violating other freedoms. Seervai in "Constitutional Law of India", Vol.l page 816, para 10.238 states ".....a civil servant is following a profession or occupation within the meaning of Article 19(1)(g). Whereas his right to freedom of speech and expression, or the right to form an association can be subject only to reasonable restrictions in the interest of public order or morality, his right to carry on his profession or calling can be made subject to reasonable restrictions in the public interest. If the true scope and object of an impugned rule is not to deal with freedom or speech or freedom of association but to secure standards of conduct necessary for the efficient and proper discharge of a profession or calling, in the public interest, then such restrictions can be justified under Article 19(6), although they cannot be justified under Article 19(2) and (3)....."

The fundamental freedoms enumerated under Article 19 are not necessarily and in all circumstances mutually supportive, although taken together they weave a fabric of a free and equal democratic society. e.g. the right to reside and settle in any part of the country can be put in jeopardy by a vociferous local group freely expressing its view against persons from another part of the country. Freedom of speech of one affects the freedom movement of another. Exercising the right to form an association may curtail the freedom to express views against its activities. For example, a person joining an association to promote adoptions cannot express anti-adoption views. He may lose his membership. Some restriction on one's rights may be necessary to protect another's rights in a given situation. Proper exercise of rights may have, implicit in them, certain restrictions. The rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions. In the present case, joining Government service has, implicit in it, if not explicitly so laid down, the observance of a certain code of conduce necessary for the proper

discharge of functions as a Government servant. That code cannot be flouted in the name of other freedoms. Of course, the courts will be vigilant to see that the code is not so widely framed as to unreasonably restrict fundamental freedom. But a reasonable code designed to promote discipline and efficiency can be enforced by the Government organisation in the sense that those who flout it can be subjected to disciplinary action.

That is why is Balakothaiah's case (supra) this Court said that a person who wanted to exercise his other freedoms under Article 19(1)(a) or (c) may do so, but then he could not insist that he be retained in Government service if the Service Rules for the proper functioning of the organisation were breached in the process, except to the extent he was protected by Article 311. If freedom of speech of an individual Government employee is circumscribed by the need for efficiency or discipline or confidentiality in public interest, the individual exercises his freedom of speech in a manner conflicting with these requirements at the risk of facing disciplinary action. This does not mean that legitimate action discreetly and properly taken by a Government servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation would also be barred. However, such is not the case here. Also, a person who legitimately seeks to exercise his rights under Article 19 cannot be told that you are free to exercise the rights, but the consequences will be so serious and so damaging, that you will not, in effect, be able to exercise your freedoms. For example, a person may be told that you are free to express your opinion against the State, but if you do so, you will be put behind bars. This is clearly deprivation of freedom of speech. Therefore, what we have to consider is the reasonableness of Service Rules which curtail certain kinds of activities amongst Government servants in the interests of efficiency and discipline in order that they may discharge their public duties as Government servants in a proper manner without undermining the prestige of efficiency of the organisation. If the Rules are directly and primarily meant for this purpose, they being in furtherance of Article 19(1)(9). can be upheld although they may indirectly impinge union some other limbs of Article 19 qua an individual employee. As the above cases show, courts have made sure that such impingement is minimal, and Rules are made in public interest and for proper discharge of public duties. A proper balancing of interests of an individual as a citizen and the right of the State to frame a code of conduct for its employees in the interest of proper functioning of the State, is required.

A somewhat similar view seems to have been taken in other commonwealth jurisdictions as well. The appellant draw our attention to the case of Marvin L.Pickering V. Board of Eduction of Township High School [391 US 563]. In that case a public school teacher wrote a letter to the editor of 8 local newspaper criticising the way in which the Board of Education and the superintendent of schools had handled past proposals to raise new revenue for the schools. After the letter was published, the board of education determined that its publication was detrimental to the efficient operation and administration of the schools of the district. An cation was taken against the teacher dismissing him from service. The teacher contended that his remarks and comments in the letter were protected by the constitutional right of free speech. The United Sates Supreme Court said: "A state has interests as an employer in regulating the speech of its employees that differ significantly from those that it possesses in connection with regulation of the speech of the citizenry in general. Where a public school teacher contends that his dismissal is violative of his constitutional right to free speech, it is necessary to arrive at a balance between the interests of the teacher, as a citizen, in

commenting upon matters of public concern, and the interest of the state, as an employer, in promoting the efficiency of the public services that it performs through its employees." The Court after examining the contents of the letter held that the letter had made no allegations against any individual official, nor had it made any personal allegations against any member of the board of education. The letter was confined to criticising only the policy. In the view of the Court, this would not, in any way, affect the efficient functioning of the teacher within the organisation. The United States Supreme Court, therefore, set aside the order of dismissal. Another commonwealth country has recently considered a somewhat similar case. The Court of Appeal of Antigua and Barbuda in the case Permanent Secretary, Ministry of Agriculture & Ors. V. De Freitas (1996 (1) CHRB 1) considered the case of a civil servant employed by the Ministry of Agriculture who took part in demonstrations organised by an opposition political party against political corruption. He carried a placard against his own minister. Refuting the contention that his right to freedom of expression and assembly under the Constitution had been violated, the court said that there must be an implied presumption that imposes restriction upon public officers that are reasonably required for the proper performance of their functions and which are reasonably justifiable in a democratic society. A presumption of constitutionality of such provisions has to be implied in the constitutional rights and their constitutionality has to be upheld.

In the present case, the appellant had made direct public attack on the head of his organisation. He had also, in the letter to the Governor, made allegations against various officers of the corporation with whom he had to work and his conduct was clearly detrimental to the proper functioning of the organisation or its internal discipline. Making public statements against the head of the organisation on a political issue also amounted to lowering the prestige of the organisation in which he worked. On a proper balancing, therefore, of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, this was a fit case where the employer was entitled to take disciplinary action under Rule 22.

We, therefore, agree with the findings of the High Court and dismiss the appeal. There will, however, be no order as to costs.