Supreme Court of India
V.K. Javali (Dr.) vs State Of Mysore & Anr on 7 August, 1961
Bench: P.B. Gajendragadkar (Cj), K. Subbarao, M. Hidayatullah, J.C. Shah, R.

CASE NO.:
Original Suite 55 of 1960

PETITIONER:
V.K. JAVALI (Dr.)

RESPONDENT:
STATE OF MYSORE & ANR.

DATE OF JUDGMENT: 07/08/1961

BENCH:
P.B. GAJENDRAGADKAR (CJ) & K. SUBBARAO & M. HIDAYATULLAH & J.C. SHAH & R. DAYAL

JUDGMENT:

JUDGMENT 1966 AIR (SC) 1387 The Judgment was delivered by GAJENDRAGADKAR, J Per Gajendragadkar, JThe petitioner Dr. V. K. Javali, who is at present the Deputy Director of Public Instruction (Headquarters) Bangalore, in the employment of respondent 1, the State of Mysore, was originally selected by the Public Service Commission for being appointed in Bombay Educational Service, Class I (Administrative Branch). In June 1953, he was transferred to Dharwar as Educational Inspector. In the last week of June he was invited by the Secretary, Wardha Hindi Prachar Sabha, Dharwar, to distribute prizes and certificates to the candidates who had passed the Hindi examinations that year. Accordingly the petitioner attend the function on 5 July 1953, distributed the prizes and certificates, and delivered a short talk in Kannada to the candidates who had assembled for the function. On 7 July 1953, a report about the said talk appeared in two newspapers, the Samyukta Karnatak, a Kannada daily of Hubli, and the Times of India, Bombay. According to the petitioner, the summary of his talk which was thus published was incorrect and distorted. That is why on the same day the petitioner wrote a letter to the editor of the Samyukta Karnatak protesting against the incorrect and distorted version of his speech published in his paper but the said letter was not published by the Samyukta Karnatak. On 7 July 1953, the Director of Education, Poona, wrote a demi-official letter to the petitioner calling upon him to submit his explanation in regard to the report of his speech published by the Times of India on the same day. Meanwhile, on 12 July 1953, the petitioner supplied to the editor of the Samyukta Karnatak an authorized version of his speech and this was published by the said paper on 12 July 1953. Two days before that, on 10 July 1953, the Under Secretary to the Government of Bombay, Education Department, called upon the petitioner to forward his explanation within three days. In the communication addressed to the petitioner by the Under Secretary, it was stated that the petitioner had criticized the Hindi language policy of Government. The petitioner by his reply, dated 13 July 1953, denied the said allegation and sent to the Under Secretary a copy of the authorized version of his speech. Thereafter on 22 September 1953, the petitioner was suspended on the ground that he had criticized the "Hindi language policy of the Government." On 16 November 1953, he was served with a charge-sheet by the Collector of Dharwar who had been appointed the enquiry officer. The

charges which were thus served on the petitioner read as follows :

"(a) That the petitioner made that speech without obtaining the previous approval of the Director of Education to the text thereof and thus he failed to abide by the instructions of the Government which were issued to him in August 1952;

(b) that he expressed views on the language controversy in contravention of the orders issued in Government Circular No. P. & S.D. 1581/34, dated 27 September 1950;

(c) that he expressed the view that Kannada should be the medium of instruction at the university stage in Karnatak and that Hindi should have the second place, which is not in consonance with the intention of Government which was clarified in the Press Note No. 1294, dated 28 September 1951; and

(d) that his statements that Kannada should be the Court and official language in Karnatak are against the policy of Government as contained in No. G.C.P. & S.D. 1581/34 of 31 December 1949 and 9 May 1950."

On 31 December 1953, the petitioner submitted his explanation. He denied all the charges and contended that the grounds on which he was suspended were different from the grounds included in the charge-sheet. In support of the charges no witness was examined, but on the other hand, in support of his defence, the petitioner examined several witnesses all of whom refuted the correctness of the version of his speech published by the newspapers. The enquiry officer then made a report in which he expressed his conclusion that the charges framed against the petitioner had not been proved. He, however, appears to have added that in making the impugned speech, the petitioner was guilty of indiscretion.

On 19 April 1954, the petitioner moved the Government for permission to file a suit against the newspapers which had published an incorrect and distorted version of his speech but this permission was refused. The petitioner then explained his case to the Minister for Education on 24 June 1954, in an interview granted to him; and on 30 June 1954, he submitted a supplementary statement of his defence.The next stage in the proceedings commenced against the petitioner was reached on 2 July 1954, when he was served with a notice to show cause as to why he should not be made to retire compulsorily from service on the ground that he had been found guilty of the charges enumerated in the notice which are as follows :

"(a) That he made a public speech on controversial matters without getting its text approved by the Director of Education in advance in spite of the warning issued to him in August 1952;

(b) that he expressed his views on the language controversy; and

(c) that the intention of the Government that Hindi should be the medium of instruction at the Post S.S.C. examination stage was made clear in a press note of 28 September 1951, and that the petitioner stated that the medium of instruction in schools and colleges should be Kannada."

In reply to this notice, the petitioner submitted his reply. He pleaded that the charges were vague and indefinite and urged that the points made out against him in the notice in question were different from those set out in the charge-sheet originally supplied to him. The petitioner's main grievance was that the proceedings against him were based on an incorrect and garbled version of his speech published by the news-papers. He also placed that he had obtained general permission from the Director of Education to make speeches on educational matters and so previous approval of the Director of Education on every occasion when the petitioner made a speech was not necessary. According to the petitioner, the speech delivered by him was no more than an academic talk and that he had not expressed any views on language controversy nor had he stated that the medium of instruction at the university level should be Kannada. The petitioner's apprehension was that the proceedings instituted against him were the result of a conspiracy against him.The petitioner further contended that he had brought it to the notice of the enquiry officer that the views on academic matters of education expressed by him were in consonance with the views expressed by exalted persons like the Prime Minister of India, the Chief Minister of Bombay as well as the Minister of Education at Bombay; and he disputed the allegation that the Bombay Government had formulated or laid down in definite terms its Hindi language policy which the petitioner was alleged to have criticized.

The representation thus made by the petitioner, however, did not wholly succeed, because on 14 October 1954, though he was reinstated in service as Professor of Education in S. T. College, Belgaum, an order of punishment was passed to him. By this order it was directed :

"(i) that is increments should be with-held for a period of three years without permanent effect;

(ii) that he should not be appointed as Educational Inspector or as Principal of a Secondary Training College during that period; and

(iii) on 12 November 1954, the petitioner was further informed by Government that his full pay for the period of suspension would not be granted."

The petitioner then made several representations for the modifications of this order but they were unsuccessful. Thereupon the petitioner preferred an appeal to the Governor of Bombay under the relevant provision of Bombay Educational Service Rules but he received no reply.

It was at that stage that the petitioner moved the High Court of Bombay by a writ petition under Art. 226 of the Constitution on 28 September 1956 of the Constitution on 28 September 1956. By his petition the petitioner prayed for quashing the order of punishment ultimately passed against him. The said petition was admitted on 11 October 1956, but pending the hearing of the rule issued on this petition, the erstwhile State of Bombay was reorganised with the result that the services of the petitioner stood transferred to respondent 1. When the writ petition came up for hearing before the Bombay High Court, the High Court took the view that it would be fair that respondent 1 should be added as a party before the application was finally disposed of and so respondent 1 was ordered to be joined as a party to the proceedings. Later, when the writ petition came for final disposal, a preliminary objection was raised that since an appeal had been preferred by the petitioner to the

Governor of Bombay, the writ petition was premature. This preliminary objection was upheld and the writ petition was dismissed on that ground. Subsequently, on 21 January 1959, the petitioner was informed that his petition of appeal to the Governor of Mysore was rejected as not maintainable. It is under these circumstances that the petitioner has moved this Court by his present writ petition under Art. 32 on 28 November 1959.By his writ petition, the petitioner contends that the punishment imposed by the State of Bombay on the petitioner by the order communicated to him on 14 October 1954, is unconstitutional, unreasonable, arbitrary and mala fides and should be set aside. He also pleads that the rules permitting the imposition of such a punishment for the exercise of the petitioner's fundamental right of freedom of speech and expression constitute an unreasonable restriction on the said fundamental right and therefore are unconstitutional. On these two grounds, the petitioner prays that an appropriate writ or order by issued by this Court quashing the impugned order of punishment.

At the hearing of this petition, the learned Solicitor-General who appeared for respondent 2, the State of Bombay, stated that respondent 2 was no longer interested in the present proceedings and that the petitioner could claim no relief against it. This position is conceded by Sri B. R. L. Ayyangar for the petitioner, and indeed it is obvious that after reorganization, the State of Bombay which has now become the State of Maharashtra is not a proper or necessary party to the present proceedings. That is why we have granted the request made by the learned Solicitor- General and struck out the name of respondent 2 from the record of this case. There would be no order as to costs in respect of respondent 2.

Respondent 1, the State of Mysore, has denied the allegations made by the petitioner. It has urged that the rules under which disciplinary proceedings were taken against the petitioner are valid and constitutional, and according to it the order of punishment is also valid and constitutional. Respondent 1 contends that in the impugned speech the petitioner discussed the question of official language and language in Courts in Bombay State, and that "any expression of opinion by a Government official directly tends to embarrass the relations between the Government and the people of India or different sections of the people."

Respondent 1 pointed out that in the enquiry held against the petitioner, the authorized version of his speech submitted by the petitioner was itself treated as the basis and the version of his speech published by the news- papers which the petitioner challenged as inaccurate, was not considered. Respondent 1 conceded that the enquiry officer had found that none of the charges had been proved against the petitioner, but it has added that the Bombay Government did not accept the said report. Respondent 1, therefore, urges that the petitioner had contravened rule 26 of the Bombay Civil Services (Conduct, Discipline and Appeal) and as such the punishment imposed on him is not only valid and constitutional but also reasonable.

Rule 26 forms part of the rules which have been framed by the Government of Bombay by virtue of the powers delegated to it under Cl. (2) of rule 48 and rule 54 of the Civil Services (Classification, Control and Appeal) Rules and they apply to the members of the provincial specialist and subordinate services, and the discipline, conduct and appeals of members of subordinate services. These rules came into force on 1 September 1932, and it is common ground that they applied to the

petitioner. Rule 26 provides that a Government servant shall not publish in his own name

(a) any statement of fact or opinion which may embarrass the relations between Government and the people of India or any sections of the people; and

(b) any statement of fact or opinion concerning the policy or affairs of, or negotiations with, a foreign country which may embarrass the relations between such country and the British or Indian Government.The rule further provides that a Government servant who intends to publish a statement which may be considered to fall within this rule shall submit a proof thereof and shall obtain the permission of the Government before publication. In the present case we are concerned with rule 26(a) and for the purpose of the present petition we will assume that it applies not only to the publication of any statement of fact or opinion but also to the making of a speech in respect of such a statement of fact or opinion.

It appears that apparently on the authority of this rule instruction had been issued by which Government servants in educational department were required to obtain previous approval of the Director of Education to the text of the speech proposed to be delivered by them. For the purpose of the present petition, we ought, however, to add that neither this instruction nor the orders issued in Circular No. P. & S.D. 1581/34, dated 27 September 1950, which are alleged produced in the present proceedings.

On behalf of the petitioner, Sri Ayyangar contends that a Government servant like the petitioner is along with all the other citizens of India entitled to the fundamental rights guaranteed by Art. 19 and as such his freedom of speech and expression guaranteed by Art. 19(1)(a) can be restricted only in the manner permitted by Art. 19(2). He contends that the restriction which can be constitutionally imposed on a citizen's freedom of speech and expression must be referable to a law made by competent legislature and to the rules framed in pursuance of authority delegated in that behalf. A purely administrative or executive rule cannot, according to Sri Ayyangar, fall within the purview of Art. 19(2), and as such any restriction sought to be imposed on a citizen's freedom of speech merely by an executive or an administrative flat without legislative authority is per se unconstitutional and invalid. He suggests that the rule in question on which the disciplinary proceedings against the petitioner are ultimately based is no more than a purely administrative or executive order which cannot fall within Art. 19(2). In developing this point and while citing authorities in support of it, Sri Ayyangar stated that the point was of general importance and had not so far been expressly considered and decided by this Court. Apart from this broad and general point, Sri Ayyangar further contended that the impugned order of punishment was unconstitutional also on the narrower ground that even if rule 26 and the circular and order issued presumably under the said rule are valid and intra vires, it is not supported by the rule and is otherwise so patently unreasonable as to fall outside Art. 19(2). In urging this argument, Sri Ayyangar is prepared to assume that the first contention raised by him does not succeed.On the other hand, Sri Gopalakrishnan, for respondent 1, has seriously disputed the validity of the first point raised by Sri Ayyangar. He contends that in construing the words "law" in Art. 19(2), we must inevitably take recourse to the definition clause included in Art. 19(3), and that clearly shows that even an executive or administrative order would fall within Art. 19(2). Besides, according to him, rule 26 is a statutory rule and so are the impugned

order any circular and so they cannot be described as purely administrative and executive flat. Sri Gopalakrishnan has further contended that there is no substance even in the narrower point urged by Sri Ayyangar because, according to him, the impugned order is consistent with rule 26 and is justified by it and is neither irrational nor unreasonable. He however, did not dispute that if the impugned order was held to be either outside the purview of the rule or otherwise manifestly unreasonable and irrational and so outside Art. 19(2), then the petitioner would be entitled to the relief prayed by him even if his case on the first point not succeed.

We do not propose to consider the larger issue raised by Sri Ayyangar in the present proceedings because, in our opinion, the petitioner is entitled to succeed on his narrow ground alternatively put forward on his narrow ground alternatively put forward on his behalf.

Before dealing with this point it would be relevant to indicate briefly the nature of the speech delivered by the petitioner which has given rise to the disciplinary proceedings against him. We have already noticed that the occasion for the speech was the prize distribution function organized by the Secretary of the Wardha Hindi Prachar Sabha at Dharwar. At this function candidates who had passed the Hindi examinations were awarded prizes and certificates and the petitioner who had been requested to preside on the occasion delivered a speech as conventionally required. In his speech he said that in his opinion it would be good if different provinces arranged for the teaching of other provincial languages in the schools, and he added :

"in total whatever way we look at it the language spoken by the people should obtain the prime place and this principle is according to our new Constitution. Studies in our schools and colleges should be conducted in the language spoken by the people, accounts in shops should be kept in the regional languages. The language of the Courts (presumably lower Courts) and the offices should be the regional language. In Karnatak, including teaching, Kannada should be ahead and Hindi behind it."

In other words, the petitioner appears to have made two points in his speech; that it would be useful if the different provinces learnt different provincial languages and that for the purpose of medium of instruction, the mother-tongue should be adopted though Hindi should be learnt by everyone. The Kannada words in the last clause have also been translated before us as meaning that Kannada should precede and Hindi should follow. There can be little doubt that broadly speaking the two propositions stated by the petitioner in his speech have now been generally accepted by a majority of universities and educationists of this country. However, we are really not concerned with the merits of the speech. What we are required to do in the speech. What we are required to do in the present proceedings in to determine whether the impugned order of punishment passed against the petitioner can be said to be justified by rule 26 having regard to the general tenor of the speech delivered by the petitioner.

We have already noticed that the enquiry resulted in the finding recorded by the enquiry officer in favour of the petitioner. It is true that the Government of Bombay was entitled to take a different view but it is not wholly irrelevant to remember that the Collector of Dharwar who held the enquiry was satisfied that there was no substance in the charges framed against the petitioner.At this stage it would be material to recall the grounds on which the impugned order of punishment was passed.

The first ground is that the speech was delivered by the petitioner without obtaining the previous sanction of the Director of Education in advance in spite of the warning issued to him in August 1952. The requirement that a previous approval of the speech should be obtained by the petitioner from the Director of Education is characterized by Sri Ayyangar as a purely executive order without any legal validity, and in support of his case Sri Ayyangar has relied upon the decision of the Madras High Court, in S. Ramakrishnaiah v. The President, District Board, Nellore and others 1952 AIR(Mad) 253 ] and Krishna Chandra Chatterjee v. Chief Superintendent, Central Telegraph Office, Calcutta [58 C.W.N. 1026]. We, however, do not propose to consider has specifically averred that he had obtained general permission to make speeches on educational matters and the warning issued to him in August 1952 is not shown to have affected that general permission. Thus the first ground is entirely without substance and to describe the speech delivered by the petitioner as a speech on controversial matters does not alter the true character of the speech. It is a speech delivered on an occasion of prize distribution on a subject which is purely educational and it expressed opinion which are generally accepted; but the basis of the ground is that the previous approval should have been obtained and that has no substance because a general permission had been given to the petitioner to deliver speeches on educational matters.

The second ground is that the petitioner expressed his views on the language controversy. Now this ground must obviously be read in the light of the requirement of rule 26(a). Rule 26(a) can be invoked when the Government servant is shown to have made a statement of fact or opinion which may embarrass the relations between the Government and the people of India or any section of the people. Can it be seriously suggested that the speech in question could have had any such consequence ? In deciding this question we must remember that the speech was delivered on 5 July 1953 in Dharwar which was then a part of the erstwhile State of Bombay in which three principal languages were spoken by the citizens, Marathi, Gujarati and Kannada. The affidavit filed by respondent 1 has made no material averment or allegation which would even remotely suggest that the speech in question could possible have led to any such consequence. The said affidavit is very unsatisfactory and it gives us no assistance at all to decide the question in favour of respondent 1. Therefore, on the materials produced before us, we cannot escape the conclusion that the broad statement in the ground that the petitioner expressed his views on the language controversy cannot rationally or reasonably bring his case within rule 26(a).That takes us to the last and the third ground set out in the notice. According to this ground, the views expressed by the petitioner were inconsistent with the policy statement issued by the Government of Bombay in a press note on 20 September 1951. On this point again the material produced by respondent 1 consists merely of an affidavit filed by it. The press note itself has not been produced before us, nor has any relevant statement been made to show how, when and by whom the policy in question was determined. Prima facie the question about the medium of instruction at the Post-S.S.C. examination stage in within the jurisdiction of the different universities. The Post-S.S.C. stage is normally the stage of collegiate education and in the matter of collegiate education and in the matter of collegiate education all educational matters are as they should be, generally left to the autonomy of the respective universities. It is not even alleged in the affidavit made by respondent 1 that the universities having jurisdiction in the rein where the speech was delivered had come to any such conclusion in the matter of the medium of college education. Therefore, apart from the fact that material and satisfactory evidence about the alleged decision of the Government had not been

produced before us, it appears to us prima facie very doubtful whether the Government could have come to any such conclusion in the matter of the medium of college education. Under such circumstances, it was clearly the duty of respondent 1 to have produced before the Court more satisfactory evidence in support of its case.

Respondent 1 has no doubt made a bare statement in its affidavit that any expression of opinion by a Government official on the language controversy directly tends to embarrass the relations between the Government and the people of India or the different sections of the people. It is significant that the affidavit uses the verb "tends" and it does not even purport to say that it tended to lead to any such consequence in 1953 when the speech was delivered. Indeed the affidavit of respondent 1 does not refer to the relevant facts as they existed in 1953 in the region where the speech was delivered, and so a bare statement that rule 26(a) was satisfied can hardly be regarded as sufficient or satisfactory for the purpose of dealing with the present case. In our opinion, therefore, having regard to the time and place at which the speech was delivered and the surrounding circumstances and having regard to the material produced before us, it is impossible to escape the conclusion that the grounds set out in support of the impugned order passed against the petitioner cannot by any stretch of imagination be said to take his case with rule 26(a). It is significant that the case against the petitioner has changed from stage to stage in that disagreeing with the conclusion of the enquiry officer, the respondent was driven to set out three grounds in support of the impugned order of punishment, none of which can rationally or reasonably take his case within the mischief of rule 26(a). Besides it is obvious that even if the expression "public order" used in Art. 19(2) at the time when it was delivered. Sri Gopalakrishnan has no doubt sought to place his case under the requirement of public order provided for by Art. 19(2); but we have no hesitation in holding that the impugned order cannot be rationally justified on that ground and must be said to fall wholly outside Art. 19(2). Our conclusion, therefore, is that the impugned order of punishment passed against the impugned order of punishment passed against the petitioner is not supported or justified by rule 26(a) and is even otherwise outside Art. 19(2) and as such unconstitutional and invalid.In the result we hold that the petitioner is entitled to the relief claimed by him on this narrow ground. We would accordingly allow the writ petition and set aside the order passed by the erstwhile Government of Bombay against the petitioner on October 1954. The petitioner would be entitled to his costs from respondent 1.