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OM KUMAR & ORS V UNION OF INDIA

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This case talks discusses when the court acts as a primary reviewing authority and when as a econdary reviewing authority, and the application of ‘Wednesbury principles’ and proportionality in the case relating to Article 14 of the constitution. The court discusses the reviewing authority of the court under Article 14 of the Constitution.

FACTS OF THE CASE

Skipper construction obtained possession from Delhi Development Authority (DDA) without paying the consideration in full, advertised and collected crores of rupees from would be purchasers. In that process, it collected amounts from more persons than there were flats. It was the case of the purchasers that the company also diverted funds elsewhere. The officers of the DDA who dealt with these matters at the relevant time here weld responsible in handing over the possession of the suit land before receiving the auction amount in full and also in “conniving” at the construction thereon as well as at the advertisements given by it for bookings in the building in question.

The court requested Justice O. Chinnappa Reddy to investigate into the conduct of the officials of the DDA. Justice Reddy submitted the report on 7.7.95. The Court accepted report and passed an order directing the Department of Personnel to initiate disciplinary proceedings against five officers (i) Sri V.S. Ailwadi IAS (retired), (ii) Sri K.S. Baidwan, IAS, (iii) Sri Virendra Nath IAS, (iv) Sri R.S. Sethi

IAS and (v) Sri Om Kumar IAS. Sri P.K. Gopinath was appointed as Inquiry Officer. Report of the Inquiry officers was received and sent to the officers, to which replies of the officers were received. AS regards, Sri V.S. Aliwadi, in view of expiry of four years as prescribed in All India Service rules the department did not take any action.

The cases of the four officers were referred to the U.P.S.C. The advice of the U.P.S.C was received by the department and was found to be favourable to the officers. Since there was difference in the tentative decisions of the competent authority and the advice of the UPSC, the matter was reconsidered by the Department of Personnel so far as Sri Virendra Nath and Sri Om Kumar. Similarly, the Ministry Of Home Affairs in the Cases of Sri K.S. Baidwan and Sri R.S. Sethi differed from a similar view of the U.P.S.C. Committee of Secretaries asked the UPSC to reconsider its advice. The reconsidered advice of the UPSC was duly received. The reconsidered advice of the UPSC was again in favour of the officers. The matter concerning the officers was placed again before the Committee of Secretaries and then before the respective competent authorities.

The Department of Personnel in its final order imposed a 'major' penalty on Sri Virendra Nath and 'minor' penalty of 'censure' on Sri Om Kumar. The ministry of Home Affairs imposed 'major' penalties on Sri K.S. Baidwan and Sri R.S. Sethi. The question raised by the counsel for Shri Om Kumar and Shri Virendera Nath are relevant to the principles enunciated by the Court.

ISSUES RAISED IN THE CASE

The issue of applicability of basic principles under administrative law, the doctrine of proportionality and Wednesbury principle was raised. When the court is to act as primary reviewing authority and when as a secondary reviewing authority.

ARGUMENTS BY APPELLANTS

Sri K. Parasaran, counsel for Sri Om Kumar and Sri Rajeev Dhawan for Sri Virendera Nath contended that the respective punishments awarded o their clients namely censure, reduction in pay and increments did not need any enhancement. They argued that the question as to the quantum of punishment to be imposed was for the competent authority and that the Courts would not normally interfere with the same unless the punishment was grossly disproportionate. The punishments awarded satisfied the Wednesbury rules.

ARGUMENTS BY RESPONDENTS

Government as respondents argued that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles.

DECISION OF THE COURT

The Court after considering the facts and the legal principles that are discussed below, concluded that in Case of Sri Om Kumar, the choice of awarding 'censure' as punishment was not violative of the Wednesbury rules. There was no omission of relevant facts nor were irrelevant facts taken into account. The Court found no illegality committed by the administrative authorities.

In Case of Sri Virendara Nath court after considering the report of Justice Chinnappa Reddy, the report of Inquiry officer and the recommendation of UPSC the court concluded that the disciplinary authority did not violate Wenesbury principle

REASONS FOR THE DECISIONS

The Court discussed the 'primary' review by the Courts of validity of legislation which offended fundamental freedom. Then the court decided the issue contended in the present case based on the basic principles of applicable under administrative law, namely, Wednesbury principles and the doctrine of proportionality.

Lord Greene in Associated Provincial Picture Houses Ltd. v Wednesbury Corporation case in 1948 said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or other of the following conditions were satisfied, - namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken.¹

In 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service summarised the principles of judicial review of administrative action as based upon one or other of the following – viz. illegality, procedural irregularity and irrationality.² Court Defined 'Proportionality' as the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are however given at area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

¹ [1948] 1 KB 223

² 1983 (1) AC 768

PROPORTIONALITY AND LEGISLATIVE ACTION

The Court observed that in India the principle of ‘proportionality’ was vigorously applied in India to the legislative action. While deciding the validity of legislations infringing Article 19(1) of the Constitution, Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were the least restrictive of choices. The burden of proof to show that the restriction was reasonable lay on the State. ‘Reasonable restrictions’ under Article 19(2) to (6) could be imposed on these freedoms only legislations. The Court relied on *Chintaman Rao v. State of UP*³, *Madras v. Row*⁴, *A.P. v. Mc Dowell & Co.* So far as Article 14 is considered, the Court observed that the validity of legislation action was examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. The courts were examining the validity of the differences and the adequacy of the differences. The same is done under the principles of proportionality.

The court concluded that in India the principle that legislation relating to restrictions on fundamental freedoms could be tested on the anvil of ‘proportionality’ has never been doubted in India. This is called ‘primary’ review by the Courts of the validity of legislation which offended fundamental freedoms.

PROPORTIONALITY AND ADMINISTRATIVE ACTION IN INDIA

The Court observed that in cases where legislation gives the administrative authorities power or discretion while imposing restrictions in individual situations, the court has tested those actions on the principle of ‘proportionality’. The court relied on *R.M. Seshadri v. Dist. Magistrate Tanjore and Anr*⁵, *Union of India v. Motion Picture Association*⁶.

In *S. Rangarajan v. Jagjivan Ram and ors.* an order refusing permission to exhibit a film in relation the alleged obnoxious or unjust aspects of reservation policy was held violative of freedom of expression under Article 19(1)(a). The court cited a no cases such as *Malak Singh and Ors. V. State of P & H and Ors.*⁷

The Court relied on the law laid down by the Supreme Court of Israel were ‘proportionality’ is recognized as a separate ground in administrative law, different from unreasonableness. It consists of three elements. First, the means adopted by the authority in exercising its power should rationally fit the legislative purpose. Secondly, the authority should adopt such mans that do not injure the ndividual more than necessary. And third, the injury caused to the individual by the exercise of the power shouldnot be disproportionately to the benefit which accrues to the general public.

³ [1950] 1 SCR 759.

⁴ 1952 CriLJ 966.

⁵ [1955] 1 SCR 60.

⁶ [1999] 3 SCR 875.

⁷ 1981 CriLJ 320.

In *E.P. Royappa v State of Tamil Nadu*, another test for the purposes of Article 14 was laid down. It is stated that if the administrative action was 'arbitrary', it could be struck down under Article 14. This principle was then uniformly followed in all courts. Arbitrary action by the administrator is described as one that is irrational and not based on sound reason. It is also described as one that is unreasonable. If, under Article 14, administrative action is to be struck down as discriminatory, proportionality applies and it is primary review. If it is held arbitrary, *Wednesbury* principle applies and it is secondary review by the Court.

The court in *G.B. Mahajan vs. Jalgaon Municipal Council* opined that, when an administrative action is challenged as 'arbitrary' under Article 14, the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the *Wenesbury* test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary.⁸

PROPORTIONALITY AND PUNISHMENTS IN SERVICE LAW

The court decided the present case by applying the principles of proportionality to determine question of 'arbitrariness' of the order of punishment is questioned under Article 14. In *Ranjit Thakur vs. Union of India*, the court referred to 'proportionality' in the quantum of punishment but the court observed that the punishment was 'shockingly' disproportionate to the misconduct proved.⁹

In *B.C. Chaturvedi v. Union of India* the court said that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty.¹⁰ It was also stated in *Ganayutham*.

The court concluded that the punishment of 'censure' was not violative of the *Wenesbury* rules. No relevant fact was omitted nor was irrelevant fact taken into account. There is no illegality. Nor the punishment was shockingly disproportionate. The administrator had considered the report of Justice Chinnappa Reddy Commission, the finding of the Inquiry officer, the opinion of the UPSC which was given twice and views of the Committee of Secretaries. The court did not deem it necessary to refer the matter to the Vigilance Commissioner for upward revision of punishment.

⁸ AIR 1991 SC 1153.

⁹ 1988 CriLJ 158.

¹⁰ (1996) 111 J 1231 SC.

In the matter of Sri Virendra Nath, on a Consideration of the report of Justice Chinnappa Reddy, the report of the Inquiry Officer, and the recommendations of the UPSC which were favourable to the officer on both occasions and the order of the disciplinary authority which accepted the finding as to misconduct, the court concluded that the administrator's decision in the primary role was not violative of Wednesbury Rules.

COMMENTS

In the present case, the court rightly decided the matter. Also, the court successfully explained the position of Wednesbury's principles and the principle of 'Proportionality'. This case explains the role of the Court as primary reviewing authority and as secondary reviewing authority.

The Court by following the principles given in the Past Cases came to the right conclusion. When legislative action imposing restrictions on freedom enumerated in Article 19(1), the validity of such legislation was tested on the principle of 'reasonableness'. 'Reasonable' implied intelligent care and deliberations, Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Article 19(2) to (6). This was nothing but the Principle of

'proportionality'. In the cases relation to Article 14, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. The examined the validity of the difference and the adequacy of the differences. This is again nothing but the principle of proportionality.

Then regarding Administrative Action and principle of proportionality, the court said that when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative actions is questioned as 'arbitrary' under Article 14, the principle of secondary review based on Wenesbury principles applies. Some of the important Judgements in this regard, as discusses in the case also, have followed the same principle. In Union of India v G. Ganayutham, The respondent who was working as the Superintendent of Central Excise was subjected to the punishment of withholding 50% of the pension and 50% of the gratuity. A writ petition was filed in the High Court which was later moved to the Administrative Tribunal. The tribunal holding the punishment too severe reduced the same. The matter then came before the Supreme Court by the way of appeal. The Court set aside the order of the Tribunal and restored the original punishment saying that the punishment was 'not' irrational according to the Wednesbury test. The Court observed:

"In Such a situation, unless the Court/Tribunal opines n its secondary role that the administrator was, on the material before him, irrational according to Wednesbury the punishment cannot be quashed."¹¹

¹¹ Union of India v. G.Ganayutham, AIR 1997 SC 3387 : 1997 SCC (L&S) 1806.

In *C.M.D United Commercial Bank v P.C. Kakkar*, a Writ Petition was filed in the High Court by an employee of Bank who was alleged to have committed several acts of misconduct while he was the Assistant Manager in the Bank. Inquiry proceedings were initiated and several charges were found to be established against him. A punishment of dismissal was imposed on him. The High court held the punishment to be excessive. The matter then came in appeal before the Supreme Court. The Court considered at question of scope of judicial review of disciplinary punishments. The Court referred to the principles enunciated in *Om Kumar & Ors v Union of India* and held that where punishments in disciplinary cases are challenged as arbitrary under Article 14 of the Constitution the court would act as a secondary reviewer. The question before the court would be whether the administrative order is “rational” or “reasonable” according to the *Wednesbury* test.¹²

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¹² *Om Kumar & Ors v Union of India*, AIR 2000 SC 3689