(1955) 07 CAL CK 0025

Calcutta High Court

Case No: Appeal from Original Order No. 149 of 1954

Chief Superintendent, Central Telegraph Office, Cal.		APPELLANT
	Vs	
Krishna Chandra Chatterjee		RESPONDENT

Date of Decision: July 20, 1955

Acts Referred:

- Constitution of India, 1950 - Article 13, 13(1), 19(1)(a), 226

Citation: 60 CWN 24

Hon'ble Judges: Chakravartti, C.J; Lahiri, J

Bench: Division Bench

Advocate: G.P. Kar and S. Roy, for the Appellant;Arun Prakash Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Chakravartti, C.J.

At the time this appeal was argued before us, it appeared as if it involved a fundamental question concerning the fundamental rights. Since judgment was reserved, it has transpired that that question does not really arise. The respondent Krishna Chandra Chatterjee, who was a permanent clerk at the Central Telegraph Office, Calcutta, was dismissed on the ground that by publishing an objectionable leaflet of which he was also a co-author, he had violated Rule 20(1) of the Government Servants'' Conduct Rules. That dismissal has been set aside by Sinha, J., on an application made by Sri Chatterjee under Article 226 of the Constitution of India. The learned Judge has held that Rule 20(1) is too vague to admit of any determinable meaning and accordingly it constitutes not a reasonable but an unreasonable restriction on the fundamental right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. The present appeal is by the Chief Superintendent, Central Telegraph Office, Calcutta, against that) decision of the learned Judge. On his behalf, the construction put by Sinha, J., on

Rule 20(1) of the Government Servants'' Conduct Rules was challenged. But it was also contended that all questions of fundamental rights were irrelevant, inasmuch as Government servants, qua Government servants, had no fundamental rights. The last argument was put on two grounds: it was said that the Constitution itself had committed the service of Government servants to the pleasure of the President, restricted only as to the manner in which disciplinary action in respect of some of the graver penalties was to be taken; and it was said, in the second place, that, in any event, when a citizen of India accepted some service under Government, carrying certain conditions with it, he must be deemed to have elected to have foregone such of his fundamental rights as might be inconsistent with such conditions.

2. It can hardly be gainsaid that the last contention, which apparently was not urged before the learned trial Judge is one of the utmost importance, affecting, as it does, hundreds and thousands of citizens of India employed in Government service-. Some day the question will undoubtedly have to be decided. It however appears to us that we are not called upon to decide it on the present occasion.

3. At the time the appeal was argued all parties proceeded on the footing that the Constitution had to be reckoned with and that there was nothing in the facts of the case which excluded the operation of its provisions. The date given to us began with the date upon which a notice was issued to the respondent. That date was a date after the commencement of the Constitution. We heard the parties at considerable length on the two questions involved in the appeal, particularly the second of them, and took time for the consideration of our judgment and for further studies which we felt were required.

4. After judgment had been thus reserved and after we had completed our further studies, we proceeded to consider what our judgment would be and in that connection made a closer study of the paper book. It was then that we came to discover for the first time that the transgression of Rule 20(1) with which the respondent was being-charged, was alleged to have taken place on the 1st of August, 1949, which was considerably before the Constitution had come into force. In view of the fact that the date on which the violation of Rule 20(1) had taken place seemed to us to exclude all questions of repugnancy to fundamental rights, we set down the appeal for further hearing, since we had not had the advantage of hearing the parties on this point.

5. We have heard both the parties this morning and having heard them we have come to be of the opinion that our first impression was correct and that no question of any violation of any fundamental right really arises out of the facts of the present case. It has now been firmly laid down by the Supreme Court in a series of decisions that if some violation of some law, which would not be a valid law after the commencement of the Constitution, had taken place before the Constitution came into force, the person guilty of such violation can be proceeded against for it even

after the Constitution. The only qualification of that principle to which regard must be paid is that in proceeding against a person for the violation of some law, which is no longer a valid law under the Constitution, in cases where such violation took place before the Constitution had come into force, the procedure employed must not itself be repugnant to the Constitution. Although a liability accrued under a pre-Constitution law may remain a good liability even after the Constitution, in spite of the law ceasing to be valid, such liability, if it is to be enforced after the Constitution, can only be enforced by some procedure which does not itself involve any repugnancy to the Constitution. The reason why a liability, accrued before the Constitution under some pre-Constitution law which has since ceased to be valid, subsists even after the Constitution, is that the rights created by the Constitution are prospective and not retrospective. These principles were first laid down by the Supreme Court in the case of Keshavan Madhava Menon Vs. The State of Bombay, , and have since been developed and reaffirmed in the subsequent cases of Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, ; Syed Quasim Razvi v. The State of Hyderabad and others, (3) [(1953) S.C.R. 589]; and Habeeb Mohamed Vs. The State of Hyderabad, .

6. To return to the facts of the present case, the violation of Rule 20(1) with which the respondent was charged is said to have taken place on the 1st of August, 1949. The respondent''s answer is that he cannot legally be charged with any violation of Rule 20 (1), because that Rule, being repugnant to Article 19(1) (a) of the Constitution by reason of its indefiniteness or ambiguity, is utterly void. This defence therefore rests upon Article 13 of the Constitution and pre-supposes that the fundamental rights guaranteed by the Constitution apply to the facts of the case.

7. On the principle laid down by the Supreme Court those rights have clearly no application and do not fall to be taken into account. Assuming that Rule 20(1) must now be held to be violative of Article 19(1) (a) of the Constitution, as held by Sinha, J., and for the reasons given by him-a matter which we do not decide-still before Article 19(1) (a) came into force and with it the fundamental right of freedom of speech and expression came in to existence, there was no fundamental right to which Rule 20(1), or, for the matter of that, any other law was required to conform. The operation of Rule 20(1) on the 1st of August, 1949, was therefore in no way restricted by any of the provisions of the Constitution, nor could it be affected or circumscribed by any right, in conflict with it, but prevailing over it, which the Constitution has brought into force. With respect to any act done on the 1st of August, 1949, therefore, there could be no question of holding the application of Rule 20(1) to be invalid on the ground that the Rule constituted an invasion of some fundamental right or placed an unreasonable restriction thereon.

8. It would follow that if a violation of Rule 20(1) did take place on some pre-Constitution date, a liability for the consequence of such violation, whatever such consequences might be, did arise at that time and such liability has not in any

way been affected by reason of the Constitution having been framed and adopted on a subsequent date and by reason of the Constitution bringing into existence certain fundamental rights with which the provisions of Rule 20(1) are inconsistent. The liability being thus established and the survival of such liability being also established for the reasons I have already given, the next question is whether the liability is being sought to be enforced by means of any procedural law which itself constitutes some infringement of the Constitution. The answer in my view must be in the negative. The respondent is being proceeded against under the Civil Services (Classification, Control and Appeal) Rules, and it has not been contended before us that those Rules contain anything which is in any way repugnant to any provision of the Constitution. In my view, the present case is one where a liability did arise before the Constitution came into force, if the charge against the respondent be true. Such accrued liability survives and the procedural law according to which the respondent is being proceeded against is not one which offends against the Constitution. No question of any violation of any fundamental right, therefore, arises and whether or not Rule 20(1) does infringe Article 19(1) (a) of the Constitution does net call for decision.

9. It was, however, contended by Mr. Arun Prakash Chatterjee that the present case was distinguishable from the line of cases to which I referred a moment ago and he selected for his argument the first of those decisions which contains indeed the basic pronouncement on the subject. Mr. Chatterjee''s argument was as follows: He said that Rule 20(1) merely contained an injunction, restraining Government servants from conducting themselves in a certain manner or, to put it in another way, it contained only a command, negatively expressed. By itself it did not create any liability for its transgression, nor did it say what the consequence of any transgression would be. For the consequence of any transgression of Rule 20(1), one would have to go to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, but when one referred to that Rule, one only found that it said nothing more than that certain penalties, including among them the penalty of dismissal, might be imposed upon members of the services "for good and sufficient reason." Mr. Chatterjee pointed out that even Rule 49 did not say that the penalties enumerated therein or any one of them could be imposed for a violation of Rule 20(1) of the Government Servants'' Conduct Rules. The only way in which a violation of Rule 20(1) could be brought within the purview of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules would be by finding that such violation was a good and sufficient reason within the meaning of the latter Rule. The next step in Mr. Chatterjee''s argument was that Since Rule 20(1) of the Government Servants'' Rules did not itself create any liability of any kind for its violation, nor did Rule 49 of the Civil Services (Classification, Control and Appeal) Rules say expressly or directly that a violation of Rule 20(1) would attract one or other of the penalites mentioned therein, no liability for a violation of Rule 20(1) could at all accrue before the authorities had found in a particular case that such violation by the Government

servant concerned did constitute good and sufficient reason within the meaning of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules and called for the imposition of one or another of the penalties mentioned therein. The point in Mr. Chatterjee''s argument was that no liability for a violation of Rule 20(1) of the Government Servants'' Conduct Rules could arise at any earlier point of time other than the moment when a finding was arrived at under Rule 49, that such violation constituted a good and sufficient reason for imposing one or other of the penalties and since that stage had not yet been reached and the Constitution had in the meantime come into force, there could be no question of the fundamental rights being excluded. To explain the last step of Mr. Chatterjee''s reasoning a little more clearly, what he meant was that the liability would arise only at the time of the finding and, therefore, the question whether or not the law under which such liability was said to arise offended against the Constitution would become a relevant point to be decided at that time and such time would be a date after the Constitution. That being so, the question whether Rule 20(1) did or did not constitute an invasion of the fundamental right guaranteed by Article 19(1) (a) of the Constitution was, according to Mr. Chatterjee, a question which did arise out of the facts of the case and would call for decision. It would call for decision, because Rule 20(1) and Article 19(1) (a) would come face to face at the date of the finding under Rule 49 and such date being a date after the commencement of the Constitution, the result of the impact or the conflict would have to be adjudged.

10. I am unable to accept this contention of Mr. Chatterjee, however plausible or ingenious it may be. Whether or not Rule 20(1) itself contains any provision for penalties to be imposed on account of its violation seems to me to be immaterial. The Acts of our Legislature are full of provisions where the transgression is defined in one section or in one law and the penalty is defined or provided for in another. It does not, therefore, seem to me to be of any consequence that the punishment for a violation of Rule 20(1) is provided for in Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. Again, it seems to me that if a violation of Rule 20(1) ''does create a liability which may be punished under Rule 49 of the disciplinary rules, such liability arises when the violation takes place and not when the violation is adjudged to have taken place. When some provision of law is infringed, the penal consequence of such infringement accrues at once, although a declaration of the consequence may come at a later date and the consequence itself may be inflicted when the declaration is made. A finding that a particular offence has been committed or a liability has been incurred or a transgression made, is always made after the liability or the offence or the transgression has taken place. The finding incorporates, as it were, a discovery of the liability, but the accrual of the liability is not contemporaneous with the discovery. It has already accrued and accrued earlier. The actual punishment is even further removed from the accrual of the liability. I cannot find anything either in principle or reason to hold that when a particular law, involving penal consequence for its breach has been violated, the

accrual of the liability for such violation is postponed till the authority concerned finds and declares that such a violation has taken place and he inflicts a proper punishment. As far as I can see, it cannot be right to say on the facts of the present case that no liability for a violation of Rule 20(1) would accrue till the authorities found that such violation had taken place and that it constituted good and sufficient reason within the meaning of Rule 49.

11. The facts in this case appear to me to be plain The alleged transgresssion took place on the 1st of August, 1949. It is sought to be punished by Rule 20(1) of the Government Servants'' Conduct Rules, read with Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. The punishment and indeed the whole proceedings are sought to be averted on the ground that the respondent could not be proceeded against under Rule 20(1) at all, inasmuch as that Rule offended against Article 19(1) (a) of the Constitution. In order that Rule; 20(1) might offend against Article 19 (1) (a) in respect of an act done on the 1st of August, 1949, it is, to my mind, essential that Article 19(1) (a) should have been in force on that date. It was certainly not in force on that date and Rule 20(1) as applied to the facts of this case, is thus not required to conform to Article 19(1) (a) or to satisfy its requirements.

12. For the reasons given above, it must, in my opinion, be held that no attack on the validity of Rule 20(1) on the basis of its invasion of the fundamental rights guaranteed by Article 19(1) (a) of the Constitution is tenable on the facts of the present case. While we say nothing as to the correctness or otherwise of the construction put by Sinha, J., on Rule 20(1), we must hold that the question of Rule 20(1) transgressing any fundamental right was not relevant and the petitioner was not entitled to say that even in its application to an act done by him on the 1st of August, 1949, the rule, being repugnant to the Constitution was void. In fairness to the learned Judge, we must add that this point was never taken before him and, as I have already stated, not even taken before us.

13. The main point decided by Sinha, J., is the constructional point and he has definitely said that it was not necessary for him to go into "the merits of the matter". In fact, he has decided one or two other points, but his judgment seems to indicate that in his view, there were still other questions remaining to be decided. On an enquiry from us Mr. Chatterjee indicated some of those points which his client took in his application for a writ and informed us that he was still willing to canvass those matters before the learned trial Judge. Mr. Kar, at one stage of his argument, stated that the Rule issued by this Court was limited to the constitutional point alone, but on a reference to the terms of the Rule, we find that this is not so.

14. We do not consider it proper to say what other questions remained to be decided in the case. The learned trial Judge apparently was aware of them. In any event, if there be any such points open to the respondent, they will have to be culled from his petition and it may be from the subsequent affidavits by which the case in

the petition was developed. Personally I do not think that an applicant for a writ can add to his case as made in the petition by means of subsequent affidavits; but beyond expressing that opinion, I do not desire to say anything further on the matter.

15. For the reasons given above, this appeal is allowed. The judgment of the learned Judge, in so far as it held that Rule 20(1) of the Government Servants'' Conduct Rules constituted an unreasonable restriction on the fundamental rights guaranteed to the respondent under Article 19(1) (a) of the Constitution and was as such ultra vires and void under Article 13(1) of the Constitution, is set aside on the ground that the question does not arise in the case.

16. The case is remanded to the learned trial Judge for a decision of such remaining points as it may involve.

17. On behalf of the appellant Mr. Kar agrees that the order made by the learned Judge for the reinstatement of the respondent should not be disturbed, pending the final decision of the case by the learned trial Judge and he also agrees that the arrears of salary deposited by his client with the Registrar, Original Side, may continue to remain in deposit, pending further orders of the trial Court. There will be no order for costs, so far as this appeal is concerned.

Lahiri, J.

I agree.