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to stand as a candidate for election he shall not either be employed as a paid legal practitioner on behalf of the municipality or act as a legal practitioner against the Municipality. There is no fundamental right in any person to stand as a candidate for election to the Municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. There is no violation of the latter right in prescribing the disqualification of the type enacted in section 16(1) (ix) of the Act. If he wants to stand as a candidate for election it is but proper that he should divest himself of his paid brief on behalf of the Municipality or the brief against the Municipality in which event there will be certainly no bar to his candidature. Even if it be taken as a restriction on his right to practice his profession of law, such restriction would be a reasonable one and well within the ambit of article 19 clause 5. Such restriction would be a reasonable one to impose in the interests of the general public for the preservation of purity in public life. We therefore see no substance in this contention of the appellant also.

The appeal accordingly fails and stands dismissed with costs.

Appeal dismissed.

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P. JOSEPH JOHN

v.

THE STATE OF TRAVANCORE-COCHIN.

[MEHAR CHAND MAHAJAN C.J., MUKHERJEA, S. R. DAS, VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and VENKATARAMA AYYAR JJ.]

Constitution of India, Arts. 166, 311, 320—Opportunity to show cause—Consultation with Public Services Commission—Extent of—Travancore Public Servants (Inquiries) Act, (Act XI of 1132)—"Our Government"—Meaning of—Covenant of United State of Travancore-Cochin—Article 20—Application of.

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An enquiry under the provisions of the Travancore Public Servants (Inquiries) Act, (Act XI of 1132) was held against the petitioner in pursuance of a resolution passed by the Council of Ministers. The petitioner took part in the proceedings, denied the charges and raised legal objection to the competence of the Enquiry Commission to hold the enquiry. Some of the charges were held proved. The petitioner was asked by the Chief Secretary to show cause why he should not be removed from service. The petitioner's request for extension of time to show cause was granted twice but refused a third time. On his failure to avail himself of the opportunity to show cause against the action proposed to be taken against him, the report of the Enquiry Commissioner was submitted to the Public Services Commission and the latter approved of the action proposed to be taken against the petitioner. The proceedings relating to the enquiry were submitted to the Rajpramukh and thereupon an order in proper form for the removal of the petitioner from service was made by the Rajpramukh and authenticated by the Chief Secretary to Government.

Held, (i) that under the provisions of Art. 311 of the Constitution a civil servant is entitled to have a reasonable opportunity to defend himself and show cause, both at the time of enquiry into the charges brought against him and at the stage when definite conclusions have been come to on the charges and the actual punishment to follow is provisionally determined upon. The position cannot be characterised as anomalous if the statute contemplates a reasonable opportunity at more than one stage.

In the present case the petitioner had reasonable opportunity to enter upon his defence at both the stages. He fully availed himself of the first opportunity, but refused to avail himself of the second opportunity which was offered to him. All the rules of natural justice were observed in the case.

(ii) The provisions of Art. 166(1) and (2) are directory, not mandatory; and, in order to determine whether there has been compliance with the said provisions, all that is necessary to see is that the requirements of the sub-sections are met in substance.

(iii) After the integration of the two States of Travancore and Cochin, the expression "Our Government" means "The Council of Ministers" under the new set up of democratic Government in the United State. The Rajpramukh as the head of the State is merely a constitutional head and is bound to accept the advice of his Ministers.

(iv) The consultation envisaged by Art. 320(3) does not extend to review petitions which the petitioner may choose to file as many times as he likes.

(v) The sanction of the Rajpramukh under Art. 20 of the Covenant of the United State of Tranvancore-Cochin is necessary only before the institution of civil or criminal proceedings. Departmental proceedings do not fall within the ambit of the said Article.

Dattatreya Moreshwar Pangarkar v. *The State of Bombay* ([1952] S.C.R. 612), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 90 of 1953.

Appeal under Article 132(1) of the Constitution of India from the Judgment and Order dated the 29th August, 1952, of the High Court of Travancore-Cochin at Ernakulam in Original Petition No. 51 of 1952.

K. Thomas and *M. R. Krishna Pillai,* for the appellant.

Mathew P. Muricken, Advocate-General for the State of Travancore-Cochin (*T. R. Balakrishna Ayyar* and *Sardar Bahadur,* with him), for the respondent.

1954. November 25. The Judgment of the Court was delivered by

MEHR CHAND MAHAJAN C. J.—This appeal by leave of the High Court of Judicature of Travancore-Cochin at Ernakulam is directed against an order of a Full Bench of that court dismissing an application for the issue of a writ of *certiorari* quashing the order of the Government of the united State of Travancore-Cochin removing the appellent from service of the State and permanently debarring him from reappointment in service.

The facts giving rise to the petition and the appeal are these: The petitioner entered the service of the erstwhile Travancore State in the year 1928. By promotion he became the Executive Engineer, Electricity Department in August 1937 and subsequently Electrical Engineer to Government in October 1944. He was the Electrical Engineer to Government on the 1st July 1949 when the States of Travancore and Cochin were integrated by a Covenant entered into between the rulers of the two States. By an order of the Government of the united State of Travancore-Cochin dated the 11th August 1949, he was appointed as the officiating Chief Engineer (Electricity) in the State. In or about September 1949 the Government of the

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united State received serious complaints about the conduct and dealings of some of their senior officers and allegations of corruption, communalism, etc. were made against them. In December 1949 the Council of Ministers decided to take action against the appellant on a number of charges indicated in the resolution. On the 22nd December 1949, immediately after this resolution was passed, the petitioner was informed that he was suspended from service pending enquiry and he was requested to hand over charge to Sri K. P. Sridharan Nair forthwith. The petitioner complied with this order and handed over charge as directed. On the 21st March 1950 the following notification was issued :—

"Whereas Government are of opinion that there are sufficient grounds for making a formal and public inquiry into the truth of the imputation of misconduct of the officers mentioned below :

Government, under section 3 of the Travancore Public Servants (Inquiries) Act, XI of 1122, hereby commit the said inquiry to Sri K. Sankaran, Judge, High Court, appointed Commissioner for the purpose.

Government are further pleased under section 4 of the said Act to nominate Sri T. R. Balakrishna Ayyar, Government Pleader, High Court, to prosecute the inquiries on their behalf.

The inquiries shall be conducted as early as possible.

The officers referred to in para. 1 supra are :

1.....

2. Sri P. Joseph John".

The petitioner was informed by notice of the 24th April 1950 about this inquiry. The notification was signed by Shri K. G. Menon, Chief Secretary to Government.

Mr. Justice Sankaran took charge as Enquiry Commissioner and on the 11th May 1950 forwarded the articles of charges against the petitioner, the list of witnesses and the list of documents placed before him together with the notice regarding the commencement of the enquiry to Shri K. S. Raghavan, Secre-

tary to Government, for service on the petitioner. A few days before the date fixed for the commencement of the enquiry the petitioner made an application to the Enquiry Commissioner for a direction to the Prosecutor to produce the files and papers relating to the various charges in the office of the Commissioner and for permission to him and his counsel to inspect the same. This application was allowed and he and his advocate were allowed to inspect the relevant files in the presence of the prosecutor or his deputy. On the 20th May 1950 when the enquiry commenced, the petitioner pleaded not guilty to the charges by a written statement. He was defended during the enquiry by Shri K. P. Abraham, a leading member of the Bar. A preliminary objection was taken to the Tribunal's jurisdiction on the basis of Article 20 of the Covenant entered into between the rulers of Travancore and Cochin and it was contended that the proceedings before the Commissioner were criminal in nature and could not be commenced without the sanction of the Rajpramukh and that its absence was fatal to the enquiry. This objection was not immediately decided by the Commissioner but was ultimately overruled. On the 22nd November 1950 the petitioner submitted detailed answers in writing to the various charges. The enquiry concluded on the 27th December 1950 and the Commissioner submitted his report to Government on the 17th February 1951. Some of the charges were held proved, while others were held not established. On the 5th July 1951 the following communication was sent to the petitioner by the Chief Secretary to Government :—

> "I am to enclose herewith a copy of the above report and to point out that the Government agree with the findings of the Inquiring Commissioner on the several charges against you. Government also agree with the Commissioner that the objections raised by you challenging the validity of the enquiry itself are not tenable.
>
> 2. As against the 26 charges framed

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against you, the nine charges* noted in the margin have not been established and they are accordingly dropped. As regards Charge No. IX in view of the extenuating circumstances, the irregularity is condoned.

*Charges Nos. XIII to XVIII & XXIII to XXV.

3. It is evident from the remaining charges, which have been established, that you have misused your official position as Electrical Engineer to Government and shown undue favouritism at the expense of State revenues, to private firms and issued materials from Government stores to private companies and individuals in violation of all rules (vide List A). It is also evident that departmental stores and departmental lorries have been diverted for your personal use in a number of cases. (Vide List B). You are also found guilty of having shown defiance and insubordination towards the authority of the Government by your refusal, in connection with the supply of power to the Nagercoil Electric Supply Corporation, to supply certain particulars which were called for and which it was your duty to furnish and by your refusal to withdraw the objectionable statement in your reply to the Government in spite of the Government order directing you to withdraw the same.

4. The Government therefore propose to remove you from service from the date on which you were placed under suspension with permanent bar against future reappointment in service.

5. You are requested to show cause within 15 days of the date of receipt of this notice with enclosures why action should not be taken against you as proposed in paragraph 4 above".

The petitioner on receipt of this notice applied for time till the 10th September 1951 for showing cause. Time as prayed for was allowed. On the 10th September 1951 when the time granted at his own request

was due to expire, he again applied for further time till the 10th November 1951. He was allowed further time till the 24th September 1951. On that date he again asked for further time till the 31st October 1951 but this request was not granted. In spite of the fact that the petitioner was granted the time which he originally asked for and this was further extended by a fortnight, he furnished no explanation and did not show any cause against the notice issued to him. The petitioner having failed to avail himself of the opportunity to show cause against the action proposed against him, a draft of the proceedings relating to the enquiry was submitted to H. H. the Rajpramukh on the 30th September 1951 and thereupon an order was issued for his removal from service from the date of suspension and debarring him from reappointment to service. The order was in proper form as having been made by H. H. the Rajpramukh and was authenticated by the Chief Secretary to Government. This order is dated the 1st October 1951. It may be mentioned that before the papers were submitted to H. H. the Rajpramukh, the report of the Commissioner was submitted to the Public Services Commission for their consideration. The Public Services Commission supported the action which the Government proposed to take against the petitioner. On the 9th October 1951 the petitioner was removed from service with effect from the 26th December 1949. Two months after the order of his removal, the petitioner submitted an application for a reconsideration of the order removing him from service. This was rejected by an order dated the 25th January 1952.

On these facts and in these circumstances an application was made before the High Court of Travancore-Cochin at Ernakulam on the 2nd June 1952 praying that the court may be pleased to issue a writ in the nature of *certiorari* or any other writ, directions or orders calling for the records relating to the orders dated the 9th October 1951 and the 25th January 1952 and to quash the same and direct the respondent to restore the petitioner to the office which he was lawfully to hold. It was contended in the application

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that the applicant had no reasonable opportunity of showing cause against his removal and that he was entitled to show cause twice, once after he was found guilty and next after the punishment had been decided and that the denial of this right rendered the order of dismissal illegal and void and that it offended against the principles of natural justice. It was further contended that the consultation with the Public Services Commission was not held in terms of the provisions of procedure for disciplinary action against Government servants and prescribed in Article 320, sub-section 3(c) of the Constitution of India. A number of other grounds were also taken against the order of dismissal. The High Court negatived all the contentions of the petitioner and dismissed the petition. It however certified that the case involved substantial questions of law as to the interpretation of the Constitution and was a fit one for appeal to this Court.

Mr. Thomas who argued the appeal on behalf of the appellant raised a number of points against the validity of the order removing the appellant from service and contended that the enquiry conducted into the charges made against him was wholly illegal and void. In our judgment, none of the points urged by the learned counsel was of a substantial character and all of them concerned matters of mere form and no valid reasons have been shown for disturbing the decision of the High Court.

The question of the validity of an order of removal of a person employed in a civil capacity under the Union or a State falls to be determined on the provisions of Article 311 of the Constitution of India. This Article is in these terms :

"(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause

against the action proposed to be taken in regard to him....."

It is not said that the petitioner was removed by an authority subordinate to that by which he was appointed. There was no occasion to raise this issue because the order of removal had been made by the Rajpramukh and was expressed according to the provisions of Article 166 of the Constitution. The requirement therefore of sub-clause (1) of Article 311 was fully satisfied.

As regards the question whether the petitioner was given reasonable opportunity of showing cause against the action proposed to be taken in regard to him, the legal position in that respect and the nature of opportunity to be granted was stated by the Privy Council in the case of *High Commissioner for India* v. *I. M. Lall*(1) and it was held that when a stage is reached when definite conclusions have been come to as to the charges, and the actual punishment to follow is provisionally determined on, that the statute gives the civil servant an opportunity for which subsection (3) of section 240 of the Government of India Act, 1935 (which corresponds to Article 311) makes provision, and that at that stage a reasonable opportunity has to be afforded to the civil servant concerned. It was also held that there was no anomaly in the view that the statute contemplates a reasonable opportunity at more than one stage. In our opinion, in the present case the petitioner had reasonable opportunity at both stages to enter upon his defence. He fully availed himself of the first opportunity and though a reasonable opportunity was also given to him at the second stage, he failed to avail himself of it and it is not open to him now to say that the requirements of clause (2) of Article 311 have not been satisfied. It was not denied that the petitioner was given by the Enquiry Commissioner all facilities for entering on his defence. Before filing his written statement before the Enquiry Commissioner the petitioner and his counsel were afforded facility to inspect the

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various files concerning the charges which he had to meet. After inspecting those files he filed a full written statement explaining those charges. He was defended in the enquiry by a leading lawyer and was afforded fullest opportunity to examine and cross-examine the witnesses examined by the Commissioner. He was able to satisfy the Enquiry Commissioner that out of the charges levelled against him a number of them were not established; but he failed to satisfy the Commissioner as regards the rest and the Enquiry Commissioner held them proved. After the enquiry was concluded the petitioner was furnished with a copy of the report of the Commissioner and was asked to show cause against the action proposed to be taken against him. He applied for two months' time to show cause. This was granted. He made a further application for further time. This was also partially granted. He again asked for further time which was refused. It is difficult to say that the time allowed to him was not reasonable in view of the fact that he had taken part in the enquiry before the Commissioner and all the evidence had been taken in his presence and he had full opportunity to defend himself. All the material on which the Commissioner had reported against him on the charges found proved, was given in the report of the Commissioner and that was supplied to him with a show cause notice. The time allowed, in our opinion, was more than sufficient for him to enter on his defence and having failed to do so, he cannot be heard to say that he was not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Mr. Thomas argued that the show cause notice was not in accordance with the provisions of Article 166 of the Constitution inasmuch as it was not expressed to have been made in the name of the Rajpramukh. As above mentioned, this notice was issued on behalf of the Government and was signed by the Chief Secretary of the united State of Travancore-Cochin who had under the rules of business framed by the Rajpramukh the charge of the portfolio of "service and appointments" at the Secretariat level

in this State. This was in our opinion substantial compliance with the directory provisions of Article 166 of the Constitution. It was held by this court in *Dattatreya Moreshwar Pangarkar* v. *The State of Bombay*(1) that clauses (1) and (2) of Article 166 are directory only and non-compliance with them does not result in the order being invalid, and that in order to determine whether there is compliance with these provisions all that is necessary to be seen is whether there has been substantial compliance with those requirements. In the present case there can be no manner of doubt that the notice signed by the Chief Secretary of the State and expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against the action proposed to be taken against him was in substantial compliance with the provisions of the article. The petitioner accepted this notice and in pursuance of it applied for further time to put in his defence. He was twice granted this time. In these circumstances, the contention of Mr. Thomas that as the notice was not expressed as required under Article 166 it was invalid and therefore the requirements of Article 311 were not satisfied in this case must be held to be devoid of force. We are satisfied that all the requirements of Article 311 have been fully complied with in this case. It may also be mentioned that the High Court held that H. H. the Rajpramukh had intimation of the decision of the Council of Ministers and the action proposed to be taken against the petitioner and that in fact His Highness approved of the proposed action.

Mr. Thomas further contended that the enquiry at the first stage also was invalid and irregular. He argued that the order appointing the Enquiry Commissioner was not expressed in proper form and that the Commissioner did not conduct the enquiry in accordance with the provisions of the Act. The notification ordering an enquiry set out above was issued after the Council of Ministers had passed a resolution to that effect. It must be presumed that in

(1) [1952] S.C.R. 612.

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the normal course of business that resolution was communicated to the Rajpramukh. The order thus substantially complies with the requirements of law and in any case the effect of its not being expressed as directed by Article 166 does not vitiate the notification. The appellant, as already stated, took part in the enquiry, defended himself and fought every inch of the ground. That being so, it is not possible to hold that he was not given reasonable opportunity at the first stage to defend himself. It was contended that under the Travancore Public Servants (Inquiries) Act, 1122, it was only the Maharaja who could make an order under the provisions of that Act, and that the Ministers could not take any action. Emphasis was laid on the expression "Our Government" in the different provisions of the Act. We are unable to see any force in this contention. The expression "Our Government" means the Maharaja's Government, in other words, the Government of the State of Travancore. After the integration of the two States of Travancore and Cochin and the formation of the United State of Travancore-Cochin the expression "Our Government" has to be construed according to the new set-up of Government and when the Council of Ministers had come into being, it is obvious that the expression "our Government" as adapted to fit in with the new Constitution means "The Council of Ministers". It is an elementary principle of democratic Government prevailing in England and adopted in our Constitution that the Rajpramukh or the Governor as head of the State is in such matters merely a constitutional head and he is bound to accept the advice of his Ministers. In this situation it cannot be held that the order of the Government appointing the Enquiry Commissioner was *ultra vires* and without jurisdiction.

Another point taken by Mr. Thomas was that without the sanction of the Rajpramukh the proceedings could not be started against the petitioner and reliance for this contention was placed on Article 20 of the Covenant of the united State of Travancore and Cochin. This article is in these terms :

"Except with the previous sanction of the Raj-

pramukh, no proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of either Covenanting State before the appointed day".

The High Court negatived this contention with the following observations:

"Article 20 refers to the institution of civil and criminal proceedings, two well-known expressions which are terms of art and clearly relate to civil and criminal proceedings before civil and criminal courts. The said two kinds of proceedings do not exhaust the totality of matters which can be called proceedings. It is only in respect of civil and criminal proceedings that the sanction of the Rajpramukh is required under Article 20 of the Covenant. It is not contended on behalf of the petitioner that the proceedings before the Commissioner are criminal proceedings. The only contention is that they partake of the nature of criminal proceedings. In our judgment, Article 20 of the Covenant does not apply to proceedings which are not criminal but merely partake of that character".

In these observations we fully concur. In our view departmental proceedings do not come within the ambit of the Article.

Lastly it was urged that there was non-compliance with the provisions of Article 320, clause 3(c) of the Constitution which provides that on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted. In this case the Public Service Commission was in fact consulted in the matter of the action proposed against the petitioner by removing him. The Public Service Commission agreed to the proposed action. This consultation and the agreement as before the petitioner was asked to show cause why he should not be removed from service. The complaint of the petitioner is that the

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consultation with the Public Service Commission should have been after he was asked to show cause but the petitioner did not show cause and that being so, no question arose of consulting the Public Service Commission over again. It was contended that the Public Service Commission should have been consulted on the review petition. To accede to his argument will mean that the State will have to consult the Public Service Commission as many times as he may choose to file review petitions. In our opinion the consultation envisaged by Article 320 does not extend so far. In this case the report of the Commissioner was placed before the Public Service Commission and the latter approved of the action proposed to be taken. The appellant was given another opportunity to show cause but he did not avail himself of that opportunity or submit any explanation or show any cause on which the Public Service Commission could be consulted. The order of dismissal having been made there was in the circumstances no further necessity to consult the Public Service Commission. In our opinion therefore there is no force in this contention as well.

After having examined all the arguments of Mr. Thomas, we are of the opinion that all the rules of natural justice were fully observed during the enquiry in this case, and the petitioner had the fullest opportunity to put in his defence both before the Enquiry Commissioner and against the action proposed to be taken against him. It was by reason of his own default that he failed to avail himself of the second opportunity. He put in a belated review but such a review is not provided for under the rules and in our opinion, it was not necessary to consult the Public Service Commission at that stage. Such petitions are not within the contemplation of the Constitution.

For the reasons given above this appeal fails and is dismissed. In the circumstances of the case we make no order as to costs.

Appeal dismissed.