1962

February 22.

KAMESHWAR PRASAD AND OTHERS

v.

THE STATE OF BIHAR AND ANOTHER

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Government Servant—Participation in strikes or demonstrations—Rule prohibiting strikes or demonstrations pertaining to conditions of service—Constitutional validity of rule—"Demonstration", meaning of—Bihar Government Servants' Conduct Rules, 1956, r. 4-A—Constitution of India, Arts. 19(1)(a), 19(1)(b), 19(1) (c), 33, 309.

By a notification dated August 16, 1957, the Government of Bihar introduced r. 4-A into the Bihar Gevernment Servants' Conduct Rules, 1956, which provided "No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service." The appellants filed a petition before the High Court of Patna under Art. 226 of the Constitution of India challenging the validity of the rule on the grounds, *inter alia*, that it violated sub-cls. (a), (b) and (c) of Art. 19 and that, in consequence, the rule was in excess of the rule making power conferred by Art. 309. The High Court took the view that the freedom guaranteed under Arts. 19 (1) (a) and 19 (1) (c) did not include a right to demonstrate or to strike so far as servants of Government were concerned, and that in any case, the impugned rule was saved as imposing reasonable restrictions.

Held, that r. 4-A of the Bihar Government Servants' Conduct Rules, 1956, in so far as it prohibited any form of demostration, be it however innocent or however incapable of causing a breach of public tranquillity, was violative of Arts. 19 (1) (a) and 19(1)(b) of the Constitution of India, and since on the language of the rule as it stood it was not possible to so read it as to separate the legal from the unconstitutional portion of the provision, the entire rule relating to participation in any demonstration must he declared as *ultre vires*.

The Superintendant, Central Prison, Fetehgarh v. *Ram Manohar Lohia*, [1960] 2 S. C. R. 821, relied on.

The Constitution has under Art. 33, selected two of the Services under the State, the members of which might be

1962

Kameshwar Prasad
v.
The State of Bihar

deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also has prescribed the limits within which such restrictions or abrogation might take place; but the other clausses of servants of Government in common with other persons and citizens of the country cannot be excluded from the protection of the rights guaranteed by part III by reason merely of their being Government servants, though on account of nature and incidents of the duties which they have to discharge in that capacity, certain restrictions on their freedoms might have to be imposed.

Held, further, that the rule in so far as it prohibited strikes was valid, because there was no fundamental right to resort to a strike.

All India Bank Employees' Association v. *National Industrial Tribunal*, [1962] 3 S.C.R. 269, followed.

Civil Appellate Jurisdiction : Civil Appeal No. 413 of 1959.

Appeal from the judgment and decree dated July 7, 1958, of the Patna High Court in M. J. C. No. 456 of 1957.

B. P. Maheshwari, for the appellants.

S. P. Varma, for the respondents.

B. Sen and *R. H. Dhebar*, for the Intervener No. 1 (Union of India).

A. S. R. Chari, M. K. Ramamurthi, R. K. Garg, D. P. Singh and *S. C. Agarwal*, for the Intervener No. 2 (E. X. Joseph).

1962. February 22. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—This appeal comes before us by virtue of a certificate of fitness granted under Art. 132 of the Constitution by the High Court of Patna. The question involved in the appeal is a short one but is of considerable public importance and of great constitutional significance. It is concerned with the constitutional validity of r. 4-A,

which was introduced into the Bihar Government Servants' Conduct Rules, 1956, by a notification of the Governor of Bihar dated August 16, 1957 and reads :

> "4-A.—*Demonstrations and strikes.*—
>
> No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service."

Very soon after this rule was notified the six appellants, the first of whom is the President of the Patna Secretariat Ministerial Officers' Association and the others are Assistants or Clerks under the Bihar State Government, filed on August 26, 1957, a petition before the High Court of Patna under Art. 226 of the Constitution challenging the validity of the rule on various grounds including *inter alia* that it interfered with the rights guaranteed to the petitioners by sub-cls. (a), (b) and (c) of cl. (1) of Art. 19 of the Constitution of India and that in consequence the rule was in excess of the rule-making power conferred by Art. 309 of the Constitution which was the source of the authority enabling service-rules to be framed. They prayed for an order restraining the respondent-State from giving effect to the rule and to desist from interfering with the petitioners' right to go on strike or to hold demonstrations. The learned Judges of the High Court who heard the petition were of the opinion that the freedom guaranteed under Art. 19(1)(a) and 19(1)(c) of the Constitution did not include a right to resort to a strike or the right to demonstrate so far as sevants of Government were concerned. The learned Judges however, further considered the validity of the rule on the assumption that the freedoms enumerated in sub-cls. (a) and (c) of Art. 19(1) did include those rights. On this basis they held that the rule impugned was saved as being reasonable restraints on these guaranteed freedoms.

1962

Kameshwar Prasad v. The State of Bihar

Ayyangar J.

The learned Judges therefore directed the petition to be dismissed, but on application by the appellants they granted a certificate under Art. 132 of the Constitution to enable them to approach this Court.

At this stage it is necessary to mention that a similar conclusion as the one by the High Court of Patna now under appeal was reached by the learned Judges of the High Court of Bombay before whom the constitutional validity of a rule in identical terms as r. 4A of the Bihar Rules was impugned. The correctness of that decision is under challenge in this Court in S.L. Ps. (Civil) Nos. 499 and 500 of 1961 and the appellants in that appeal sought leave to intervene in this appeal and we have permitted them to do so, and we heard Mr. Chari—learned Counsel for the interveners in further support of the appeal.

Before entering on a discussion of the arguments advanced before us it might be convenient to state certain matters which are common ground and not in controversy :

(1) The impugned rule 4-A was framed under Art. 309 of the Constitution which enacts, to quote the material words :

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services....."

and provision is made by the proviso to the Article for the Governors of States to make rules until "provision in that behalf is made by or under an Act of the appropriate Legislature". We are drawing attention to the Article under which the rule is made for the purpose of pointing out that the rule-making power being subject to the Constitution, the validity of the rule would have to be tested by the same criteria as are applicable to all laws and subordinate legislation. In other words, if

there are any constitutional limitations upon law-making, such of them as are appropriate to the subject dealt with by the rule would be applicable to them.

(2) It would be seen that the rule prohibits two types of activities, both in connection with matters pertaining to the conditions of service (i) the holding of demonstrations, and (ii) resort to strikes to achieve the purpose indicated. This Court had, in *All India Bank Employees' Association* v. *National Industrial Tribunal* (1) (Bank disputes Bombay etc.), to consider the question as to whether the right to form an association guaranteed by Art. 19(1) (c) involved or implied the right to resort to a strike and answered it in the negative. In view of this decision learned Counsel for the appellants, as also Mr. Chari for the interveners confined their arguments to the question of the legality of the provision as regards the right "to hold demonstrations". The validity of the rule therefore in so far as it prohibits strikes, is no longer under challenge.

The argument addressed to us on behalf of the appellants may be shortly stated thus : The service-rule being one framed under Art. 309 is a "law" within the definition of Art. 13(3) of the Constitution and it would have to be pronounced invalid to the extent that it is inconsistent with the provisions of Part III of the Constitution Art. 13(2). Article 19(1) confers on all citizens the right by sub-cl. (a) to freedom of speech and expression, and by sub-cl. (b) to assemble peacefully and without arms, and the right to "demonstrate" would be covered by these two sub-clauses. By the mere fact that a person enters Government service, he does not cease to be "a citizen of India", nor does that disentitle him to claim the freedoms guaranteed to every citizen. In fact, Art. 33 which enacts :

"Parliament may by law determine to

(1) C.A. 154 of 1961 (Not yet reported).

1962

Kameshwar Prasad
v.
The State of Bihar

Ayyangar J.

what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

obviously proceeds on the basis of persons in the service of Government being entitled to the Protection of the fundamental rights guaranteed by Part III of the Constitution and is inserted to enable special provision being made for the abrogation, if necessary, of the guaranteed freedoms in the case of two special services only, viz., the army and the police force. The approach to the question regarding the constitutionality of the rule should be whether the ban that it imposes on demonstrations would be covered by the limitation of the guaranteed rights contained in Art. 19(2) and 19(3). In regard to both these clauses the only relevant criteria which has been suggested by the respondent-State is that the rule is framed "in the interest of public order". A demonstration may be defined as "an expression of one's feelings by outward signs". A demonstration such as is prohibited by, the rule may be of the most innocent type—peaceful orderly such as the mere wearing of a badge by a Government servant or even by a silent assembly say outside office hours—demonstrations which could in no sense be suggested to involve any breach of tranquillity, or of a type involving incitement to or capable of leading to disorder. If the rule had confined itself to demonstrations of type which would lead to disorder then the validity of that rule could have been sustained but what the rule does is the imposition of a blanket-ban on all demonstrations of whatever type—innocent as well as otherwise—and in consequence its validity cannot be upheld.

Before considering these arguments of learned

Counsel it is necessary to deal with the submission by Mr. Sen who appeared for the Union of India who intervened in this appeal which, if accepted, would cut at the root of the entire argument for the appellant. He endeavoured to persuade us to hold that though the power to frame Service Rules under Art. 309 was subject to the Constitution with the result that the rules so framed ought not to be contrary to any constitutional provision, still it did not follow that every one of the fundamental rights guaranteed by Part III could be claimed by a Government servant. He urged that as a person voluntarily entered Government service he must by that very act be demeed to have consented to enter that service on such reasonable conditions as might be framed for ensuring the proper working of the administrative machinery of the Government and for the proper maintenance of discipline in the Service itself. Under Art. 310 every office is held, subject to the provisions of the Constitution, at the pleasure of the President or of the Governor as the case may be, and provided a rule regulating the conditions of service was reasonable and was calculated to ensure the purposes above-named he submitted that its reasonableness and validity could not be tested solely by reference to the criteria laid down in cls.(2), (3) or (4) of Art. 19.

In this connection we were referred to a few decisions of the American Courts for the proposition that the constitutionality of special rules enacted for the discipline of those in the service of Government had to be tested by criteria different from those applicable to ordinary citizens. Thus in *Ex Parte: Curtis* (1) the constitutionality of a law prohibiting officers or employees of the United States from "requesting, giving to or receiving from any other officer or employee of the government any money or property or other thing of value for political purposes," under a penalty of being discharged and, on conviction fined, was upheld. In the majority

(1) 27 Law. Ed. 232, 106 U. S. 371.

1962

Kameshwar Prasad v. The State of Bihar

Ayyangar J.

judgment which was delivered by Waite, C.J., the reasonableness of such a rule is pointed out. It is however manifest that no fundamental right could be claimed to have been infringed by the provision there impugned. In *United Public Workers* v. *Mitchell* (1), which was another case to which our attention was invited, one of the questions raised related to the validity of an Act of Congress (The Hatch Act, 1940) making it unlawful for the employees in the Executive Branch of the Federal Government to take part in political campaigns and making the same the basis for disciplinary departmental action. It was contended that this was an interference with the right of free speech as well as with political rights. Reed, J., who spoke for the majority observed:

> "The interference with free expression has to be seen in comparison with the requirements of orderly management of administrative personnel.....We accept appellant's contention that the nature of political rights reserved to the people are involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party official or worker to further his own political views. Thus we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First Amendment. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment.....We do not find persuation in appellants' argument that such activities during free time are not subject to regulation even though admittedly political activites cannot be indulged in during working hours. The influence of political activity by government employees, if evil in its effects on the

(1) 91 Law. Ed. 754, 330 U.S. 75.

> service, the employees or people dealing with them, is hardly less so because that activity takes place after hours.....It is accepted constitutional doctrine that these fundamental human rights are not absolutes.....The essential rights of the First Amendment are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery".

Mr. Sen also referred us to *Mc Auliffe* v. *New Bedford* (1) which is cited at p.791 in 91 Law. Ed. in support of the position that servants of Government formed a class and that conditions of service imposed upon them which are reasonable and necessary to ensure efficiency and discipline cannot be questioned on the ground of their contravening any constitutional guarantees. Mr. Sen drew our attention in particular to the following passage in the judgment of Holmes, J.:

> "There is nothing in the Constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle, the city may impose any reasonable condition upon holding offices within its control. This condition seems to us reasonable, if that be a question open to revision here (The Police Regulation prohibiting members of the depart-

(1) (1892) 155 Mass. 216.

1962

Kameshwar Prasad
v.
The State of Bihar

Ayyangar J.

ment from soliciting money etc. for political purposes)".

As regards these decisions of the American Courts, it should be borne in mind that though the First Amendment to the Constitution of the United State reading "Congress shall make no law..... abridging the freedom of speech....." appears to confer no power on the Congress to impose any restriction on the exercise of the guaranteed right, still it has always been understood that the freedom guaranteed is subject to the police power—the scope of which however has not been defined with precision or uniformly. It is on the basis of the police power to abridge that freedom that the constitutional validity of laws penalising libels, and those relating to sedition, or to obscene publications etc., has been sustained. The resultant flexibility of the restrictions that could be validly imposed renders the American decisions inapplicable to and without must use for resolving the questions arising under Art. 19(1)(a) or (b) of our Constitution wherein the grounds on which limitations might be placed on the guaranteed right are set out with definiteness and precision.

Learned Counsel invited our attention also to the decision of this Court in *Balakotaiah* v. *Union of India* (1) to a similar effect. But it must however, be noted that in Balakotaiah's case the validity of the rule was not challenged.

In further support of his submission that the freedoms guaranteed to citizens by Art. 19 cannot in their very nature, be applied to those who are employed in government service our attention was invited to sub-cls. (d), (e) and (g) of cl. (1). It was said that a Government servant who was posted to a particular place could obviously not exercise the freedom to move throughout the territory of India and similarly, his right to reside and settle in any part of India could be said to be violated by his

(1) [1958] S. C. R. 1052.

being posted to any particular place. Similarly, so long as he was in government service he would not be entitled to practise any profession or trade and it was therefore urged that to hold that these freedoms guaranteed under Art. 19 were applicable to government servants would render public service or administration impossible. This line of argument, however, does not take into account the limitations which might be imposed on the exercise of these rights by cls. (5) and (6) under which restrictions on the exercise of the rights conferred by sub-cls. (d) and (g) may be imposed if reasonable in the interest of the general public.

In this connection he laid stress on the fact that special provision had been made in regard to Service under the State in some of the Articles in Part III—such as for instance Arts. 15, 16 and 18(3) and (4)—and he desired us therefrom to draw the inference that the other Articles in which there was no specific reference to Government servants were inapplicable to them. He realised however, that the implication arising from Art. 33 would run counter to this line of argument but as regards this Article his submission was that it was concerned solely to save Army Regulations which permitted detention in a manner which would not be countenanced by Art. 22 of the Constitution. We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article selects two of the Services under the State—members of the armed forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them—from invalidity on the ground of violation of any of the fundamental

1962

Kameshwar Prasad v. The State of Bihar

Ayyangar J.

rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19 (1) (c) and (g).

The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society..... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that

the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; It may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.

If thus particular forms of demonstration fall within the scope of Art. 19(1)(a) or 19(1)(b), the next question is whether r. 4-A, in so far as it lays an embargo on *any form of demonstration* for the redress of the grievances of Government employees, could be sustained as falling within the scope of Art. 19(2) and (3).

These clauses run:

> "19. (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to

1962

Kameshwar Prasad v. The State of Bihar

Ayyangar J.

contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

The learned Judges of the High Court have, as stated earlier, upheld the validity of the rule by considering them as reasonable restrictions in the interest of public order. In coming to this conclusion the learned Judges of the High Court did not have the benefit of the exposition of the meaning of the expression "in the interest of public order" in these two clauses by this Court in *Superintendent, Central Prison, Fatehgarh* v. *Ram Manohar Lohia* (1). Speaking for the Court Subba Rao, J., summarised his conclusion on the point in these terms:

> "Public order (Art. 19(2) and (3)) is synonymous with public safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strike, war affecting the security of the State."

The learned Judge further stated that in order that a legislation may be "in the interests of public order" there must be a proximate and reasonable nexus between the nature of the speech prohibited and public order. The learned Judge rejected the argument that the phrase "in the interests of public order" which is wider than the words "for the maintenance of public order" which were found in the Article as originally enacted—thereby sanctioned the enactment of a law which restricted the right merely because the speech had a tendency however

(1) [1960] 2 S.C.R. 821.

remote to disturb public order. The connection has to be intimate, real and rational. The validity of the rule now impugned has to be judged with reference to tests here propounded.

If one had to consider the propriety of the rule as one intended to ensure proper discipline apart from the limitations on law-making, in a Government servant and in the context of the other provisions made for the making of representations and for the redress of services, grievances, and apart from the limitiations imposed by the Constitution there could be very little doubt nor would it be even open to argument that the rule now impugned was both reasonable and calculated to ensure discipline in the Services and in that sense conducive to ensure efficiency in the Service. Based on this aspect of the function of the rule the argument as regards Art.19(2) & (3) was put on a twofold basis: (1) that the maintenance of public order was directly dependent upon the existence of a body of Government servants who were themselves subject to strict discipline. In other words, the maintenance of discipline among Government servants not only contributed to the maintenance of public order but was a *sine qua non* of public order. (2) The other aspect in which it was presented was the negative of the one just now mentioned that if Government servants were ill-disciplined and were themselves to agitate in a disorderly manner for the redress of their service grievances, this must lead to a demoralisation of the public and would be reflected in the disappearance of public order.

We find ourselves unable to uphold this submission on behalf of the State. In the first place we are not here concerned with any rule for ensuring discipline among the police, which is the arm of the law primarily charged with the maintenance of public order. The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rule were so framed

1962

Kameshwar Prasad v. The State of Bihar

Ayyangar J.

as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Art. 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration—be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.

Learned Counsel for the respondent and those who supported the validity of the rule could not suggest that on the language of the rule as it stood, it was possible to read it as to separate the legal from the unconstitutional portion of the provision. As no such separation is possible the entire rule has to be struck down as unconstitutional.

We have rejected the broad contention that persons in the service of government form a class apart to whom the rights guaranteed by Part III do not, in general, apply. By accepting the contention that the freedoms guaranteed by Part III and in particular those in Art. 19(1)(a) apply to the servants of government we should not be taken to imply that in relation to this class of citizen the responsibility arising from official position would not by itself impose some limitations on the exercise of their rights as citizens. For instance, s.54(2) of the Income-tax Act, 1922, enacts:

> "If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine."

Section 128(1) of the Representation of the People Act, 1951, enjoins on every officer, clerk, agent etc. who performs any duty in connection with the

recording or counting of votes at an election shall maintain the secrecy of the voting and shall not communicate to any person any information calculated to violate such secrecy, and visits the breach of the rule by punishment with imprisonment for a term which may extend to three months or with fine. It cannot be contended that provisions on these or similar lines in these or other enactments restrict the freedom of the officers etc. merely because they are prohibited from communicating information which comes to them in the course of the performance of the duties of their office, to others. The information having been obtained by them in the course of their duties by virtue of their official position, rules or provisions of the law prescribing the circumstances in which alone such information might be given out or used do not infringe the right of freedom of speech as is guaranteed by the Constitution.

We would therefore allow the appepl in part and grant the appellants a declaration that r. 4A in the form in which it now stands prohibiting "any form of demonstration" is violative of the appellants' rights under Art. 19(1)(a) & (b) and should therefore be stuck down. It is only necessary to add that the rule, in so far as it prohibits a strike, cannot be struck down since there is no fundamental right to resort to a strike. As the appellants have succeeded only in part, there will be no order as to costs in the appeal.

Appeal allowed in part.