

* HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

+ Writ Petition No. 28014 of 2016

% Dated 18.10.2016

Lankapalli Chinna Reddappaaidu and others

...Petitioners

Vs.

\$ State of AP rep. by its Special Chief Secretary,
(Agriculture and Co-operation), AP, Secretariat,
Saifabad, Hyderabad and others

...Respondents

! Counsel for the Petitioners: Sri K.V. Simhadri

^ Counsel for Respondents: GP for Co-operation

< Gist :

> Head Note:

? Cases Referred:

1. (1985) 1 SCC 523
2. (2013) 5 SCC 1
3. (2016) 6 SCC 408



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 28014 of 2016

Between:

Lankapalli Chinna Reddappanaidu and others

...Petitioners

and

State of AP rep. by its Special Chief Secretary,
(Agriculture and Co-operation), AP, Secretariat,
Saifabad, Hyderabad and others

...Respondents

JUDGMENT PRONOUNCED ON : 18.10.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 28014 of 2016

Order:

Heard, learned counsel for petitioners and the learned Standing Counsel for the respondents.

This Writ Petition is a sequel to an order passed by this court on 29.06.2016 in W.P.M.P.No.25938 of 2016 in W.P.No.21156 of 2016 directing the third respondent Bank to take a decision with regard to age of superannuation within four weeks. The petitioners in W.P.No.21156 of 2016 are the petitioners 1 to 7 herein.

The petitioners are working in the cadre of Senior/Middle Management in the third respondent Bank. When a notice was issued intimating them that they are going to retire on attaining the age of 58 years, they filed the above Writ petition and this Court passed an order directing the third respondent to take a decision as aforesaid and consequently the third respondent Bank passed a resolution to continue the age of superannuation of its employees at 58 years and for subordinate staff at 60 years. Challenging the same, the present Writ Petition is filed.

The case of the petitioners is that the third respondent Bank is a statutory body formed by the Act of Legislature amalgamating two banks, viz., Andhra Pradesh State Co-operative Bank, Vijayawada and Hyderabad Co-operative Apex Bank Limited, Hyderabad. All the provisions of the Banking Regulation Act, 1949 are made applicable to all the Co-operative Banks including the third respondent Bank. The Banking Laws (Application to the Co-operative Societies) Act, 1965 is also applicable to

the third respondent Bank and as such it is regulated by the Reserve Bank of India (RBI)/National Bank for Agriculture and Rural Development (NABARD). The Andhra Pradesh Co-operative Societies Act, 1964 was amended by inserting Chapter 13-B in the said Act with effect from 26.04.2007. Section 115-D provides for application of special provisions to co-operative credit societies. The fourth respondent – NABARD in its letter dated 04.07.2011 intimated to the General Secretary of All India Cooperative Bank Employees Federation, Chennai stating that the retirement and the age thereof being an administrative matter, a decision has to be taken by the Board of the respective banks keeping in view the provisions of the Bye-laws and Cooperative Societies Act as well as profitability, financial strength and repaying capacity thereof. The petitioners state that in view of the said communication it is open to the third respondent Bank to pass a resolution enhancing the age of superannuation. The Government of Andhra Pradesh also amended Andhra Pradesh Public Employment (Regulation of Superannuation) Act, 1984 with effect from 02.06.2014 enhancing the age of retirement of its employees from the age of 58 years to 60 years. It appears that the third respondent Bank proposed to pass a resolution to enhance the age of superannuation from 58 years to 60 years in its board meeting held on 28.06.2014. However, the said proposal was dropped. The second respondent initiated a proposal seeking amendment to Rule 28(6) of the Andhra Pradesh Cooperative Societies Rules in respect of all types of cooperative societies instead of Credit Societies vide his letter dated 30.06.2014 addressed to the Principal Secretary to the Government without reference to Section 115-D of the AP Cooperative Societies Act, 1964. The file was circulated to the Hon'ble Chief Minister of Government

of Andhra Pradesh and he was pleased to pass an order stating that any decision with regard to increasing the age of retirement has to be taken by the respective organizations in view of autonomy granted to them under Section 115-D(2)(4) of the Act. In pursuance to the said decision, the first respondent issued a memo on 25.03.2015. In the said background, the petitioners 1 to 7 herein filed W.P. No.21156 of 2016 seeking a direction to the third respondent to take a decision uniformly in respect of superannuation. In the said Writ Petition this Court passed an order as aforesaid in WPMP No.25938 of 2016 dated 29.06.2016, and by virtue of the said order the present resolution was passed by the third respondent Bank to continue the existing age of superannuation at 58 years. The same is challenged in the present Writ Petition.

Learned counsel for the petitioner submits that though this Court directed the third respondent to take into consideration the provisions of Section 115-D(2)(4) of the Act and also the memorandums issued by the Government from time to time, those were not taken into consideration while passing the resolution. He further submitted that the financial position of the third respondent Bank permits continuance of the employees till the age of 60 years and in spite of financial soundness the decision was taken to superannuate at 58 years which is illegal. He placed reliance on the decisions of the Hon'ble Supreme Court reported in K. Nagaraj v. State of Andhra Pradesh¹ and State of Punjab v. Salil Sabhlok².

Learned Standing Counsel for the third respondent placed before this Court the agenda placed before the board of management for taking

¹ (1985) 1 SCC 523

² (2013) 5 SCC 1

a decision pursuant to the order of this court and submitted that all relevant factors were taken into consideration while taking a decision and since the decision of the board of management is a policy decision the petitioners cannot challenge the same except on permissible grounds which are absent in this case.

The scope of interference in policy decisions is well settled. There cannot be any dispute that the continuance of the age of superannuation at 58 years is a policy decision to be taken by the respective societies in view of the statutory provisions contained in the Andhra Pradesh Co-operative Societies Act. In the light of those provisions only this Court passed an order on 29.06.2016 giving liberty to the respective societies to take a decision. The scope of interference in respect of such decisions was reiterated by the Hon'ble Supreme Court in *Centre for Public Interest Limitation v. Union of India*³ and it was held that such policy decision can be interfered only when it was found to be arbitrary, irrelevant considerations or *mala fide* or against statutory provisions. This Court cannot substitute its opinion with the opinion of the Board/Committee of the concerned society merely because this Court had a different opinion. When the decision taken was in a fair, transparent and unbiased manner made applicable to all persons uniformly it cannot be held arbitrary. When the decision making process involved the application of the members of the Body who had to manage their own affairs this Court cannot re-appreciate the said decision by independently examining the material unless the Body took a decision on the basis of irrelevant considerations/material on the face of it. The relevant observations of the Hon'ble Supreme Court are as follows.

³ (2016) 6 SCC 408

“22. Minimal interference is called for by the Courts, in exercise of judicial review of a Government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as Courts are not well-equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in *Narmada Bachao Andolan v. Union of India* ((2000) 10 SCC 664) and reiterated in *Federation of Railway Officers Assn. v. Union of India* ((2003) 4 SCC 289) in the following words: (SCC p.289, para 12)

“12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.”

23. Limits of the judicial review were again reiterated, pointing out the same position by the Courts in England, in the case of *G. Sundarrajan v. Union of India* ((2013) 6 SCC 620) in the following manner: (SCC p.646, para 15)

“15.1. Lord MacNaughten in *Vacher & Sons Ltd. v. London Society of Compositors* (1913 AC 107 : (1911-13) All ER Rep 241 (HL) has stated:

“... Some people may think the policy of the Act unwise and even dangerous to the community. ... But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.”

15.2. In *Council of Civil Service Unions v. Minister for the Civil Service* (1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as “procedural impropriety”.

15.3. This Court in *M.P. Oil Extraction v. State of M.P.* (1997) 7 SCC 592 held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

15.4. Reference may also be made of the judgments of this Court in *Ugar Sugar Works Ltd. v. Delhi Admn.* (2001) 3 SCC 635, *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* (2007) 8 SCC 418 and *Delhi Bar Assn. v. Union of India* (2008) 13 SCC 628.

15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement.”

(emphasis in original)

24. When it comes to the judicial review of economic policy, the Courts are more conservative as such economic policies are generally formulated by experts. Way back in the year 1978, a Bench of seven Judges of this Court in *Prag Ice & Oil Mills v. Union of India* (1978) 3 SCC 459 : AIR 1978 SC 1296 : 1978 Cri LJ 1281 carved out this principle in the following terms: (SCC p.478, para 24)

“24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.”

25. Taking aid from the aforesaid observations of the Constitution Bench, the Court reiterated the words of caution in *Peerless General Finance and Investment Co. Limited v. Reserve Bank of India* ((1992) 2 SCC 343) with the following utterance: (SCC p.375, para 31)

“31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.”

26. It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to include diverse forms of 'public' power in response to the changing architecture of the Government. Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,

“it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established – for example, if the decision was reached procedurally unfair.”

27. The *raison d'être* of discretionary power is that it promotes decision maker to respond appropriately to the demands of particular situation. When the decision making is policy based judicial approach to interfere with such decision making becomes narrower. In such cases, in the first instance, it is to be examined as to whether policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy.”

The Hon'ble Supreme Court in K. Nagaraj's case (supra) considered the issue of age of superannuation pursuant to a policy decision taken by the then Telugu Desam Government in 1983 reducing the age of superannuation from 58 years to 55 years. While considering the said issue it was observed as follows:

".....Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counter balance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must as far as possible, be left to the judgment of the executive and the legislature. These claims involve considerations of varying vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the Court's interference would be called for, though not for fixing the age of retirement but for

mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. But, while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the legislature have to undertake. As stated in 'The Supreme Court and the Judicial Function': "Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require"."

The Hon'ble Supreme Court ultimately rejected the various contentions raised by the petitioners challenging the reduction of age of superannuation. In this case also a comprehensive note was placed before the board of management pursuant to the direction of this Court on 29.06.2016 and the board has taken a conscious decision retaining the age of superannuation at 58 years by considering the provisions of the Andhra Pradesh Cooperative Societies Act, 1964, service regulations of the third respondent Bank, the decision of the State Government enhancing the age of superannuation and representations of Service Unions of the third respondent Bank and the District Cooperative Central Banks. In view of the same, the contentions raised by the learned counsel for the petitioners that the relevant material was not taken into consideration while passing the resolution does not stand to reason. Even otherwise also a policy decision like the fixation of age of superannuation, which on the face of it not being arbitrary, cannot be interfered with by this Court in exercise of its power under Article 226 of the Constitution of India. The other decision relied on by the learned counsel for the petitioners in State of Punjab v. Salil Sabhlok (supra) is not applicable to the facts of the present case as it relates to the selection of a Chairman and Members of Public Service Commission.

In view of the above position, the Writ Petition does not merit admission and it is accordingly dismissed at the admission stage. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 18th October, 2016
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