

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

WRIT PETITION NO.20639 OF 2018

Between:

S.Ramulu s/o. S.Chandraiah, Aged 53 years,
Occu: Dy.Executive Engineer (Panchayat Raj
Engineering Dept.,) PR Sub-Division, Kothur,
R.R.District, r/o.201, Somavarapu Elegence,
Road No.1, Arunodaya Nagar, Nagole,
Hyderabad.

.....Petitioner

and

State of Telangana, rep.by its Prl.Secretar5y,
Panchayat Raj & Rural Development Dept.,
Secretariat, Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 13.08.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.20639 OF 2018

%13.08.2018

S.Ramulu s/o. S.Chandraiah, Aged 53 years,
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Hyderabad.

.... Petitioner

Vs.

\$ State of Telangana, rep.by its Prl.Secretar5y,
Panchayat Raj & Rural Development Dept.,
Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioners : Mr. M.V.Rama Rao

Counsel for the Respondents: Government Pleader for Panchayat Raj
for respondents 1 to 4;
Sri S.Satyanarayana Rao for
respondent No.5

<Gist :

>Head Note:

? Cases referred:

1. (2006) 7 SCC 200
2. (2004) 11 SCC 402
3. (2010) 13 SCC 306
4. AIR 1978 SC 851
5. (1984) 3 All ER 935
6. (2006) 2 SCC 1
7. (2011) 10 SCC 86

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.20639 OF 2018

ORDER:

Observations of Professor Bernard Schwartz in his book 'Administrative Law, (3rd Edn.)' [referred to by Hon'ble Supreme Court in **Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel and others**¹] aptly apply to this case. He said, *"....Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action: [W]e must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further."* The issue in this case is whether the administrative authority crossed Lakshmana Rekha in exercising his discretion to transfer petitioner warranting judicial interdiction.

2. Petitioner is working as Deputy Executive Engineer in Panchayat Raj Sub-division, Kothur in Ranga Reddy district. According to petitioner, he was posted to this sub-division on order to serve basis by the Government and assumed charge of the sub-division on 11.10.2016. By the order impugned, he is now transferred and posted as Personal Assistant to Superintending Engineer, Panchayat Raj, Mahabubnagar.

3.1. According to learned counsel for petitioner, petitioner has not completed five years of stay in the present place of posting and, therefore, he is not subjected to transfer counselling process. The place occupied by him is not shown as vacancy and no person opted to the place occupied by him. While so, after completion of

¹ (2006) 7 SCC 200

transfer counselling, by independent proceedings, petitioner is transferred as Personal Assistant to Superintending Engineer and in his place, 5th respondent is posted. According to learned counsel, even 5th respondent has not opted to this place. He opted to Abdullahpurmet, where there is a clear vacancy and in fact, in the transfer exercise 5th respondent's request to transfer to Abdullahpurmet was accepted. However, later, for the reasons best known, the impugned transfer orders are issued disturbing the petitioner and, in his place, 5th respondent is posted. By the impugned decision, petitioner was also deprived of his entitlement to participate in transfer counselling.

3.2. He would submit that after lifting ban on transfers, guidelines are formulated by the Government and the lower authorities are required to follow guidelines strictly. There is no justification to deviate the guidelines in transferring the petitioner when he was not liable for transfer and his place is not shown as vacancy. According to learned counsel, as per the guideline No.7, all transfers should be effected by the competent authority with the approval of the Committees constituted for this purpose. For zonal post, Committee consisting of Head of Department, Additional/Joint/Deputy Secretary nominated by the Secretary of the Department and Regional Officer or Additional or Joint Director in the Office of the Head of Department. In the case on hand, transfer of petitioner was not placed before the Committee.

3.3. He would further submit that many persons, who were identified as liable for transfer, are not disturbed even though ceiling limit of 40% is not reached and on the contrary, petitioner

is transferred, and it therefore amounts to arbitrary exercise of power.

3.4. According to learned counsel for petitioner, the proceeding numbers transferring the petitioner and the 5th respondent would show that order of transfer of petitioner was later to the order of transfer of 5th respondent, whereas by the time order of transfer of 5th respondent was issued, there was no vacancy as petitioner was holding the Office. He would therefore submit that transfer of petitioner is not in accordance with the transfer guidelines; it amounts to arbitrary exercise of power and authority. It would show that entire exercise undertaken was not in a *bona fide* manner.

4.1. According to learned Government Pleader, in the transfer counselling, no person has opted to the post of Personal Assistant to Superintending Engineer in Mahabubnagar Circle Office and this post is crucial. As there is dire need to fill up the post of Personal Assistant to the Superintending Engineer and as petitioner is found to be most suitable, he was identified for said posting and in his place 5th respondent is posted. He would submit that as per 40% ceiling, 33 Deputy Executive Engineers can be transferred, but only 22 were transferred and, therefore, the transfer of petitioner was within the ceiling imposed by the Government.

4.2. He would submit that present transfer is made purely on administrative grounds and, there is no illegality in transferring the petitioner. He would submit that petitioner was working in P.R. Sub-division, Shadnagar-I and along with sub-division he was

shifted to Kothur. Petitioner has worked for more than five years in the same jurisdiction. As such he is liable for transfer. Learned Government Pleader does not dispute the fact that name of petitioner is not displayed in the list of Officers liable for transfer.

4.3. Learned Government Pleader placed reliance on the decision of Supreme Court in **State of U.P. and others v. Gobardhan Lal**² to contend that in matter of transfers, writ Court should not interfere unless *mala fides* are alleged or transfer orders are made in violation of any statutory provisions, whereas no such contention is made.

5. According to learned counsel for 5th respondent, though 5th respondent has opted to Abdullahpurmet, he has accepted his transfer to Kothur sub-division and accordingly reported to duty. According to learned counsel, petitioner has been working in and around Shadnagar area for very long time in the lower cadre and in the present cadre and, therefore, he is liable for transfer. False allegation is made against petitioner that he made application to the local Member of Legislative Assembly and because of that application, petitioner was disturbed to post him to present place. According to learned counsel 5th respondent has not approached any politician. He would submit that as petitioner is liable for compulsory transfer and as present transfer is affected on administrative grounds, no interference is called. In support of his contention, he placed reliance on the decision of Supreme Court in **State of Haryana and others v. Kashmir Singh and another**³.

² (2004) 11 SCC 402

³ (2010) 13 SCC 306

6. On reading respective pleadings, it is not in dispute that petitioner is not identified as one of the persons liable for transfer and the place occupied by him is not shown as vacancy to enable the officers to exercise option for transfer. It is also not in dispute that in the transfer exercise, as per the option given by the 5th respondent, Abdullahpurmet was identified for him to be posted. It is also not in dispute that Abdullahpurmet is vacant even by now.

7. The scope of judicial review in transfer of Government Servants is very limited. In W.P.No.18946 of 2018, the Court reviewed the precedent decisions on transfers and observed that writ Court cannot go into the intricacies of the cadre management and posting of employees and ordinarily Court should not interfere in transfer matters. Two decisions relied by the learned counsel for 5th respondent and learned Government Pleader, respectively, also emphasise this principle.

8. Thus, within the well laid down parameters of judicial review, the issue of transfer of petitioner and posting the 5th respondent in his place requires consideration.

9. It is appropriate to note that transfer exercise was undertaken consequent to lifting of ban on transfers. The competent authority identified 33 Deputy Executive Engineers, including 5th respondent, who have been working for long time i.e., completing five years or more at a station. He has called for willingness of persons identified for transfer to indicate places of their choice in the clear vacancies and vacancies likely to arise on transfer of incumbents. This list does not contain petitioner name

and he was not asked to exercise options. As per the Government orders in G.O.Ms.No.61 Finance (HRM.I) Department dated 24.05.2018 to affect transfer of zonal cadre officers, three Member Committee was constituted, and the Committee undertook the job of transfer requests.

10. The Engineer-in-Chief in his affidavit admits that petitioner is not included in the list of Officers liable for compulsory transfer and his vacancy is not shown in the transfer counselling. The only justification sought to be given in the affidavit deposited by the Engineer-in-Chief and contended by learned Government Pleader is that after transfer exercise was completed, it was noticed that no one opted to the post of Personal Assistant to the Superintending Engineer, Mahabubnagar and that vacancy requires to be filled up. However, affidavit is silent as to why the Officers liable for compulsory transfer were not selected for that post, more so when deponent admits that as per 40% ceiling, 33 Officers are liable for transfer but only 22 were transferred.

11. The counter-affidavit is also silent as to why vacancy in Abdullahpurmet is not filled up and how incharge arrangements are continued, more so when 5th respondent opted to that place and was also identified to fill this vacancy in the transfer counselling exercise. It is now sought to be contended that petitioner has completed more than 5 years of stay in the same sub-division though sub-division is shifted from Shadnagar to Kothur. However, no explanation is offered as to why in transfer counselling petitioner was not identified for transfer and his place is not shown as vacancy.

12. The relevant records, where under transfer exercise was undertaken pursuant to lifting of ban on transfers, were produced by the learned Government Pleader. To test the contention of learned Government Pleader and stand of Engineer-in-Chief that petitioner is identified as most suitable person to be appointed as Personal Assistant to the Superintending Engineer and process of transfer exercise identifying petitioner for transfer, the relevant record is seen. It is seen that tabulated statement was drawn on transfer of respective officers containing 14 columns. Column-6 deals with present place of posting; column-13 deals with place allotted; column-14 deals with remarks where the reasons for retention/transfer are mentioned. Each of the pages are signed by all the members of the Committee. Sl.No.25 deals with 5th respondent. His place of posting is shown as Panchayat Raj Sub-division, Mahabubnagar and the statement as originally typed and signed by all the Committee members would show that 5th respondent is allotted to the office of Superintending Engineer (PR), Mahabubnagar and in the remarks column, typed as 'general counselling allotted to PR SD, Abdullahpurmet'. As admitted in the counter-affidavit deposed by the Engineer-in-Chief that Committee has approved transfers as per the guidelines notified in G.O.Ms.No.61. After the deliberations of the Committee were finalized, the Engineer-in-Chief was required to issue orders posting the Officers as per the decision of the Committee. He cannot undertake review of decisions made by the committee in his individual capacity.

13. To validate decision to transfer petitioner it is now contended that as post of Personal Assistant to Superintending Engineer, Mahabubnagar is not filled in the transfer counselling, petitioner was identified as most suitable and, therefore, he is transferred. This does not sound a *bona fide* reason. Record does not contain reasoned decision to transfer petitioner was taken by the Committee or by the competent authority. Learned Government Pleader fairly submitted that it is not recorded by way of minutes either by the Committee or by the competent authority on the reasons for identifying the petitioner for transfer to the post of Personal Assistant to the Superintending Engineer. In other words, there is no material to support the contention of respondent authorities shifting the petitioner to the Office of Superintending Engineer.

14. Post of Personal Assistant to Superintending Engineer is an administrative post and no technical skill or expertise is required. No material is shown on making of such assessment. Reading of affidavit deposed by the Engineer-in-Chief would show that *post facto* reasons are invented to justify the transfer of 5th respondent.

15. It is seen from record that the Engineer-in-Chief strikes off entries made in columns-13 and 14 against 5th respondent name in the tabulated statement prepared and signed by the committee and writes "PRSD Kothur" in column-13 and puts his initials. At the end of statement, name of petitioner is written with ink and against column no.13, it was written as posted as PA to SE, Mahabubnagar and initialled by the Engineer-in-Chief. In other words, insertions/corrections were made by the Engineer-in-Chief

after completion of exercise by the Committee, on his own and said insertions/corrections were not approved by the Committee.

16. For administrative reasons, transfers can be affected by the competent authority and Engineer-in-Chief is competent to transfer Deputy Executive Engineer. However, present order of transfer of petitioner is made as part of transfer exercise after lifting of ban on transfers. There must be compelling reason for affecting the transfer of petitioner without reference to transfer counselling and not by the Committee constituted for this purpose and reasons must be recorded. The very objective of formulating guidelines specifying modalities of transfer, asking Officers to exercise options, and appointing a Committee of three Officers to undertake the exercise was to ensure transparency and to avoid personal choices of Head of the Department/competent authority. By the impugned exercise this very objective is defeated.

17. There cannot be a *post facto* explanation in the form of counter-affidavit filed in the writ petition when a challenge is made to the order of transfer. As fairly submitted by the learned Government Pleader and as seen from the original record of transfers produced by the learned Government Pleader, there is no separate exercise undertaken by the Engineer-in-Chief to fill up the vacancy of Personal Assistant to the Superintending Engineer to support the statement now made in the form of counter-affidavit. As held by the Hon'ble Supreme Court in ***Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others***⁴, no *post facto* justification of a decision, more

⁴ AIR 1978 SC 851

so in the form of counter-affidavit be made and same is unsustainable. The order must contain the reasons in support of the decision or at least the file should contain reasons to take the decisions. In this case both are missing.

18. While effecting transfers, no assessment on suitability of a person is made and transfer guidelines do not speak of any such assessment. As noted earlier, petitioner was not identified as liable for transfer and place occupied by him was not shown as vacancy in the transfer counselling exercise. As seen from the original record, there was no independent exercise undertaken by the Engineer-in-Chief to identify the petitioner as most suitable person to fill up the post of Personal Assistant to Superintending Engineer. There is no explanation forthcoming as to why all other officers, who are also identified for compulsory transfer, are not transferred and why in the transfer exercise the persons who are liable for compulsory transfer are not transferred to the post of Personal Assistant to the Superintending Engineer. No material is placed on record to show that how petitioner is identified as most suitable person to fill up the said slot.

19. Having regard to the facts noted above, the conclusion is irresistible that present order of transfer transferring the petitioner from Sub-division, Kothur to Office of Superintending Engineer, Panchayat Raj, Mahabubnagar, as Personal Assistant is not made in *bona fide* exercise of power and authority. Apparently, decision to shift the petitioner was for purposes other than administrative or in exigencies of service. It would thus amount to arbitrary exercise of power and not *bona fide*. It amounts to abuse of power

and authority. Therefore, illegal. In the facts of this case, the contention of learned counsel for petitioner that order of transfer is vitiated on ground of personal prejudice and preferences commands acceptance.

20. The writ Court frowns upon abuse of power and authority by Officer vested with power to take decisions and exercising discretion in an arbitrary manner.

21. In **Jayrajbhai Jayantibhai Patel** (supra), Supreme Court held as under:

“**12.** Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the State, acts bona fide and within the limits of its power. However, the scope of judicial review in administrative matters has always been a subject-matter of debate despite a plethora of case-law on the issue. Time and again attempts have been made by the courts to devise or craft some norms, which may be employed to assess whether an administrative action is justiciable or not. But no uniform rule has been or can be evolved to test the validity of an administrative action or decision because the extent and scope of judicial scrutiny depends upon a host of factors, like the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions applicable, etc. **While appreciating the inherent limitations in exercise of the power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the administrative discretion and the need to remedy alleged unfairness in the exercise of such discretion.**

18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. **Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene.** It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.” (emphasis supplied)

22. One of the three principles laid down by *Lord Diplock* in **Council of Civil Service Unions v. Minister for the Civil Service**⁵ on which writ Court can undertake judicial review is “Wednesbury unreasonableness” or “irrationality”. He elaborated said principle by holding that *‘it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it’*.

23. In **Rameshwar Prasad (VI) v. Union of India**⁶, Supreme Court held,

“241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (See *Shalini Soni v. Union of India* [(1980) 4 SCC 544 : 1981 SCC (Cri) 38])”.

24. The view expressed by *Professor Bernand Schwartz* in his book ‘Administrative Law’ (3rd Edn.) approved by Supreme Court in **Jayrajbhai Jayantibhai Patel** (supra) aptly applies to this case.

Supreme Court observed in Paragraph-19 as under:

“19. The following passage from Professor Bernard Schwartz's book *Administrative Law*, (3rd Edn.) aptly echoes our thoughts on the scope of judicial review:

“Reviewing courts, the cases are now insisting, may not simply renounce their responsibility by mumbling an indiscriminate litany of deference to expertise. Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action: [W]e must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further.”

⁵ (1984) 3 All ER 935

⁶ (2006) 2 SCC 1

Quoting Judge Leventhal from *Greater Boston Television Corpn. v. FCC* [444 F 2d 841, 851 (DC Cir 1970)] he further says:

“...the reviewing court must intervene if it ‘becomes aware ... that the agency has not really taken a “hard look” at the salient problems, and has not genuinely engaged in reasoned decision-making....” (emphasis supplied)

25. In **Asha Sharma v. Chandigarh Administration and others**⁷, Supreme Court held as under:

“12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as “arbitrary”. **Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness.** Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law.

14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. **Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible.** The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. **Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.**

23. On a proper analysis of the principles stated by this Court in a catena of judgments including the judgment aforereferred, it is clear that the courts can issue directions with regard to the

⁷ (2011) 10 SCC 86

dispute in a particular case, but should be very reluctant to issue directions which are legislative in nature. ***Be that as it may, because of the new dimensions which constitutional law has come to include, it becomes imperative for the courts in some cases, to pass directions to ensure that statutory or executive authorities do not act arbitrarily, discriminatorily or contrary to the settled laws.....***”

26. From the above decisions it emerges that if no reasoning is recorded in support of the decision by the administrative authority such decision can be interfered. Arbitrariness in State action, even where the rules vest discretion in an authority is impermissible. There can be no rubber-stamping of administrative authority action merely because he has discretion to take a view. Though authority is entitled to exercise its discretion, such exercise must be well considered and supported by reasons and only thus far and no further. As observed by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service, *judicial review* ‘... *applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it*’. When administrative decision is based on wholly irrelevant considerations and it is so absurd that no reasonable person could have arrived at it on the given material, such decision can be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. All the above parameters of judicial review are attracted in this case.

27. However, it appears that 5th respondent is caught in the cross fire due to arbitrary decision taken by the competent authority. Therefore, his interests must be protected. Record

discloses that 5th respondent opted to Abdullahpurmet and he was also identified as liable for transfer to Abdullahpurmet and vacancy is available in that sub-division. Thus, the original decision of the transfer committee must be given effect to.

28. Thus, for the aforesaid reasons, while holding the transfer of petitioner, by the order impugned, as illegal and that he is entitled to be retained in Kothur Sub-division, it is further directed that 5th respondent should be accommodated in the existing vacancy at Abdullahpurmet as originally decided.

29. The Writ Petition is allowed accordingly. All pending miscellaneous petitions stand closed.

Date: 13.08.2018
kkm

JUSTICE P.NAVEEN RAO



HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.20639 OF 2018

Date: 13.08.2018

Kkm