

A GOVERNMENT OF TAMIL NADU & ORS.

v.

BADRINATH & ORS.

OCTOBER 15, 1987

B [A.P. SEN AND M.N. VENKATACHALIAH, JJ.]

*All India Services (Conduct) Rules, 1968—r. 17—The rule applies to acts done in exercise of official duties only—No member of the Service is prohibited from vindicating his private character for any act done by him in his private capacity.*

C Respondent No. 1 who was functioning at the relevant time as the  
D commissioner of Archives and Historical Research, Tamil Nadu,  
delivered a speech at a function held by the History Association of the  
E Presidency College, Madras criticising the time capsule buried in the  
precincts of the Red Fort at Delhi which led to a furore both in Parlia-  
ment as well as in the national press. The Government, feeling greatly  
F embarrassed by the controversy, started a disciplinary inquiry against  
him on the view that being a civil servant it was not desirable that he  
should have participated in a public discussion on the time-capsule but  
later on dropped the same. However, just a day before that, a signed  
G news-item appeared in a newspaper about the controversy regarding  
the time-capsule stating that a Government spokesman had charged  
respondent no. 1 as trying to 'sabotage the civil services from within'.  
Having failed in his efforts to ascertain from the Government the  
identity of its spokesman who had made this offending utterance against  
H him or to induce it to issue a contradiction through the Press, respon-  
dent no. 1 addressed a letter to the correspondent of the newspaper  
asking him to disclose the name of the Government spokesman. The  
correspondent, in his reply, stated that the Government spokesman was  
respondent no. 2, the Chief Secretary to the Government, who, during  
a telephonic conversation with him, had made the offending utterance.  
Respondent No. 1 made a representation to the Government with regard  
to his grievance in this behalf but, finding that there was no  
response, applied for sanction of the Government under r. 17 of the All  
India Services (Conduct) Rules, 1968 seeking permission to institute a  
suit against respondent no. 2 for damages for defamation. The Govern-  
ment refused to grant the permission and respondent no. 1 moved the  
High Court under Art. 226 of the Constitution against the order of  
refusal. The writ petition was dismissed by a Single Judge, who *inter*  
*alia* in his judgment referred to a concession made by the Advocate

General appearing for the appellants that the act complained of was an official act and, therefore, the intended suit was to vindicate an official act which was the subject matter of a defamatory criticism. Respondent No. 1 preferred an appeal under cl. 15 of the Letters Patent and a Division Bench allowed the appeal holding that the refusal of the State Government to grant the requisite permission under r. 17 could not be justified on the ground of public interest.

Allowing the appeals,

HELD: According to its plain terms, r. 17 of the All India Services (Conduct) Rules, 1968 is in the nature of a restraint on a member of the All India Services from bringing a suit for damages for defamation for an act done in the exercise of his official duties as a public servant or from going to the press in vindication of his official act or character. Explanation to r. 17 seeks to restrict the scope and effect of the restraint placed by r. 17. No member of the Service is prohibited from vindicating his private character or any act done by him in his private capacity. Proviso thereto however casts on him a duty to report to the Government regarding such action. [497B-C]

In the instant case, respondent no. 1 made a speech incidentally at a time when he was holding the post of the commissioner of Archives & Historical Research, at a function organised by the History Association of the Presidency College, Madras. He was invited to make a speech on the occasion presumably for his attainments, in the field. But the speech delivered by him on the occasion could not be treated to be an official act of his and therefore the suit brought by him against respondent no. 2, the then Chief Secretary of Tamil Nadu could not be treated to be a suit for the vindication of his official act. It is common knowledge that persons of erudition and eminence are often times asked to grace such occasions or make a speech and when they do so, undoubtedly they give expression to their personal views on various subjects. By no stretch of imagination can it be said that while doing so they act in the discharge of their official duties merely because they happen to hold public office. [499A-D]

During the course of his judgment, the learned Single Judge adverts to paragraph 17 of the writ petition where respondent no. 1 has averred that his intended suit was to vindicate his private character and not to vindicate any official act. The case of respondent no. 1 therefore throughout has been that r. 17 of the Rules was not attracted to the suit and indeed he specifically aver that he was entitled to file a suit even

A without the permission of the Government under r. 17. However, he goes on to say that if a suit were to be filed it might land him into trouble in that disciplinary proceedings might be taken against him for having instituted a suit without previous permission of the Government. On the assumption that such sanction was necessary under r. 17, he moved the High Court for grant of an appropriate writ under Art. 226 of the Constitution, apparently by way of *ex abundanti cautela*. The learned Single Judge did not deal with the scope and ambit of r. 17 in view of the concession made by the learned Advocate General. We have no manner of doubt that the appellants are not bound by the concession made by the learned Advocate General before the learned Single Judge that the act complained of was an official act. It is unfortunate that the State Government was not properly advised at the earlier stages of the proceedings in insisting upon the view that such permission was required under r. 17 and that it was justified in refusing to grant the permission prayed for. The concession made by the learned Advocate General being on a matter of law is not binding. [498D-G]

D CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1639-40 of 1987.

From the Judgment and Order dated 20.12.1984 of the Madras High Court in W.P. No. 349 of 1979.

E A.K. Sen and A.V. Rangam for the Appellants.

S. Rangarajan, Ms. Asha Rani, Sanjay Parikh and Sanjiv Madan for the Respondents.

The Judgment of the Court was delivered by

F SEN, J. These appeals by special leave are directed against a judgment of a Division Bench of the Madras High Court dated December 20, 1984 reversing the judgment and order of a learned Single Judge dated March 27, 1979 and allowing the writ petition filed by respondent no. 1 herein Thiru Chaturvedi Badrinath, a senior member of the Indian Administrative Service, and directing the issuance of a writ of mandamus ordaining the State Government of Tamil Nadu from granting the requisite permission of the Government under r. 17 of the All India Services (Conduct) Rules, 1968 for the institution of a suit for damages for defamation by him against respondent no. 2 Thiru V. Karthikeyan, the then Chief Secretary to the State Government of Tamil Nadu by a defamatory statement that he,

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allegedly, made to a correspondent of the Indian Express against him.

The facts. At the relevant time, respondent no. 1 Thiru Badrinath was the Commissioner of Archives & Historical Research, Tamil Nadu. On September 7, 1973 he delivered a speech at a function held by the History Association of the Presidency College, Madras criticising the time capsule buried in the precincts of the Red Fort at Delhi and said that it was full of distortions of historical facts describing it as 'neither history nor fiction'. This led to a furore both in Parliament as well as in the national press. The Government feeling greatly embarrassed by the controversy created about the authenticity of the time capsule, started disciplinary inquiry against respondent no. 1 under rr. 6 and 7 of the All India Services (Conduct) Rules on the view that being a civil servant it was not desirable that he should have participated in a public discussion on the time capsule. However, the State Government by a G.O. dated August 25, 1977 dropped the disciplinary proceedings. Just a day before i.e. on August 24, 1977 a signed news item appeared in all the editions of the Indian Express about the controversy regarding the time capsule stating that a Government spokesman charged respondent no. 1 as trying to 'sabotage the civil services from within'. Taking umbrage at the offending utterance, respondent no. 1 addressed a letter dated August 25, 1977 expressing his anguish that such a statement was made by a Government spokesman, and desired to know as to who that Government spokesman was; and whether he indeed uttered the words and if so, whether that reflected the views of the Government. On the same day, respondent no. 2 in his capacity as the Chief Secretary replied that he had no information to communicate to him on the subject. On December 5, 1977 respondent no. 1 addressed another letter to respondent no. 2 in the form of a representation complaining of the defamatory attack on him, demanding that the Government should issue a contradiction through the press. The Government did not accede to the demand. In the meanwhile, respondent no. 1 apparently addressed a letter to a certain Shastri Ramachandran, the press correspondent of the Indian Express, asking him to disclose the name of the Government spokesman. The correspondent by his letter dated December 14, 1977 informed that the Government spokesman was respondent no. 2 who during a telephonic conversation with him had made the offending utterance. There were certain other utterances attributed to respondent no. 2 with which we are not concerned. Upon this, respondent no. 1 by his letter dated December 19, 1977 sought permission to meet the Chief Minister and personally place before him his grievance set out in his aforesaid representation. The grievance of

A respondent no. 1 is that the letter was never replied to.

Eventually, on December 28, 1977 respondent no. 1 applied for sanction of the Government under r. 17 of the Rules seeking permission to institute a suit against respondent no. 2 for damages for defamation. This was sought on the ground that in an interview with Thiru B Shastri Ramachandran, the correspondent of the Indian Express, respondent no. 2 had charged him with trying to sabotage the civil services from within and that the charge was per se defamatory and was made with intent to bring disrepute to his career as a scholar and historian and caused irreparable damage to his reputation as a civil servant. By the impugned G.O. dated February 7, 1978 the Government refused to grant the permission applied for to respondent no. 1. C Against the refusal respondent no. 1 moved the High Court under Art. 226 of the Constitution for the issuance of a writ of mandamus and other appropriate writs, directions and orders. A learned Single Judge (V. Ramaswami, J.) by his judgment and order dated January 23, 1979 D dismissed the writ petition on the ground that respondent no. 1 was not entitled to grant of the requisite permission under r. 17 of the Rules as a matter of course and it could not be said that the refusal of the Government to grant such permission was arbitrary, capricious or on irrelevant consideration. On the contrary, he held that the Government refusal was based on proper grounds inasmuch as the Government had taken into account all the relevant considerations including E public interest and the interest of maintenance of discipline in the civil service. The learned Single Judge further observed that public interest was certainly a proper ground on which the Government could refuse the permission, if they were of the view that grant of such permission would expose another officer to unnecessary harassment through vexatious proceedings or encourage feud among civil servants and that F had to be prevented. Aggrieved, respondent no. 2 preferred an appeal under cl. 15 of the Letters Patent. A Division Bench (M.M. Chandurkar, CJ and Sathiadev, J.) by its judgment and order dated December 20, 1984 allowed the appeal holding that the refusal of the State Government to grant the requisite permission under r. 17 of the Rules could not be justified on the ground of public interest. G The entire judgment of the Division Bench proceeds on the wrongful hypothesis that the obtaining of prior permission of the Government under r. 17 was a condition precedent for the maintainability of a suit for damages. It also manifestly erred in its view that the speech delivered by respondent no. 1 at the function was in his official capacity as the Commissioner of Archives & Historical Research and therefore H fore the intended suit fell within the ambit of r. 17 of the Rules in-

asmuch as it was a suit for the vindication of an official act. We are afraid, it is difficult to sustain the judgment of the Division Bench.

In exercise of the powers conferred by sub-s. (1) of s. 3 of the All India Services Act, 1951, the Central Government after consultation with the Government of the States concerned framed the All India Services (Conduct) Rules. The Rules are a complete code in itself, obviously designed to frame a Code of Conduct for the members of the Service to ensure absolute integrity and devotion to duty and responsibility, in order that there is a fearless and impartial civil service in existence in the country. They form the bullwork of the executive power of the Union and the States and also form the instrumentality through which such powers have to be exercised. The key provision is the one contained in r. 3 which is of spinal importance and reads:-

“3. General—(1) Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service.

(2) Every member of the Service shall take all possible steps to ensure integrity of, and devotion to duty by, all Government servants for the time being under his control and authority.

(3) (i) No member of the Service shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.

(ii) The direction of the official superior shall ordinarily be in writing. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.

(iii) A member of the Service who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible and in such case, it shall be the duty of the official superior to confirm the direction in writing.

A Explanation:-Nothing in clause (1) of sub-rule (3) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

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After laying down a rigorous code by framing r. 3 to ensure that members of such service discharge their duties and functions with absolute integrity and do nothing which is unbecoming of a member of the Service, the Central Government has provided by rr. 4 to 20 the various constraints under which the members of the Service must function. These rules necessarily form part of their conditions of service under sub-s. (1) of s. 3 of the All India Services Act. Rule 4 places a restraint on the use of position or influence to secure directly or indirectly employment of near relations in a private organisation, r. 5 on taking part in politics and contesting elections, r. 6 on having connection with the mass media, the press or the radio, r. 7 on engaging in criticism of Government, r. 8 on giving evidence before any committee, person or other authority except with the previous sanction of the Government, and where such sanction has been accorded, on giving evidence criticising the policy or any action of the Government, r. 9 on unauthorised communication of information, r. 10 on asking for or accepting contributions to or raising of public subscription, r. 11 on accepting gifts, r. 11A on giving or taking of dowry, r. 12 on taking part in public demonstration, r. 13 on private trade or employment, r. 14 on investment, lending and borrowing, r. 15 on insolvency and habitual indebtedness, r. 16 on acquisition of property, movable or immovable, r. 17 on having recourse to any Court or the press for the vindication of an official act or character, r. 18 on canvassing for others, r. 19 on taking a second spouse and r. 20 on consumption of intoxicating drinks and drugs.

A close analysis of these Rules clearly brings out that the provision contained in r. 17 is nothing but a restraint on a member of the Service. Rule 17 of the Rules read with the Explanation thereto provides as follows;

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"17. Vindication of acts and character of members of the Service—No member of the Service shall, except with the previous sanction of the Government have recourse to any court or to the press for the vindication of official act which has been the subject matter of adverse criticism or attack of a defamatory character.

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Explanation—Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity. Provided that he shall submit a report to the Government regarding such action.”

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According to its plain terms, r. 17 is in the nature of a restraint on a member of the All India Services from bringing a suit for damages for defamation for an act done in the exercise of his official duties as a public servant or from going to the press in vindication of his official act or character. Explanation to r. 17 seeks to restrict the scope and effect of the restraint placed by r. 17. No member of the Service is prohibited from vindicating his private character for any act done by him in his private capacity. Proviso thereto however casts on him a duty to report to the Government regarding such action.

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Analysing the provision of r. 17 Sri Asoke Sen, learned counsel for the appellants contends that to attract r. 17 three conditions must be fulfilled, namely: (1) The intending plaintiff must be a member of the Service. (2) The suit must be for the vindication of his official act or character. (3) The official act must be the subject of a defamatory statement. According to the learned counsel, though two of the conditions are fulfilled, namely: (1) that respondent no. 1 was a member of the Service and (2) the subject matter viz. the statement made by respondent no. 2 and alleged to be of a defamatory character was made by him in his official capacity as the Chief Secretary, there was non-fulfilment of the third condition. He rightly urges that the speech delivered by respondent no. 1 criticising the authenticity of the time capsule was merely an expression of opinion on his private capacity. In substance, the contention is that r. 17 read with the Explanation thereto clearly places such private acts outside the purview of the restraint placed by r. 17.

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The contention to the contrary by respondent no. 1 Thiru Badrinath was that it was not open to the appellants to say that r. 17 was not attracted and he drew our attention to the concession made by the learned Advocate General as reflected in the judgment of the learned Single Judge:

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“The learned Advocate General also stated that the act complained of was an official act and, therefore, the intended suit was to vindicate an official act which was the subject matter of a defamatory criticism. Therefore, we

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A            have to proceed on the basis that the criticism which is complained of as defamatory related to an official act of the petitioner.”

In view of this concession, he contends that it is now not open to the appellants to say that r. 17 was not attracted.

B            In dealing with these contentions, it is rather pertinent to observe that the learned Single Judge did not record a finding that r. 17 of the Rules was not attracted in the facts and circumstances of the case. After setting out the provision contained in r. 17, he observes that the requirement of r. 17 are that (i) the act which has been the subject matter of adverse criticism should be an official act and (ii) the criticism of the attack must be defamatory in character. We are entirely in agreement with the view expressed by the learned Single Judge. No construction other than the one reached by him is possible.

C            During the course of his judgment, the learned Single Judge adverts to paragraph 17 of the writ petition where respondent no. 1 has averred that his intended suit was to vindicate his private character and not to vindicate any official act. The case of respondent no. 1 therefore throughout has been that r. 17 of the Rules was not attracted to the suit and indeed he goes on to aver that he was entitled to file a suit even without the permission of the Government under r. 17. However, he goes on to say that if a suit were to be filed it might land him into trouble in that disciplinary proceedings might be taken against him for having instituted a suit without previous permission of the Government. On the assumption that such sanction was necessary under r. 17, he moved the High Court for grant of an appropriate writ under Art. 226 of the Constitution, apparently by way of *ex abundanti cautela*. The learned Single Judge did not deal with the scope and ambit of r. 17 in view of the concession made by the learned Advocate General.

D            We have no manner of doubt that the appellants are not bound by the concession made by the learned Advocate General before the learned Single Judge. It is unfortunate that the State Government was not properly advised at the earlier stages of the proceedings in insisting upon the view that such permission was required under r. 17 and that it was justified in refusing to grant the permission prayed for. The concession made by the learned Advocate General being on a matter of law is not binding. That apart, Sri Ashoke Sen, learned counsel for the appellants has very fairly accepted the point of view put forth by respondent no. 1 in the writ petition that no such permission was required.

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In the premises, the decision of the Division Bench appealed from suffers from a serious infirmity. In the instant case, respondent no. 1 Thiru Badrinath made a speech incidentally at a time when he was holding the post of the Commissioner of Archives & Historical Research, at a function organised by the History Association of the Presidency College, Madras. He was invited to make a speech on the occasion presumably for his attainments in the field. But the speech delivered by him on the occasion could not be treated to be an official act of his and therefore the suit brought by him against respondent no. 2 Thiru V. Karthikeyan, the then Chief Secretary of Tamil Nadu could not be treated to be a suit for the vindication of his official act. It is common knowledge that persons of erudition and eminence are often times asked to grace such occasions or make a speech and when they do so, undoubtedly they give expression to their personal views on various subjects. By no stretch of imagination can it be said that while doing so they act in the discharge of their official duties merely because they happen to hold public office.

At the end of the day, we wish to mention that Thiru Badrinath stated before us that he had filed the suit in the High Court for damages for defamation against respondent no. 2 Thiru V. Karthikeyan without waiting for the prior permission of the State Government under r. 17 of the Rules and that the suit was filed before the expiry of the period of limitation of one year as provided for by Art. 75 of the Limitation Act, 1963. He further stated that the Registry of the High Court however returned the plaint with the endorsement that the same be presented after the decision in the writ petition. He drew our attention to the averment in paragraph 22 of his affidavit-in-reply to the effect:

“I respectfully submit that, at the time I had filed W.P. No. 979/1978 against GO dated the 7th February, 1978, I had formally presented to the Registry of the Madras High Court a civil suit for defamation against the Chief Secretary. I was advised to do this in order to prevent the time limit for such suits from expiring, should the decision in the writ petition be that, the defamatory attack on me by Shri Karthikeyan being of a personal kind I was covered by the proviso in Rule 17 and would not, therefore, require government sanction under Rule 17. Quite correctly, after a note being made of the date on which the suit was presented, it was returned to me, saying that it would have to wait for a decision in the writ petition. Following the judg-

A           ment in the writ appeal, setting aside the decision in W.P. 979/1978, I have been waiting for government sanction.”

B           It also transpires that the suit was filed by respondent no. 1 without serving a notice as required under s. 80 of the Code of Civil Procedure, 1908. We refrain from expressing any opinion as to whether the return of the plaint for representation after the decision of the writ petition would save the running of the time. The questions whether the suit is barred by limitation or not, or whether the same was competent without a notice under s. 80 of the Code, are question to be determined by the High Court in the suit.

C           Accordingly, the appeals must succeed and are allowed. The judgment and order passed by the Division Bench of the High Court are set aside and that of the learned Single Judge dismissing the writ petition restored. The High Court will now proceed with the suit brought by respondent no. 1 in accordance with law. The rights and contentions of the parties are left open.

D           There shall be no order as to costs.

H.L.C.

Appeals allowed.