V. RAMANA

v.

A.P.S.R.T.C. AND ORS.

SEPTEMBER 5, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963—Appellant removed from service due to failure to perform duties as a conductor—High Court upheld removal from service—On appeal Held, scope of interference with quantum of punishment cannot be a routine matter—No interference with administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court—Scope of judicial review is limited to the deficiency in decision-making process and not the decision—Industrial Disputes Act, 1947—Section 11-A.

The appellant was removed from service as he had failed to perform his duties as a conductor, while collecting and depositing the correct fare. The said order was challenged by filing a writ petition in the High Court. The matter was referred to a larger Bench, which upheld the removal of the petitioner. Hence this appeal.

Appellant contended that the High Court ought to have considered the question of quantum of punishment by applying the principles of Section 11-A of Industrial Disputes Act, 1947; and that there were minor lapses involving a small amount, which should have also been considered.

Respondent contended that punishment of removal was proper as the petitioner was responsible to collect and deposit the correct fare as conductor; and that a person guilty of such breach of trust should be imposed punishment or removal from service.

Dismissing the appeal, the Court

HELD : 1. The scope of interference with quantum of punishment is well settled and such interference cannot be a routine matter. [1152-F]

A *Regional Manager, RSRTC* v. *Ghanshyam Sharma,* **[2002] 10 SCC 330, followed.**

Karnataka State Road Transport Corporation v. *B.S. Hullikatti,* **[2002] 1 SCR 487;** *Regional Manager,* **U.P.S.R.T.C.** *Etewha & Ors.* v. *Hoti Lal and* B *Anr.,* **[2003] 3 SCC 605;** *Om Kumar and Ors.* v. *Union of India,* **[2001] 2 SCC 386;** *Union of India and Anr.* v. *G. Ganayutham,* **[1997] 7 SCC 463 and** *B.C. Chaturvedi* v. *Union of India,* **[1995] 6 SCC 749, relied on.**

Wednesbury **case (1948) 1 KB 223;** *Council for Civil Srvices Union* v. C *Minister of Civil Service,* **(1983) 1 AC 768, referred to.**

2. There should be no interference with the administrator's decision unless it was illogical or suffers from procedural impopriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. The Court would not go into the correctness D **of the choice made by the administrator open to him and it should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decison. [1159-G, H]**

E *Wednesbury* **case (1948) 1 KB 223, referred to.**

3. Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. To shorten litigation it may, in exceptional F **and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed was shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed. [1160-A, B]**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9904 of 2003.

From the Judgment and Order dated 14.8.2001 of the Andhra Pradesh High Court in W.P. No. 4968 of 2000.

H T.N. Rao and D. Mahesh Babu for the Appellant.

G. Ramakrishna Prasad, K.P. Kylashanatha Pillai and Mohd. Wasay Khan for the Respondents. A

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Challenge in this appeal is to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. B

The factual background is essentially as follows: C

The appellant was working as a Conductor in the organization of the Andhra Pradesh State Road Transport Corporation. Charges were made against him which related to not issuing tickets at the boarding point itself to the passengers who were in the bus, failure to collect fare and issue tickets to persons who were alighting at a particular destination and not properly maintaining records of tickets and fare. Explanation of the appellant was considered and was found to be not satisfactory and disciplinary proceedings were initiated. The Enquiry Officer found him guilty of the charges levelled and after giving him opportunity of hearing as regards the quantum of punishment, order of removal from service was passed. D E

Questioning correctness of the said order, writ petition was filed. Learned Single Judge before whom the matter was placed held that there was some divergence of view in the judgments of learned Single Judges and, therefore, referred the matter to a larger Bench. The reference was as regards the effect of acquittal in the criminal case and smallness of the amount involved. The High Court by the impugned judgment held that the acquittal of the case was really of no consequence and small amount of discrepancy was equally inconsequential. F

In support of the appeal learned counsel for the appellant submitted that the High Court should have considered the question of quantum of punishment by applying the principles of Section 11-A of Industrial Disputes Act, 1947 (in short the 'Act'). It was further submitted there were minor lapses and smallness of the amount has not been considered in the proper perspective and order of termination of service should not have been passed. Learned counsel for the respondent-Corporation supported the order of the Tribunal G H

A and judgment of the High Court. In *Karnataka State Road Transport Corporation* v. *B.S. Hullikatti,* JT (2001) 2 SC 72, it was held that misconduct in such cases where the bus conductor either had not issued tickets to a large number of passengers or had issued tickets of lower denomination, punishment of removal is proper. It is the responsibility of the conductors to collect correct B fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not C collecting fare from persons who had already travelled were in violation of various Regulations contained in The Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short 'Regulations'). In the *Karnataka State Road Transport* case (supra) it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on D checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three Judge Bench in *Regional Manager, RSRTC* v. *Ghanshyam Sharma,* (2002) 1 LLJ 234, where it was E additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service.

F The principle was reiterated in *Regional Manager, U.P.S.R.T.C. Etawha and Ors.* v. *Hoti Lal and Anr.,* JT (2003) 2 SC 27.

The scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.
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Lord Greene said in 1948 in the famous Wednesbury case (1948) 1 KB 223 that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was H satisfied, namely the order was contrary to law, or relevant factors were not

considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council for Civil Services Union* v. *Minister of Civil Service,* (1983) 1 AC 768 (called the CCSU case) summarized the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

In *Om Kumar and Ors.* v. *Union of India,* [2001] 2 SCC 386, this Court observed, *inter alia,* as follows:

> "The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "proportionality" to legislative action since 1950, as stated in detail below.
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> By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.
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A The development of the principle of "strict scrutiny" or "proportionality" in administrative law in England is, however, recent. Administrative action was traditionally being tested on Wednesbury grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared B invalid in several cases applying the principle of "strict scrutiny". In the case of these freedoms, Wednesbury principles are no longer applied. The courts in England could not expressly apply proportionality in the absence of the convention but tried to safeguard the rights zealously by treating the said rights as basic to the common law and the courts then applied the strict scrutiny test. In the C Spycatcher case *Attorney General* v. *Guardian Newspapers Ltd.,* (No.2) (1990) 1 AC 109 (at pp. 283-284), Lord Goff stated that there was no inconsistency between the convention and the common law. In *Derbyshire County Council* v. *Times Newspapers Ltd.,* (1993) AC 534, Lord Keith treated freedom of expression as part of common D law. Recently, in *R.* v. *Secy. Of State for Home Deptt., ex p. Simms,* [1999] 3 All ER 400 (HL), the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the common law. Lord Hobhouse held that the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental E human rights was re-emphasised in *R.* v. *Lord Saville ex p,* [1999] 4 All ER 360 (CA), at pp.870,872). In all these cases, the English Courts applied the "strict scrutiny" test rather than describe the test as one of "proportionality". But, in any event, in respect of these rights "Wednesbury" rule has ceased to apply.

F However, the principle of "strict scrutiny" or "proportionality" and primary review came to be explained in *R.* v. *Secy. of State for the Home Deptt. ex p Brind,* (1991) 1 AC 696. That case related to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain G matters through persons who represented organizations which were prescribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organizations. It did not however, for example, preclude the broadcasting by such persons through the H medium of a film, provided there was a "voice-over" account,

paraphrasing what they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed that the Convention rights were not still expressly engrafted into English law but stated that freedom of expression was basic to the Common law and that, even in the absence of the Convention, English Courts could go into the question (see p. 748-49). A B

> ".....whether the Secretary of State, in the exercise of his discretion, could reasonably impose the restriction he has imposed on the broadcasting organisations"

and that the courts were C

> "not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public interest will be sufficient to justify it". D

Lord Templeman also said in the above case that the courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that "in terms of the Convention" any such interference must be both necessary and proportionate (*ibid* pp. 750-51). E

In the famous passage, the seeds of the principle of primary and secondary review by courts were planted in the administrative law by Lord Bridge in the *Brind* case (1991) 1 AC 696. Where Convention rights were in question the courts could exercise a right of primary review. However, the courts would exercise a right of secondary review based only on Wednesbury principles in cases not affecting the rights under the Convention. Adverting to cases where fundamental freedoms were not invoked and where administrative action was questioned, it was said that the courts were then confined only to a secondary review while the primary decision would be with the administrator. Lord Bridge explained the primary and secondary review as follows: F G

> "The primary judgment as to whether the particular competing public interest justifying the particular restriction H

A imposed falls to be made by the Secretary of State to whom Parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonably make the primary judgment."

B But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa [1974] 4 SCC 3 (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be C confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action D does not satisfy these rules, it is to be treated as arbitrary. In *G.B. Mahajan* v. *Jalgaon Municipal Council,* [1991] 3 SCC 91 at p. 111 Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In *Tata Cellular* v. *Union of India,* [1994] 6 SCC 651 at pp. 679-80), E *Indian Express Newspapers Bombay (P) Ltd.* v. *Union of India,* [1985] 1 SCC 641 at p.691), *Supreme Court Employees' Welfare Assn.* v. *Union of India,* [1989] 4 SCC 187 at p. 241 and *U.P. Financial Corpn.* v. *Gem Cap (India) (P) Ltd.,* [1993] 2 SCC 299 at p. 307 while judging whether the administrative action is "arbitrary" F under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a Wednesbury review always.

The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under G Article 14.

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Thus, from the above principles and decided cases, it must be H held that where an administrative decision relating to punishment in

disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In *B.C. Chaturvedi* v. *Union of India and Ors.*, [1995] 6 SCC 749, it was observed:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In *Union of India and Anr.* v. *G. Ganayutham,* [1997] 7 SCC 463, this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

"The current position of proportionality in administrative law in England and India can be summarized as follows:

A (1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the B framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not *bona fide*. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness C of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

D (2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are E the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC 514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English F courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the G English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

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(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain "*Ranjit Thakur* [1987] 4 SCC 611".

The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

A To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/ Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the B punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

In the above background the High Court's judgment does not suffer from any infirmity. The appeal is dismissed without any order as to costs.

C

A.Q. Appeal dismissed.