PETITIONER:
RADHEY SHYAM SHARMA

Vs.

RESPONDENT:
THE POST MASTER GENERAL CENTRAL CIRCLE NAGPUR

DATE OF JUDGMENT:
23/03/1964

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA
SIKRI, S.M.

CITATION:
1965 AIR 311 1964 SCR (7) 403

ACT:
Fundamental Right-Postal employee taking part in a demonstration in furtherance of the strike-Ordinance prohibiting strikes in any postal, telegraph or telephone service-Constitutioality of-Essential Services Maintenance Ordinance, No. 1 of 1960, ss. 3,4 and 5-Constitution of India, Arts. 19(1) (a), 19(1)(b).

HEADNOTE:
The petitioner was serving as an officiating Teleprinter Supervisor at Jaipur when the employees of the Posts and Telegraphs Department went on strike from the midnight of July 11, 1960, throughout India and there was a similar strike at Jaipur. The petitioner's case was that he was on duty that day from 12 noon to 8 p.m. and after his duty was over, he did not go home but went to the dormitory where he fell asleep as he was tired. On hearing some noise he woke up at 11-30 p.m. and wanted to go home but was arrested by the police under the Essential Services Maintenance Ordinance, No. 1 of 1960. The criminal charge was however withdrawn. On July 21, 1960, a chargesheet was served on the petitioner in the following terms:

> "That Shri Radhey Shyam Sharma I C/S Telegraphist, CTO Jaipur committed gross misconduct in that on the midnight of the 11th July, 1960, he took part in a demonstration in furtherance of the strike of the P. & T. Employees in violation of the orders dated 8-7-1960 issued by the Government of India under the 'Essential Services Maintenance Ordinance, 1960 (1 of 1960)' prohibiting strikes in any Postal, telegraph or telephone service".

The enquiry officer found him guilty of the charge and ordered that his pay should be reduced in the time scale by three stage,% for a period of two years and on restoration the period of reduction was not to operate to postpone his future increments. 0n appeal, the Director General considered the whole matter on merits and rejected the

appeal. In this Court it was urged that the punishment imposed upon the petitioner was violative of his fundamental rights under Arts. 19(1)(a) and (b), reliance being placed on two cases of this court in Kameshwar Prasad v. State of Bihar and O. K. Ghosh v. E. X. Joseph; that ss. 3, 4 and 5 of the Ordinance were ultra-vires, as they contravened Art. 19(1.)(a) and (b) and that in any case there was no evidence on which it could' be found that the charge against him had been proved.

Held: The provisions of the Ordinance in ss. 3, 4 and 5 did not violate the fundamental rights enshrined in Art. 19(1)(a) and (b). A perusal of Art. 19(1) shows that there is no fundamental right to strike, and all that the ordinance provided was with respect to any illegal strike as provided in the Ordinance. There was no provision in the Ordinance which in any way restricted those fundamental rights. It was not in dispute that Parliament had the competence to make a law in the terms of the Ordinance and therefore the President had also the power to promulgate, such an Ordinance.

404

The competence of the legislature therefore being not in dispute it cannot be held that the Ordinance violated the fundamental rights guaranteed under Art. 19(1)(a) and (b).

All India Bank Employees Association v. National Industrial Tribunal, [1962] 3 S.C.R. 269, referred to.

The two cases relied on by the petitioner have no relevance in connection with the charge in the present case. The punishment given to the petitioner cannot therefore be set aside on the ground that the charge was in violation of the fundamental rights guaranteed under Art. 19(1)(a) and (b).

Kameshwar Prasad v. State of Bihar, [1962] Supp. 3 S.C.R. 369 and O. K. Ghosh v. E. X. Joseph, [1963] Supp. 1 S.C.R. 789, held inapplicable.

If on the undisputed facts the authorities came to the conclusion that the petitioner acted in furtherance of the strike 'Which was to commence half an hour later and was thus guilty of gross misconduct, it could not be said that there was no evidence on which the authorities concerned could find the charge framed against the petititoner proved.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 208 of 1963Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

B. D. Sharma, for the petitioner.

S.V.Gupte, Additional Solicitor-General, S.P. Varma and R. H. Dhebar, for the respondent.

March 23, 1964. The Judgment of the Court was delivered by

WANCHOO, J.-This is a petition under Art. 32 of the Constitution. The petitioner was appointed as a Telegraphist by the Post Master General Nagpur in 1949. In July 1960. he was serving as an officiating Teleprinter Supervisor at Jaipur. The employees of the Posts and Telegraphs Department (hereinafter referred to as the Department) went on strike from the midnight of July 11, 1960 throughout India and there was a similar strike at Jaipur. The petitioner was on duty on that day from 12 noon to 8 p.m. He says that after his duty was over, he did not go home but went to the dormitory where he fell asleep as he was tired. At about 11-30 p.m. he woke up on hearing some noise and discovered that it was very late and then he wanted to go home. But as he came out, he was arrested by the police on

the ground that he was also one of the demonstrators, who were demonstrating outside in connection with the strike. The arrest was made under the Essential Services Maintenance Ordinance, No. 1 of 1960, (hereinafter referred to as the Ordinance). 'On July 13, the petitioner was suspended on the ground that a criminal charge was pending against him in a criminal court.

405

However, the criminal charge was withdrawn on July 18, 1960. On July 21, 1960, a charge-sheet was served on the petitioner in the following terms:-

> "That Shri Radhey Shyam Sharma I C/S Telegraphist, CTO Jaipur committed gross misconduct in that on the midnight of the 11th July 1960, he took part in a demonstration in furtherance of the strike of the P. & T. Employees in violation of the orders dated 8-7-1960 issued by the Government of India under the "Essential Services Maintenance Ordinance, 1960 (1 of 1960)" prohibiting strike in any postal, telegraph or telephone Service."

An inquiry was made in the matter by the Post Master General, Central Services Nagpur to whom it was transferred as the petitioner had been appointed by that officer. The enquiry officer found the petitioner guilty of the charge framed against him and thereupon a notice was issued to him to show cause why the penalty of reduction in the time scale by three stages for a period of two years affecting the future increments be not imposed upon him. Thereafter the Post Master General after taking into account the explanation submitted by the petitioner to the show cause notice ordered that the pay of the petitioner should be reduced in the time scale by three stages for a period of two years and on restoration the period of reduction was not to operate to postpone his future increments. Thereupon the petitioner filed an appeal to the Director General, Posts and Telegraphs. The Director General directed further evidence to be taken on certain lines before deciding the appeal. However, no further evidence was given on behalf of the Department and the matter was re-submitted to the Director General as it was Finally, the Director General considered the whole matter on the merits and rejected the appeal.

The present petition is a sequel to the order of the Director General, and the petitioner contends that the punishment imposed upon him is violative of his fundamental rights under Arts. 19(1)(a) and 19 (1) (b) and should be quashed. Reliance is placed on his behalf on two cases of this Court in Kameshwar Prasad v. State of Bihar,(1) and O. K. Ghosh v. E. X. Joseph(2), Further it is contended that ss. 3, 4 and 5 of the Ordinance are ultra vires, as they contravene sub-clauses (a) and (b) of Art. 19 (1). Lastly, it is urged that in any case there was no evidence on which it could be found that the charge against the petitioner had been proved.

(1) [1962] Supp. 3 S.C.R. 369.
(2) [1963]. Supp. 1 S.C.R. 789.

406

The petition has been opposed on behalf of the Union of India and it is urged that the Ordinance is perfectly constitutional and does not violate any fundamental rights. It is further urged that the two cases relied upon by the petitioner are of no assistance to him, as they were concerned with R.4-A and Rule 4-B of the Central Civil

Services (Conduct) Rules, 1955. Lastly it is urged that there was evidence on which the authorities concerned could find the charge proved against the petitioner.

The first question that arises is whether ss.3, 4 and 5 of the Ordinance are violative of any fundamental rights enshrined in the Constitution. The Ordinance as its name shows was passed in order that essential services may be maintained. Its necessity had arisen because of a threat of strike inter alia by the employees of the Department. Among "Essential Service" as defined in s. 2 (1) is included the postal, telegraph or telephone service. Section 3 of the Ordinance provides that "if the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in any essential service specified in the Order". Further upon the issue of such an order no person employed in any essential service to which the order relates shall go or remain on strike; and any strike declared or commenced, whether before or after the issue of the order, by persons employed in any such service, shall be illegal. Section 4 provides that any person who commences a strike which is illegal under the Ordinance or goes or remains on or otherwise takes part in, any such strike shall be punished with imprisonment. Section 5 provides that any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under the Ordinance shall be punishable with imprisonment.

The constitutionality of these sections is attacked on the ground that they violate the fundamental rights guaranteed by cls. (a) and (b) of Art. 19 (1). Under cl. (1) (a) all citizens have the fundamental right to freedom of speech and expression and under cl. (1) (b) to assemble peaceably and without arms. Reasonable restrictions on these fundamental rights can be placed under the conditions provided in cls. (2) and (3) of Art. 19. We are of opinion that there is no force in the contentiton that these provisions of the Ordinance violate the fundamental rights enshrined in sub-cls. (a) and (b) of Art. 19(1). A perusal of Art. 19(1) shows that there is no fundamental right to strike, and all that the Ordinance provides is with respect to any illegal strike as provided in the Ordinance. This aspect has been elaborately discussed in the Bank Employees' case(1) and it has been held that there is no fundamental right to strike

(1) [1962] 3 S.C.R. 269.

407

(see All India Bank Employees' Association V. National Industrial Tribunal(1)). There is no provision in the Ordinance which in any way restricts freedom of speech and expression, nor is there any provision therein which restricts any one from assembling peaceably and without arms. The Ordinance thus has nothing to do with restricting the fundamental rights enshrined in sub-cls. (a) and (b) of Art. 19(1), and there is therefore no necessity of even considering whether the provisions of the Ordinance can be justified under cls. (2) and (3) of Art. 19. It is not disputed that Parliament had the competence to make a law in the terms of the Ordinance and therefore the President had also the power to promulgate such an Ordinance. The competence of the legislature therefore being not in dispute we fail to see how the Ordinance can violate the fundamental rights guaranteed under sub-cls (a) and (b) of Art. 19(1) for there is no provision in it which in any way restricts those fundamental rights.

Learned counsel for the petitioner in this connection relies

on two cases of this Court to which reference has already been made. Kameshwar Prasad's case (2) related to R. 4-A of the Bihar Government Servants' Conduct Rules, 1956, which provided that no government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service. This Court held in that case that R-4-A insofar as it prohibited any form of demonstration, be it however innocent or however incapable of causing a breach of public tranquility was violative of Arts. 19(1) (a) and 19(1) (b) of the Constitution. This Court also held that insofar as that rule prohibited a strike it was good, since there was no fundamental right to resort to strike. In O. K. Ghosh's case(3) this Court was concerned with r. 4-A and r. 4-B of the Central Civil Services (Conduct) Rules, 1955, and following the decision in Kameshwar Prasad's case(4), 4-A was struck down in part so far as it related to demonstrations and r. 4-B was also held to be invalid. That case did not deal with the Ordinance at all and the charge in that case did not seem to have been in the same terms as the charge in the present case. No argument appears to have been urged either in the High Court or before this Court about the validity of the Ordinance or about the validity of the impugned order in relation to the Ordinance or the illegal character of the strike. In the circumstances that case is also of no assistance to the petitioner and there was nothing decided there which would in any way affect the validity of the provisions of the Ordinance. We are therefore of opinion that the Ordinance is valid.

(1) [1962] 3 S.C.R. 269, 292.(2)
(2) [1962] Supp. 3 S.C.R. 369.
(3) [1963] Supp. 1 S.C.R. 789.

408

We have already set out the charge framed against the petitioner. it will be seen that the charge is based entirely on the Ordinance and has no connection with rr. 4-A and 4-B which were considered in the O.K. Ghosh's case(1). The petitioner is charged with gross misconduct on the ground that on the midnight of July 11, 1960, he took part in a demonstration in furtherance of the strike of the employees of the Department in violation of the order of July 8, 1960. It is not disputed that on July 8, 1960, the Central Government had issued an order under s. 3 of the Ordinance prohibiting any strike in the Department. The strike therefore that started on the midnight of July 11, 1960 was an illegal strike in view of s. 3 (4)(b) of the Ordinance. Section 5 of the Ordinance provides inter alia that any person who acts in furtherance of a strike which is illegal is punishable thereunder. The charge against the petitioner was that he had acted in furtherance of the strike which was to commence on the midnight of July 11, 1960 and was therefore guilty of gross misconduct. It is this charge of gross misconduct which has been found to be proved against the petitioner and which has led to the punishment inflicted on him. This charge as already indicated has nothing to do with r. 4-A and r. 4-B and therefore the two cases on which the petitioner relies have no relevance in connection with this charge. The punishment given to the petitioner cannot therefore be set aside on the ground that the charge was in violation of the fundamental rights guaranteed under sub-cls. (a) and (b) of Art. 19(1), which deal with freedom of speech and expression and the right to assemble peaceably and without arms.. The charge does not deal with these two matters at all. On the other hand it deals with acting in furtherance of the illegal

strike which started on the midnight of July 11, 1960, and the petitioner was charged with gross misconduct inasmuch as he acted in furtherance of the illegal strike on July 11, 1960 after the strike had been prohibited by the Central Government by order dated July 8, 1962. Whether the "acting" in furtherance of the strike took the form of speeches or demonstrations would make no difference. In either case it can be said that there is a violation of Art. 19 (1) (a).

The only question that remains for consideration therefore is whether the petitioner's contention that there was no evidence at all on which the authorities concerned could find the petitioner guilty of the charge is correct. So far as that is concerned, the authorities had the following undisputed facts before them: -

(1) The petitioner was the Secretary of the local union of the employees of the Department;

(1) [1963] Supp. 1 S.C.R. 789.

409

(2) On that day the petitioner's duty finished at 8 p.m. and he should have normally gone home; but he stayed on in the dormitory till 11-30 p.m. which was just half an hour before the strike was to commence;

(3) The demonstration was held in connection with the strike by the employees of the Department at 11-30 p.m. just half an hour before the strike was to commence;

(4) The petitioner took part in that demonstration and was actually arrested amongst the demonstrators.

If on these undisputed facts the authorities came to the conclusion that the petitioner acted in furtherance of the strike which was to commence half an hour later and was thus guilty of gross misconduct it cannot in our opinion be said that there was no evidence on which the authorities concerned could find the charge framed against the petitioner proved. -The contention therefore that there was no evidence on which the authorities concerned could find the charge proved must-fail.

We therefore dismiss the petition. In the circumstances ,of this case we pass no order as to costs.

Petition dismissed.

410