

B. Aswartha Reddy and ors. Vs. State of Andhra Pradesh Represented by the Secretary General Administration (Home) Dept., Hyderabad and ors.

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Court : Andhra Pradesh

Decided On : Feb-23-1965

Reported in : AIR1966AP204; 1966CriLJ741

Judge : P. Satyanarayana Raju, C.J. and ;Chandrasekhara Sastry, J.

Acts : [Police Act, 1861](#) - Sections 15, 15(1), 15(3) and 15(5); [Constitution of India](#) - Article 14

Appeal No. : Writ Appeal No. 139 of 1964 and W. Petn. No. 1535 of 1964

Appellant : B. Aswartha Reddy and ors.

Respondent : State of Andhra Pradesh Represented by the Secretary General Administration (Home) Dept., Hyderabad

Advocate for Def. : P. Ramachandra Reddy, 3rd Govt. Pleader

Advocate for Pet/Ap. : C. Kulasekharareddy, ;D. Suryanarayana Raju, ;V. Rajagopala Reddy, ;D. Prasanna Kumari and ;O.A. Reddy, Advs.

Disposition : Petition allowed

Judgement :

Chandrasekhara Sastry, J.

1. In this is appeal and the petition, the validity of a proclamation made under Section 15 of the Police AL-I (Act V of 1861.) so far as it relates to the apportionment and exemptions made under Sub Section (3), (4) and (5) of Section 15 of the said Ad is challenged as offending the fundamental right guaranteed under Article 14 of the [Constitution of India](#). The main facts that led to the finding of this appeal and the petition are the same There were two factions in the village of Narayanareddipalli. Tadipatri taluk. Anantapur District. The Station House Officer. Muchukota put up security orders M. C. Nos, 15/63 and 16/63 on the file of the Sub Divisional Magistrate, Anantapur, against the members belonging to the two factions. The appellants in the appeal seven in number, were respondents 3 to 7, 9 and 11 in M. C. 15/63. The petitioners in W. P. No. 1535/64 were also respondents in the said case. There were in all 38 respondents in M. C, 15/63. It was alleged against the appellants and the other respondents in M. C. 15/63 that they belong to the party of Thollamadugu Narayana Reddi, who is the leader of one of the factions in Narayanareddipalli village and who is the 1st petitioner in W. P. No. 1535/64. The proceedings against the seven appellants in the Writ Appeal and two others were separated and enquired into as M. C. 33/63 on the file of the Sub Divisional Magistrate, Anantapur and ultimately, all of them were discharged under Section 119 Cr. P. C. The other respondents in M. C. 15/63 gave security for keeping the peace. The persons belonging to the opposite party were the respondents in M. C. 16/63. It is alleged in the affidavit filed in support of Writ Petition No. 1630/64 out of which this writ appeal arises that the appellants have no part and are not responsible for the disturbed conditions in the village and yet the Government have unjustly and arbitrarily made them liable for payment of cost of the additional Police Force, while exempting all the factionists in M. C. 16/63 on the file of the Sub-Divisional Magistrate. Anantapur. In the counter-affidavit filed in this appeal, it is admitted that the appellants were discharged; but it is suggested that this was due to the fact that the only witness was the Head-Constable, who gave the first report and that it was not possible in factious village to get any independent evidence. It is alleged that the appellants are strong supporters of T. Narayanareddi. It is also stated that Vykuntam Chinna Narayanareddi. the leader of the opposite party and Vykuntam Venkata Subbaiah belonging to the same

party were murdered on 18-9-1968, the cases relating (hereto being Crime Nos. 43 and 44 of 1963 under Sections 147, 148, 324 and 302 I. P. C., read with Section 25(1) of the Indian Arms Act. But it is admitted in this counter-affidavit that the appellants in this appeal are not involved in the murder cases. But it is asserted that, since the appellants have participated in the incidents, which led to the filing of the security cases, M. C. No.s. 15 and 16 of 1963, they are active factionists belonging to the party of T. Narayanareddi. In paragraph 4 of this counter-affidavit, it is admitted that it is a fact that punitive tax is being collected from the partisans belonging to the party of T. Narayanareddi, as the investigation into the cases disclosed that the party of T. Narayanareddi have again and again been the aggressors in the faction and have been responsible for the unrest in the area and that the other party, who have suffered three murders at the hands of T. Narayanareddi's party without retaliation, have not been responsible for the disturbed conditions that have made the imposition of the additional Police Force necessary. It is further stated that, since both the leaders of the opposite party, Vykuntam Chinna Narayanareddi and his brother-in-law, Vykuntam Venkata Subbaiah were murdered their party became weak and so has not been indulging in any acts of violence, and that aggressors and victims cannot be equated on the same level for imposition of punitive tax. It is on this ground that the imposition of punitive tax only on the persons, who are alleged to belong to the party headed by T. Narayanareddi is sought to be justified. It is common ground that the persons belonging to the opposite faction, who were respondents in M. C. 16/63 are exempted from payment of this punitive tax.

2. Writ Petition No. 1630/64 was heard by Gopalakrishnan Nair J. and was dismissed on 8-10-61. The main ground on which the Writ Petition was dismissed by the Learned Judge was that, unless this Court is able to take evidence and arrive at a finding of fact that the petitioners do not belong to one faction or the other, it will not be possible to grant relief to them and that this cannot properly be done in writ proceedings. The petitioners in W. P. No. 1630/64, therefore, filed this writ appeal.

3. Nine of the other respondents in M. C. 15/63, who are alleged to belong to the party headed by T. Narayanareddi, are the petitioners in W. P. No. 1535/64. The

main ground on which this writ petition was tiled was that the petitioner's group alone was singled out for the levy and collection of the punitive tax, while the persons belonging to the opposite group and who were involved in as many as five cases in the year 1963 causing much unrest in the village by their acts of violence, are exempted. Thus, the Government discriminated between the persons alleged to belong to the party of T. Narayanareddi and the persons belonging to the opposite party. The manner in which the power of exemption is exercised by the Government, is, therefore, an abuse of the power and is mala fide. In this Writ Petition, the Government filed a counter-affidavit, sworn to by Sri P. D. Lakshminarayana, Assistant Secretary to Government, General Administration Department. The history of the factions between the two parties, one headed by T. Narayanareddi and the other by Vykuntam Chinna Narayanareddi is traced. It is stated that the proceedings against the party of Vykuntam Narayanareddi were pending in the Court of the Sub-Divisional Magistrate, Anantapur. In this counter-affidavit, also, it is pointed out, that Vykuntam Chinna Narayanareddi and Vykuntam Venkata Subbaiah were murdered. Thus it is alleged that despite all possible preventive measures being taken viz., stationing of local and reserve Police, action under Section 107 Cr. P. C. and frequent visits by Police Officers of all ranks, the factions have not abated, but that on the other hand, tension between the parties is very high and the partisans of T. Narayanareddi have committed double murder. It is asserted in this counter-affidavit also that the partymen of T. Narayanareddi have been the aggressors from the start of the faction in the village and have so far murdered three persons of the other party. It is for this reason that only the 38 persons belonging to the party of T. Narayanareddi are made liable for the punitive tax to meet the expenses incurred for the posting of the additional Police Force and all others including the persons belonging to the opposite party were exempted. The order of the Government, the validity of which is in question in these cases is as follows:-

'Quartering of Punitive Police In Narayana Reddipalle In Tadpatri Taluk Of Anantapur District.

Hyderabad. March 5, 1964.

No. 47.

The following Government order is published (G. O. Ms. No. 164 General Administration (General-A) 18th February, 1964. Read the following -

From the Collector of Anantapur Letter No. L. Dis. M. Cl. 5001/63, dated 20-12-1963, From the Inspector General Of Police, Letter No. Re. 826/R4/63, dated 30-M964. ORDER; Ms. No. 164 General Administration (General A) dated 18th February, 1964.

The Government sanction the addition of one Head Constable, and four Police Constables to the strength of Muchukota Police Station in Anantapur District for a period of twelve months from the date specified in the proclamation in paragraph 6 below to provide for the quartering of punitive police in Narayanareddipalli village in Tadapatri Taluk in Anantapur District. This force will be in addition to the District strength.

(2) The additional Head Constable and four Police Constables sanctioned in paragraph 1 above will be entitled to a uniform allowance of Rs. 2 (Rupees two only) each per month in addition to the usual allowance admissible to them under the rules in force.

(3) The expenditure on account of the additional Police Force sanctioned in paragraph 1 above, should be recovered from the persons (thirty eight in number) whose names are given in the annexure and/or from their families. The receipts & charges connected with the additional police force should be accounted for under the service head 'XIX Police' and '23b'. Police - Police Executive Force-A. District 'Police Force-Ordinary areas respectively.

(4) In exercise of the powers conferred by Section 15 of the [Police Act, 1861](#) (Central Act V of 1861), the Governor of Andhra Pradesh hereby exempts all the inhabitants of Narayanareddipalli village other than those referred to in paragraph 3 above from liability to bear the cost of the additional Police Force ordered to be stationed in the said village.

(5) The Collector of Anantapur should report to the Government through the Inspector-General of Police, Andhra Pradesh, Hyderabad sufficiently before 10-2-1965 regarding the condition of affairs in the village and the necessity for continuing or for reducing or for withdrawing the additional Police Force.

(6) The entire Government Order should be published in English in the next issue of the Andhra Pradesh Gazette. Collector of Anantapur is requested to give publicity to the Proclamation by tom-tom in the village of Narayanareddipalli before 29-2-1964 and he is also requested to see that the entire Government order is published immediately in English and Telugu in the Anantapur District Gazette,

PROCLAMATION.

Whereas the area comprising the village, Narayanareddipalli in Tadpatri taluk of Anantapur district, has been found to be in a disturbed state and whereas from the conduct of the inhabitants of the laid area, it has been found expedient to station an additional Police force therein, the Governor of Andhra Pradesh hereby declares under Section 15 of the [Police Act, 1861](#) (Central Act V of 1861), that for a period of twelve months from 1-3-1964 an additional police force consisting of one Head Constable and four police Constables shall be stationed in the said area, and that the cost of the said force so employed shall be borne by the inhabitants of that area according to such apportionment as may be made by the Magistrate of the District under Sub-section (4) of the said Section 15 and subject to such exemptions as may be ordered under Sub-section (3) of that Section.'

4. The names of 38 persons are given in the annexure. These 38 persons were respondents in M. C. 15/63. It is pointed out above that the case against the seven appellants and two others was separated and enquired into as M. C. 33/63 and that all of them were discharged. It is under Section 15 of the Police Act (V of 1861) that the order in question was made. The said Section is as follows:-

'15(1). It shall be lawful for the State Government by proclamation to be notified in the official Gazette, and in such other manner as the State Government shall direct to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such

area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector General of Police or other officer authorised by the State Government in this behalf, with the sanction of the State Government to employ any Police Force in addition to the ordinary fixed complement to be quartered in the areas specified in such proclamation as aforesaid.

(3) Subject to the provisions of Sub-section (5) of this Section, the cost of such additional Police Force shall be borne by the inhabitants of such areas described in the proclamation.

(4) The Magistrate of the District, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding Sub-section, Such apportionment shall be made according to the Magistrate's Judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the State Government by order to exempt any person or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under Subsection (1) of this Section shall state the period for which it is to remain in force, but It may be withdrawn at any time or continued from time to time for a further period or periods as the State Government may in each case think fit to direct.'

Sub-section

(1) of this Section makes it lawful for the State Government by proclamation to be notified in the official Gazette, and in such other manner as the State Government shall direct, to declare that any area subject to its authority has been found to be In a disturbed or dangerous state and that it is expedient to increase the number of Police. Sub-section

(2) provides that, on such a declaration, it shall be lawful for the Inspector General of Police or other officer authorised by the State Government in that behalf with the sanction of the State Government (to employ any Police Force in addition to the ordinary fixed complement to be quartered in that area. Sub-section

(3) provides that, subject to any exemption to be granted by the State Government under Sub-section (5), the cost of such additional Police Force shall be borne by the inhabitants of such areas described in the proclamation. The power to exempt any person from liability to bear the cost of additional Police Force is conferred on the State Government by Sub-section (5). Sub-section

(4) invests the Magistrate of the district with the power to apportion the cost among the inhabitants after such enquiry as he may deem necessary. The validity of this Section cannot be questioned and, in fact, is not questioned before us. That the area comprising the village of Narayanareddipalle, Tadipatri Taluk, Anantapur District is in a disturbed state cannot be doubted on the facts disclosed in the affidavits. It follows the declaration made by the Governor of Andhra Pradesh under Section 15(1) of the Police Act cannot be challenged as illegal and without jurisdiction and, in fact, has not been so challenged. But it is contended by the appellants, who were the petitioners in W. P. No. 1630/64 and the petitioners in W. P. 1535/64 that the order making only the respondents in M. C. 15/63, who are alleged to belong to the party of T. Narayanareddi, liable for the cost of the additional Police Force and exempting all others including those belonging to the opposite faction and who are the respondents in M. C. 16/63 is discriminatory and offends Article 14 of the Constitution of India. It is submitted by the learned Counsel for the appellants and the petitioners that the reason given in the counter-affidavits for this discrimination viz., the opposite party became weak and hence is exempted, is not a valid reason which can be justified under law, Further, there were several cases pending against the members of this opposite party which fact clearly shows that the order making only the persons belonging to the party of T. Narayanareddi liable to pay the cost of the additional Police Force is arbitrary and discriminatory and is not bona fide. It is also contended that the proclamation and the exemption are not in accord with Section 15 of the Police Act. Another special argument is also urged in the writ appeal which applies only to the appellants

therein and it will be referred to and considered separately when dealing with the particular facts of that case. Sub-section

(3) of Section 15 provides that the cost of additional Police Force shall be borne by the inhabitants of the area proclaimed to be in a disturbed or dangerous state under Sub-section (1). It follows that, on such a proclamation of the area being in a disturbed or dangerous state and an additional Police Force is quartered in that area, all the inhabitants of that area will be liable. But, it is open to the State Government by order to exempt any person or class or section of such inhabitants from liability to bear any portion of such cost. But a perusal of the order above quoted shows that it makes only the 38 persons mentioned therein liable for the cost of the additional Police Force at Narayanareddipalle village and exempts all others, thus reversing the procedure to be followed under Section

15. Therefore, there appears to be force in the contention of the learned counsel for the appellants and the petitioners that the notification is not in accordance with what is required under Section 15 of the Police Act.

5. On behalf of the appellants in the writ appeal, it is urged that they were all discharged in the security cases and it is also admitted that they were not implicated in the murder cases. As such, it is contended that the order of the Government making them liable to pay the cost of the additional Police Force is illegal and arbitrary. It is pointed out that the incidents referred to in the counter-affidavit were disbelieved by the Sub Divisional Magistrate so far as the appellants are concerned and that they were discharged. It is not even alleged that there is any other case pending against them. In support of this argument, reliance is placed upon certain observations in the decision in *Pratapsingh v. State of Rajasthan*, AIR 1955 Raj 5. In that case, by the notification in question therein, the Government exempted under Sub-section (5) of Section 15 of the Police Act, the Harijan and Muslim inhabitants of the area declared to be in a disturbed dangerous state from liability to bear any portion of the costs on account of the posting of the additional Police Force. Objection was taken to this notification on the ground that it offended Article 14 of the [Constitution of India](#). It was held that the exemption granted to Harijan and Muslim inhabitants because they were

Muslims or Harijans and therefore peaceful cannot stand as it offends against Article 15 of the Constitution. That decision was confirmed by the Supreme Court in *State of Rajasthan v. Pratap Singh*. : [1961]1SCR222 . The Supreme Court held that the exemption discriminated against the law-abiding members of the other communities and in favour of the Muslim and Harijan communities (assuming that every one of them was peace-loving and law-abiding) on the basis only of 'caste' or 'religion' and that the exemption was, therefore, contrary to Article 15(1) of the Constitution and was struck down.

6. The above decisions dealt with the case of discrimination on the ground of religion and caste. In the present case, the order is attacked on the ground of discrimination which is prohibited by Article 14 of the Constitution. In his order in M. C, 33/63 discharging the appellants, the Sub-Divisional Magistrate, Anantapur pointed out that the A. P. P. II on behalf of the prosecution represented that there was no case against the respondent therein, who are the appellants before us. It was also pointed out that there was no complaint against them by any of the villagers excepting the reports of the Head-Constable. Therefore, the allegation in the counter-affidavit in this appeal that the appellants had participated in the two instances referred to therein and, therefore, are made liable to bear the punitive tax, cannot be justified. It is admitted that they are not involved in the murder cases. There is no other material which would justify the Government's refusal to exempt the appellants under Sub-section (5) of Section 15. The reason given in the counter-affidavit for exempting the members of the opposite party under Sub-section (5) of Section 15 is stated to be that they have not been responsible for the disturbed conditions that have made the imposition of the punitive Police Force necessary, the scheme of the various sub-sections in Section 15 indicates that exemption should be, granted to such inhabitants or class or section of such inhabitants, who were not responsible for the conduct, which may have necessitated the increase in the Police Force. With regard to the seven appellants, there does not appear to be any other material, which would justify the Government in making them liable to pay up the cost of the additional Police Force.

7. The appeal is, therefore, allowed with costs and Rule Nisi is made absolute. Advocate's fee Rs. 100.

8. In Writ Petition No. 1535/64, there are 9 petitioners and they were some of the respondents in M. C. 15/63. These petitioners executed security bonds for keeping peace. It is not suggested before us that the petitioners shall not be made liable for the cost of the additional Police Force. But, it is argued by the learned counsel for the petitioners that the members of the opposite party were also involved in a number of cases and that their conduct also was responsible for the quartering of the additional Police Force in the area. But the Government, by the notification in question, exempted all of them from liability to bear the cost of additional Police Force. It is contended that the levy of punitive tax from one party alone is illegal and violates Article 14 of the [Constitution of India](#). Under sub-section (3) of Section 15, the cost of such additional Police Force shall be borne by the inhabitants of such areas described in the proclamation, and Sub-section (5) empowers the State Government by order to exempt any person or class or section of such inhabitants from liability to bear any portion of such cost. This power has to be exercised by the Government only in favour of such persons or class of persons whose conduct did not necessitate the quartering of the additional Police Force. But the persons belonging to the opposite party are admittedly involved in a number of cases which fact shows that they are indulging in acts of violence and as such, the notification exempting them from bearing the cost of the additional Police Force is discriminatory within the meaning of Article 14 of the Constitution. It is pointed out rightly that, if the members of the opposite party also, whose conduct is responsible for quartering the additional Police Force, are made to bear the cost of the same, the liability of the petitioners will be very much less. For these reasons, it is submitted that the respondents have to be restrained from collecting the punitive tax from the petitioners in pursuance of the notification in question. A Division Bench of this Court in a batch of Writ Petitions Nos. 520, 528, 547, 576, 581, 585 of 1962 and 342, 555 of 1963 (Andh Pra) while holding that the power to exempt is not an arbitrary power because the law provides that any persons or class or section of such inhabitants may be exempted from liability to bear any portion of such cost, because it may be that such persons are either not responsible for the disturbance or for any other reason, pointed out.

'If, however, in exercise of that power the State Government or any person authorised by it has in fact discriminated, such order is always liable to be

quashed.'

In the present case, the order of the Government making only the persons specified in the notification liable to bear the cost of the additional Police Force and exempting the members of the opposite party, though there are several cases pending against them, is discriminatory and offends Article 14 of the [Constitution of India](#).

9. The Writ Petition is, therefore, allowed and Rule, nisi is made absolute.

10. But it will be open to the Government to again consider the matter under clauses (4) and (5) of Section 15 of the Act and reapportion the cost of the additional Police Force amongst all the persons responsible for the quartering of Force in the area.

11. There will be no order as to costs in the writ petition.

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