

(2006) 04 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 33371 of 2005 and W.P.M.P. No's. 36340 and 40804 of 2005

A. Chinnasamy

APPELLANT

Vs

The District Collector, A. Sukumaran, I.A.S., District Collector,
A.K. Murugesan, M.L.A. and M. Arunachalam, Special Deputy
Tahsildar (Election)

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 MLJ 474

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : A.R.L. Sundaresan for A.L. Gandhimathi and S. Xavier Felix, for the Appellant; A.L. Somayaji, A.A.G. assisted by R. Vijayakumar, Government Advocate for respondents 1, 2 and 4 and Vijay Narayan for R. Parthiban, for 3rd respondent and Varadharajan, for Abudukumar Rajarathinam, Government Advocate (Crl. side), for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, petitioner seeks to quash the order of transfer dated 5.10.2005, insofar as the petitioner is concerned.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit are as follows.

(a) Petitioner, while working as Taluk Supply Officer, Attur, Salem District, a complaint was sent by one Kannan to the first respondent alleging

that one M.P.Rajendran is running a wholesale shop for selling rice and paddy in the name of Priya Traders at Attur, and is illegally transporting the

ration rice supplied to the fair price shops, to other states and also using the

name of the third respondent, who is his relation, for his illegal activities.

(b) On receipt of the complaint, the first respondent, through the District Supply Officer, forwarded the same to the petitioner and requested him to make an enquiry and send the report within 15 days. On receipt of the said request, petitioner conducted an elaborate enquiry and found that the complaint is true and sent a report to the Food Cell and a crime was registered against one Damodaran. The first respondent through the Tahsildar, Attur, informed the petitioner that on 5.10.2005 the Legislative Committee is having inspection in Salem District on 6.10.2005 and he has been appointed on duty with the VIPs coming to the meeting and in this regard he was directed to meet the Personal Assistant on 6.10.2005.

(c) In the meantime, the first respondent by his proceeding dated 5.10.2005 transferred the petitioner from Attur Salem District to Gangavalli Taluk Officer as Special Deputy Tahsildar (Elections). The said order of transfer, even though stated as "on administrative ground", according to the petitioner, it is only due to the influence and pressure of the third respondent. The said order of transfer is challenged in this writ petition only on the ground that due to mala fide intention and influence and pressure of the third respondent, second respondent has transferred the petitioner to the present post.

3. The respondents 1 and 2 are one and the same person and in the counter affidavit filed by them it is stated as follows,

...The District Supply Officer, Salem and the District Consumer Protection Officer in his letter No. Roc.71543/04/J5 dated 30.9.2005 has reported that several complaints were received against Thiru A. Chinnasamy, Taluk Supply Officer, Attur that he was demanding amount for the issue of Ration Card to the public and he also refused to give correct information to the public while public are approaching him regarding Public Distribution System and he has not maintained cordial relations with the public. The District Supply Officer, Salem has also requested to transfer him to some other place for the sake of public interest. Hence in the interest of public and on administrative ground Thiru A.Chinnasamy, formerly Taluk Supply Officer, Attur was transferred as Special Deputy Tahsildar (Election) Gangavalli at Taluk Office, Gangavalli in Collector's

Roc.130/2005(A7) dt:5.10.2005....

It is further stated with regard to mala fide against the third respondent as follows,

...The contention of the petitioner that he has been transferred due to the influence and pressure of 3rd respondent (M.L.A., Attur) to victimize him

for the steps taken against Thiru.Damodaran is an imaginary one and it is not correct. As stated in the Para 3 and 4 action has been taken in

Collector's Roc.54390/2005/(J3) and a criminal case No. 460/2005 has been registered by the Inspector, C.I.D. Civil Supplies, Salem against

Thiruvalargal Damodaran and Venkatesan for the transportation of ration rice and wheat on 27.05.2005. Subsequently Thiru R.Damodaran filed

writ petition No. 26135 of 2005 in Honourable High Court seeking for a direction to release to 273 Chippam of boiled and raw rice since on

28.7.2005 from the Tamilan Rice Mill at Ammampalayam. On this Honourable High Court directed the District Revenue Officer to release the 273

Chippam of boiled raw rice furnishing immovable property as security to the value of said Chippams and dispose writ petition. The value of rice is

called from the regional Manager, Tamil Nadu Civil Supplies Corporation, Salem addressed in Roc.5439 0/05/J3 dt: 6.10.2005 by District Supply

Officer, Salem. The report of the Regional Manager, Tamil Nadu Civil Supplies Corporation, Salem is awaited.

The respondents 1 and 2 in the counter affidavit further stated that the impugned order of transfer is not only against the petitioner, but against a

group of 17 persons, issued on administrative exigency and the averments made by the petitioner that the transfer order was made pursuant to the

pressure given by the third respondent is denied.

4. The third respondent filed a counter affidavit and denied the mala fides alleged against him by the petitioner. In paragraphs 8 and 11 of the

Counter, specific denial are made and the same are extracted hereunder;

8. The allegation is totally false and I crave leave and liberty of this Honourable Court to initiate appropriate proceedings against the petitioner for

defamation. I stoutly deny the fact that the said Damodaran has any connection with me and, in any event, I have absolutely no connection with any

of the activities that have been mentioned in the affidavit filed in support of the Writ Petition. I am not a necessary party in the writ petition and I

should be discharged from the present proceeding.

9. ...

10. ...

11. I further submit that after the admission of the present writ petition the petitioner has given a statement to Tamil Murasu dt.17-11-2005 Salem

Edition; Dinakaran, Dina Malar dt.18-11-2005-Chennai Edition and Kalai Kadhira dt.18-11-2005-Salem Edition to the effect that I have amassed

Rs. 20 crores through illegal transport of rice. This conduct of the petitioner has to be highly deprecated, especially since he is a Government

Servant governed by the Government Servants Conduct Rules. The petitioner has also made a false complaint that the Hon'ble High Court has

ordered a C.B.I. enquiry and has also issued notice to the Hon'ble Speaker of the State Legislative Assembly. The 3rd Respondent craves liberty

to take appropriate action against the petitioner for such defamatory statements.

On the above contentions, the third respondent requested to dismiss the writ petition.

5. The learned Senior Counsel for the petitioner reiterating the contentions raised in the affidavit submitted that only because of the report

submitted by the petitioner against the Damodaran, petitioner was transferred at the instance of the third respondent and hence prayed for quashing

the said order of transfer.

6. The learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the transfer is on administrative grounds and the

petitioner along with 16 others were transferred by a common order and there is no illegality in the order of transfer. It is also submitted that the

petitioner joined in the said post and no indulgence can be given on the vague averments made by the petitioner raising mala fides and the same is

intended only for the purpose of filing this writ petition.

7. The learned Senior Counsel appearing for the third respondent submitted that the third respondent has no connection with the petitioner and he

has not given any pressure to the first respondent to transfer the petitioner.

8. I have considered the rival submissions made by the respective counsels.

9. The impugned common order, transferring petitioner and 16 others is on public interest. Except the vague averments in the affidavit that the

petitioner was transferred due to the pressure given by the third respondent to the second respondent, no specific mala fide is alleged. The only incident stated to establish the mala fide is that he has enquired into a complaint given against one Damodaran and based on the enquiry a criminal case was initiated against the said Damodaran. How the third respondent is connected with the said Damodaran is not mentioned. It is well settled in law that while alleging mala fide, the same should be proved specifically and on the basis of vague averments of mala fide, the order of transfer is not entitled to be interfered with.

10. The learned Counsel for the third respondent cited a judgment of the Supreme Court reported in Indian Railway Construction Co. Ltd. Vs.

Ajay Kumar, to show that the burden of proof is heavy on one who alleges mala fide and the same must be discharged. It would be useful to

extract para 23 which reads as under;

23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of

its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is

obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be

done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been

acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established

only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which

preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from

proved facts. (See S. Pratap Singh Vs. The State of Punjab, . It cannot be overlooked that the burden of establishing mala fides is very heavy on

the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations

demand proof of a high order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, courts would be slow

to draw dubious inferences from incomplete facts placed before it by a party,

particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

In the said case, the Honourable Supreme Court taking note of the earlier decision held that bad faith or personal ill-will is not to be held

established except on clear proof thereof. Here in this case, petitioner has not established the allegation against the third respondent with proof.

11. In another judgment reported in *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, also it is held that

burden of establishing mala fides is very heavy on the person who alleges it and mere allegation is not enough. It is further held that specific

materials should be placed before the Court to prove mala fides.

12. The learned Additional Advocate General rightly contended that the impugned order of transfer is not in respect of the petitioner alone and it is

based on administrative reasons. The transfer is made along with 16 other persons and therefore no motive can be attributed against the second

respondent for ordering transfer of the petitioner. It is also to be noted that the petitioner has been transferred only to a nearby place and there is

no reduction of rank and hence the petitioner has not been affected in any manner. The petitioner being a Government Servant, is bound to be

transferred and he is duty bound to accept the transfer, as transfer is an incidence of service in Government Service.

13. The Honourable Supreme Court considered the power of the Court in the matter of transfer in the decision reported in 2004 (7) Sup 166

(*Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Ors.*). It is useful to extract paragraph 3 of the judgment for proper

understanding.

3. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide

or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray v. State of Orissa* 1995 (Suppl) 4 SCC 169.

Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (see *Union of*

India and Others Vs. S.L. Abbas, . Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the

order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In

Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, it was observed as follows:

No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his

choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an

incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown

to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals

normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for

that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position

was highlighted by this Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

Petitioner herein has failed to prove the allegation of mala fide against the third respondent, based on which this writ petition is filed.

14. No other point except mala fide is raised and the same having been held as not proved, the writ petition is dismissed. No costs.