

(1917) 09 MAD CK 0016
In the Madras High Court

A.T. Venkata Narayana Pillai

APPELLANT

Vs

V. Ponnusami Nadar and Others

RESPONDENT

Date of Decision : 12-09-1917

Acts Referred:

Religious Endowments Act, 1863 — Section 14

Citation : (1918) ILR (Mad) 357 : 43 Ind. Cas. 205 : (1918) 7 LW 85 : (1917) 33 MLJ 660

Judgement

1.This is an appeal from a decree of the Subordinate Judge of Kumbakonum dismissing the suit, brought by the plaintiff for a declaration that his

suspension from the office of temple trustee by the Kumbakonum Devasthanam Committee was illegal, and for damages. The decision as to the

legality of the suspension depends mainly in this case on the question whether the procedure adopted by the Committee can be supported What

happened was that, after the plaintiff had been given notice of some or all of the charges against him, the 2nd defendant a member of the

Committee drew up a report Ex. B 1, and forwarded copies of it to the other members of the Temple Committee proposing that the plaintiff and

some other trustees should be suspended until further orders. In it he stated that, though the subject had been or a long time before the meeting, it

had not been concluded. "" It is therefore sent in circulation. I request that instead of writing "meeting" in this you will write your opinion.

Defendants 1, 4 and 6 are proved to have assented to the course. The 5th defendant died after suit and defendants 7, 8 and 9 were not in office at

the date of suspension. The 3rd defendant on receipt of Ex, B 1, sent an answer Ex. C: in which he stated, ""It is not legal to take this step by

circulation, much less by taking individual opinions as you are now doing, The

procedure adopted is wrong from beginning to end. I request. you therefore to call a meeting for the purpose. "" Ignoring this request the 2nd defendant wrote to the plaintiff the letter Exhibit A 1, in which he stated that the plaintiff had been suspended for the reasons set forth in the accompanying proceedings order and asked him to hand over to another of the trustees. The proceedings Ex. A 1, recorded the opinion of the majority that the plaintiff should be suspended, and disclosed the fact that the matter had been dealt with in circulation. Now the Temple Committee is a statutory body to which the powers formerly exercised by the Board of Revenue under Regulation VII of 1817 have been transferred as regards certain temples by the Religious Endowments Act; and, these powers it may now be taken as settled include a power of suspending or dismissing the Temple Trustees for sufficient cause. It has however been held that in exercising these powers they are to a large extent in the position of a corporation and that their actions must be tried by the same tests. Now it is well settled that the ordinary way for bodies in the position of a corporation to transact the business is at a meeting, and, assuming that it is open to them to transact some of their business in circulation, I think they have no such power as regards matters such as suspension, or dismissal of free-hold officers under their superintendence as to which their authority must be strictly pursued. *Rex v. Taylor* (1694) 3 Salk 231. *Rex v. Sutton* (1711) 10 Mod. 74. *Thandavaraya Pittai v. Subbayyar* ILR (1899) M. 483. *Ponnambala Pillai (Died) and Another Vs. Muthu Chettiar and Others*, . Even if the matter could properly have been dealt with in circulation, that could only have been by consent of all the members and anyone of them would have had the right to insist on the matter being dealt with at a meeting, as the 3rd defendant endeavoured to do in this case. See the observations of Page Wood, V. C., in *Hallows v. Ferine* (1867) L.R. 3 Eq 520 which were approved by Sterling, J., in *re Great Northern Salt and Chemical Works* : *Ex parte Kennedy* (1889) 45 Ch. D. 472. Here there was not even what is Ordinarily known as circulation, as the 2nd defendant merely sent copies of his proposals to each of the other members and obtained their individual assents to his proposals. In these circumstances we are clearly of opinion that the action of the Committee in suspending the plaintiff was ultra vires.

2. It is then said that we ought to enquire whether there were valid grounds for suspending the plaintiff and if so to dismiss the suit. Certain

observations of Mr. Justice Shephard in *Seshadri Aiyangar v. Nataraja Aiyar* ILR (1898) M 179 were referred to, but these observations appear

to have been obiter and no authority is cited. There are similar observations by Mr. Justice Sundara Aiyar in *Seshadri Aiyangar v. Ranga Bhattar*

ILR (1911) M. 631. The case cited by him *The King v. Mayor etc. of London* (1787) 8 T. R. 209 is no authority that this is a good answer to a

suit, as in that case the Court merely refused to issue the discretionary writ of mandamus and observed that ""no case has been cited to show that

an assize will not lie for such an office as the present; or that he could not maintain an action for money had and received during his suspension.

Further the office with which Mr. Justice Sundara Aiyar was dealing was that of archaka and other considerations may possibly apply to it. In

Willis v. Gipps (1846) 5 Moore 379 the Privy Council recommended that an order of a motion made without due notice should be set aside

although they at the same time reported that there were sufficient grounds for making this order. We are therefore of opinion that it would not be a

good answer to the present suit to show that there were sufficient grounds for suspending the plaintiff. In this view it is unnecessary to consider the

further objection that the plaintiff was removed without due notice, as we have held that the action was ultra vires on the other ground.

3. As regards the liability of the defendants or some of them for damages, there can be no doubt that the decision of a Bench of three Judges sitting

on the Original Side in *Vijayaraghava v. Secretary of State for India in Council* ILR (1884) M. 466 is authority for the proposition that a person in

the enjoyment of a public office who is wrongfully removed is entitled to damages. In *Seshadri Aiyangar v. Nataraja Aiyar* ILR (1898) M 179. a

trustee who was illegally suspended recovered Rs. 1,000 against the Temple Committee, *Collins, C. J.*, being influenced by the fact that the

Committee were actuated by an indirect motive, the fact that the plaintiff was a *Vadagalai*. In *Thandavaraya Pillai v. Subbayar* ILR (1899) M.

483 the plaintiff recovered damages before the District Munsif, and to this extent the decree seems to have been reversed by the District Judge,

and the plaintiff did not appeal. As early as *Syed Amin Sahib v. Ibram Sahib* (1868) 4 M.H.C.R. 112 it seems to have been assumed that

damages might be recovered from a temple trustee for wrongful dismissal. On the other hand, there does not seem to be any instance of an action

of this kind having been successfully maintained in England. In the case of *Darby v. Cozens* ILR (1787) 552 already cited the suggested remedies

of the removed officer were an assize or an action for money had and received to his use during the period of suspension, and not an action against

the corporation for wrongfully suspending him, and in *Osgood v. Nelson* (1872) L.R. 5 H.L. 636 it was thought well for the removed officer to

proceed by action for money had and received against his successor. In *Harman v. Tappenden* (1801) 1 East 555 where a freeman of the

Corporation was alleged to have been illegally removed from his office, it was held that an action did not lie against individual Corporators for act

erroneously done by them in their corporate capacity, at least not without proof of malice. This case was relied on by Kelly, C. B. in *Mill v.*

Hawker (1874) L.R. 9 Ex. 809 who held that for a tort committed by a corporation it could only be sued as a body. On the other hand *Cleasby*

and *Piggott, BB.*, held that members of a Highway Board who exceeded their authority by ordering a trespass to the plaintiff's land were

individually liable In *Mill v. Hawker* (1875) L.R. 10 Ex. 92. *Blackburn, J.*, the same case in the Exchequer Chamber, said that the question

whether the corporators were liable was one of considerable importance and great difficulty. It would, he said, require time for consideration and

probably the decision would not be unanimous. Accordingly he declined to decide it at that stage, and it has not been decided since. It has

however long previously been ruled by the House of Lords in *Fergusson v. Kinnoull* (1842) 9 Cl. & F.251 that where the law imposes a duty on

any person or body of persons and they fail or neglect to perform that duty they are answerable in damages to those whom their failure or neglect

injures. The appeal was from Scotland, but the judgments proceeded on grounds common to the laws of England and Scotland as was expressly

stated, and thus contain general expressions which are rather in favour of extending liability of individual corporators at any rate to cases of excess

of jurisdiction such as the present. It is also to be observed that it has been held by the Judicial Committee on appeal from India in *Calder v. Halket*

(1839) 3 Moor P.C. 28 that even Judicial Acts at any rate of inferior courts are actionable in the absence of statutory provision if done wholly

without jurisdiction. Fergusson v. Kinnoull (1842) 9 C1. & F. 251 is also important because it lays down that it is only corporators who are parties

to the failure or neglect of duty who can be held answerable in damages. It is also clear that Section 14 of the Religious Endowments Act

contemplates that members of Temple Committees should be sued individually in cases under that section. On the whole it does not appear that the

Madras cases are opposed to any settled rule of English Law or that there is sufficient reason for calling them in question.

4. As regards damages it is not shown that the plaintiff sustained any substantial damage by reason of the suspension though it was of course

annoying to have the suspension tom-tommed in the neighbourhood. On the whole we assess the damages at Rs. 50 and reverse the decision of

the Lower Court and give the plaintiff a declaration that his suspension was illegal and a decree against defendants 1, 2, 4 and 6 who must be

considered as parties to the suspension, for Rs. 50 damages and for costs here and below calculated on that amount.