

(1919) 01 MAD CK 0020
In the Madras High Court

Chakravarthi V. Jagannatha Chariar and Another	APPELLANT
Vs	
Seenu Bhattachariar alias Ramasami Bhattachariar and Others	RESPONDENT

Date of Decision : 10-01-1919

Acts Referred:

Citation : (1919) ILR (Mad) 618 : 51 Ind. Cas. 869

Hon'ble Judges : Phillips, J;Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In the suit from which this second appeal has arisen, plaintiff sued to recover the office of hereditary Archaka in the temple of

Sri Sarangapani in Kumba-konam, which he alleged he was entitled to, and to restrain the defendants from obstructing him in the discharge of his

duties and in the enjoyment of the emoluments appertaining to his office and to obtain damages for his wrongful suspension from it by the trustees,

which resulted in loss of emoluments to him. Defendants Nos, 1 to 5 were the trustees and the remaining defendants were the plaintiff's co-

Archakas. The trustees denied plaintiff's claim to his Archakaship being hereditary, but the lower Courts have found as a fact that he is an

hereditary Archaka and we must accept the finding in second appeal.

2. The suspension complained of, was by an order of the trustees, Exhibit O, made in September 1910 and served on the plaintiff, which stated on

account of the imputations made in the petition concerning you received from the committee office as also in the "Yatharthavachani" newspaper

and the allegations made against you by various respectable persons, the trustees are greatly dissatisfied with you. Pending searching enquiry into a

final disposal of the same you are suspended from your office. You shall, therefore, take notice that, even during the Murai of any other Archaka,

you should not act as a substitute." Subsequently in April 1911, when the 2nd respondent before us became a trustee he confirmed the order of

suspension. No notice was given to, and no explanation was taken from, the plaintiff before the order was passed, The suit was filed in November

1911; it was admitted that no enquiry was held into the plaintiff's conduct and it is found that no real attempt to hold such an enquiry was ever

made by the trustees. Though the order, in its inception, was one of temporary suspension pending enquiry, the trustees seem to have subsequently

treated it as a final order of suspension till the plaintiff cleared his character in a Court of law against the newspaper. They say so in Exhibit II. The

charge against the plaintiff was that he was leading an immoral life by frequenting a dancing girl's house and he was, therefore, unfit to perform the

duties of an Archaka. The District Munsif, while holding that the allegations of actual immorality against the plaintiff had not been proved, found that

he was seen in her company and that he had compromised his good name for purity by his conduct and that there was a widespread public opinion

about his immorality. He, therefore, held that the order of suspension was a valid one and dismissed the plaintiff's suit.

3. The District Judge, on appeal, refused to go into the question of plaintiff's alleged immorality and held that, as the trustees had failed to make the

intended enquiry within a reasonable time after the order of suspension was passed, their action in keeping plaintiff indefinitely out of office, without

a definite finding after notice to him and proper enquiry that he was unfit to do the duties of that office, was wrongful and that they were, therefore,

liable in damages. He gave a decree declaring that the plaintiff was an hereditary Archaka and that the order of suspension had ceased to be in

force from the date of suit, and directed that the plaintiff be restored to his office and awarded damages to him at Rs. 250 a year from the date of

plaint to the date of reinstatement. He directed defendants Nos. 1 and 5, who were parties to the order of suspension, to pay each 1/5th of the

damages and costs personally and as the other trustee defendants were new trustees, he ordered the balance to be recovered from the trust funds.

4. The second appeal to us has been filed only against that portion of the decree which is against the temple, the trustees against whom personal

decrees were passed not appealing. The main question argued before us was that the learned Judge should have given a finding on the question of

plaintiff's immorality, because it was contended that, if the immorality alleged was established, the order of suspension should be held to be valid

and in force at the date of suit, whether viewed as one pending enquiry or as one passed by way of punishment for misconduct, any want of notice

or of proper enquiry being immaterial. Reliance was placed for this contention on Seshadri Aiyangar v. Ranga Bhattar 10 Ind. Cas. 548 ; 35 M.k

631 ; 21 M.L.J. 580 ; 10 M.L.T. 14.

5. Before, however, considering this argument it may be mentioned that it has not been contended before us that the alleged immorality, if proved,

would not amount to misconduct, justifying the suspension of an hereditary Archaka by the trustees. Though an hereditary Archaka does not hold

office at the will and pleasure of the trustees, it was conceded that he might be removed or suspended from office by them for proved misconduct.

We need not, therefore, consider these questions for the disposal of this second appeal.

6. The case in Seshadri Aiyangar v. Banga Bhattar 10 Ind. Cas. 548 ; 35 M.p 631 ; 21 M.L.J. 580 ; 10 M.L.T. 14 was, no doubt, one where an

Archaka had been suspended by the trustees pending enquiry into his conduct without previous notice; but before suit the intended enquiry had

been held and the offence charged had been found to be proved and apparently the ad interim suspension order pending enquiry had been

terminated and replaced by an order after enquiry. That ruling is, no doubt, an authority for the contention that previous notice and enquiry are not

essential to validate an order of suspension pending enquiry, if it is subsequently found that the charge alleged was well founded. It is not necessary

to consider whether this ruling should be followed, though it maybe remarked that some of the observations in it do not seem to be quite in

consonance with the views expressed by the learned Chief Justice in Thiruvambala Desikar v. Chinna Pandaram 34 Ind. Cas. 67 ; 40 M.p 177 ;

30 M.L.J. 274 ; (1916) 2 M.W.N. 43 ; 4 L.W.306 and in Venkata Narayana Fillai v. Ponvswami Nadar 43 Ind. Cas. 205 ; 41 M.p 357 ; 30

M.L.J. 660 ; (1917) M.W.N. 839 ; 22 M.L.T. 454 ; 7 L.W. 85. The objection raised in the present case to the validity of the suspension order

has reference not so much to its inception as to its continuance beyond a reasonable time without a proper enquiry. Even if the trustees be held to have the power to pass an ad interim order of suspension without notice, it seems to me that such power should not be exercised except in cases of urgency where, from the nature of the misconduct alleged and other circumstances, immediate suspension from office becomes a necessity to safeguard the interests of the institution. There was hardly any such urgency in the present case. But even if the order was a good one when it was first passed, I am fully in agreement with the District Judge in thinking that it should not have been continued in force for a longer period than was reasonably necessary. There can be no doubt in the present case that the period which elapsed after the date of the order and before the date of the suit, viz., about 14 months, was an unduly long period and I accept the Judge's view that there was unreasonable delay and that the order as an interim order ceased to be valid before the date of suit.

7. This position was hardly denied by the 1st appellant's Vakil, but he argued that the order should be looked upon as a punitive one which was justified by the plaintiff's misconduct. It is doubtful whether the order can be looked upon as a punitive order at all, because, whatever the intention of the trustees might have been, plaintiff was never informed that it had that character. But assuming that it could be done, I am of opinion that the order as a punitive one should be held to be invalid as having been passed without notice and without enquiry, whatever the merits of the case may be. It is a fundamental principle of natural justice that a person charged with an offence or with a misconduct must be given notice of it and heard in his defence, if he wishes to defend before he is condemned. That principle must be recognised and anything done contrary to it cannot be upheld.

As the learned Chief Justice quotes in *Thiruvambala Desihar v. Chinna Pandaram* 34 Ind. Cas. 67 ; 40 M.p 177 ; 30 M.L.J. 274 ; (1916) 2

M.W.N. 43 ; 4 L.W.306 ""the laws of God and man both give the party an opportunity to make his defence, if he has any."" The interim order of suspension pending enquiry without notice does not offend against this principle, as it is only a disciplinary and not a punitive one, and the ruling in

Seshadri Aiyangar v. Ranga Bhattar 10 Ind. Cas. 548 ; 35 M.P 631 ; 21 M.L.J. 580 ; 10 M.L.T. 14 is confined to such disciplinary orders. The

observations of the Chief Justice in Venkata Narayana Pillai v. Ponnuswami Nadar 43 Ind. Cas. 205 ; 41 M.P 357 ; 33 M.L.J. 660 may also be

referred to in this connection. As pointed out by his Lordship there the Privy Council in Willis v. Gipps (1846) 5 Moore P.C. 379 ; 53 E.R. 536

recommended that an order on a motion without due notice should be set aside although, on the merits, there were sufficient grounds for making it.

It is no answer to the invalidity of the order in the present case viewed as a punitive one to say that the trustees are prepared to prove facts which

would justify it in the opinion of the Court. Plaintiff was entitled to have an order by the trustees after notice to him and proper enquiry before he

was punished; the Court's order is not an adequate substitute for it. To hold otherwise will be to compel the person punished to submit to

punishment without knowing the grounds for it or to resort to a Court of law before he can find out the grounds on which he had been punished. I

am, therefore, of opinion that the order of suspension the moment it was treated as a punitive order by the trustees became illegal and invalid.

8. In any view, therefore, the order was invalid at the date of suit. It is not necessary to ascertain when exactly before the suit the order became

invalid, as the District Judge has not given the plaintiff any damages before the date of suit and plaintiff has not appealed against the disallowance of

damages prior to suit claimed by him. In awarding plaintiff possession of his office I think it was open to the District Judge to grant a decree for its

emoluments by way of damages, as he has done, from the date of suit to date of re in statement. No argument has been addressed to us about the

quantum of damages.

9. It was finally argued that the temple funds should not be made to bear any portion of the damages but that the trustees who were the tort-

feasors should pay them personally. There can be no doubt in this case that the trustees in passing the order of suspension and continuing it acted in

their capacity as trustees and in what they conceived to be the proper discharge of their duties as such and on behalf of the temple. In these

circumstances I am of opinion that temple funds are liable and plaintiff is entitled to have recourse to them for damages. Whether the trustees are

liable to make good the loss caused to the temple by their action need not be decided in this case.

10. I would, therefore, dismiss the second appeal with costs of the 1st respondent.

Phillips, J.

11. I agree. If the suspension order is treated as an interim order pending enquiry, I think the District Judge is right in holding that the trustees were

guilty of unreasonable delay in deferring the enquiry for over a year, for this conduct of theirs practically converted the interim suspension into a

punitive suspension. Treated as a punitive order, it cannot be justified because it was passed without giving plaintiff an opportunity of defending

himself. It may seem anomalous that the trustees should be mulcted in damages for passing an order which, the District Munsif has found, was in

the circumstances a justifiable order, but the trustees should not have left it to the Court to decide after enquiry whether such an order was

justifiable and should have exercised the discretion vested in them to pass such an order after due enquiry. It may be open to them to treat the

enquiry that has now been held as adequate and to pass such orders as they think fit hereafter, and on this point I express no opinion, but they are

liable in damages for causing loss to plaintiff without giving him an opportunity of being heard in self-defence. I agree that the second appeal should

be dismissed with costs.