
(2013) 02 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 2266 of 2012

Davis	Vs	APPELLANT
Intelligence Officer (I.B.)		RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 17(3), 3(2), 59A
Kerala Value Added Tax Act, 2003 — Section 21, 3, 3(2), 3(2)(c), 3(3)

Citation : (2013) 1 KHC 697 : (2013) 2 KLT 188 : (2013) 65 VST 526

Hon'ble Judges : K.M. Joseph, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : K. Srikumar and G. Shrikumar, V.V. Asokan, K.P. Mayankutty Mather, P.P. Ramachandran, K. Manoj Chandran, P.R. Ajith Kumar and Suraj Shrikumar, for the Appellant; Sojan James, Spl. Government Pleader, for the Respondent

Judgement

K.M. Joseph, J.—Appellants are the writ petitioners. They approached this Court under Art. 226 of the Constitution seeking to quash the orders passed by the sixth respondent [Intelligence Officer (Investigation Branch), Thrissur] against them under the provisions of the Kerala Value Added Tax Act, 2005 (hereinafter referred to as the Act). The further prayer sought by them was to quash the orders passed by the fourth respondent (Commissioner of Commercial Taxes) to the extent empowering the special team for disposal and to initiate penal and prosecution steps against the appellants. Yet another relief sought is to direct the respondents to properly adjudicate the penalty proceedings based on the materials on record and other evidence. There are other reliefs sought with which we are not to be detained. By Ext. P1 order dated 5.7.2011, the Commissioner of Commercial Taxes ordered as follows:

It is brought to notice of the undersigned that an enquiry file relating to six dealers are pending with the Investigation Branch, Thrissur. It is also recommended that a special team may be constituted for the disposal of the pending file, and to pursue from the investigation, if necessary, and to initiate

penal and prosecution steps against the defrauders so that the heavy loss caused by them to the State exchequer may be made good forthwith.

In the circumstances, a special team is hereby constituted for the above purpose with the following Officers and headed by Sri. K.P. Sajeevan, Inspecting Asst. Commissioner (Int.), Kozhikode:

1. Sri. K.P. Sajeevan, Inspecting Asst. Commr. (Int), Kkd.
2. Sri. H.P. Haridasan, Int. Officer (I.B.), Tcr.
3. Sri. T.V. Shaji, Int. officer, Sq. No. III, Thrissur.
4. Smt. P.V. Premi, Int. Inspector (I.B.), Thrissur.
5. Sri. Sreeraj K. Pillai, CTI (I.B.), Tcr.
6. Sri. C.R. Santhosh, CTI (I.B.), Tcr.
7. Smt. Sini Sebastian, CTI (I.B.), Tcr.

The team should complete the work within three months.

Subsequently, by order dated 9.12.2011 produced as Ext. P1(a) in all the Writ Petitions, three Intelligence Inspectors, all working at Thrissur, were included in the team constituted for disposal of the pending files of the six live chicken dealers (three of whom who are the appellants before us).

2. The learned Single Judge has relegated the appellants to pursue the statutory remedies. It is being aggrieved by the same, the appellants are before us.

3. We heard Shri K. Srikumar, learned senior counsel appearing for the appellant in W.A. No. 2266/12, Shri G. Shrikumar, learned senior counsel appearing for the appellant in W.A. No. 39/13, Shri K.P. Mayankutty Mather, learned counsel appearing for the appellant in W.A. No. 40/13 and also Shri Sojan James, learned Special Government Pleader for Taxes.

4. The common contention which is raised by all the appellants is that the orders of penalty passed by the Intelligence Officer, Thrissur are without jurisdiction. The argument is that in so far as the Commissioner has constituted a team of seven officers and later on added to the said team with further three officers, it is only the team of officers who could have proceeded to impose penalty on the appellants. In this context, support is sought to be drawn from the Notification issued dated 31.3.2005 by the Government of Kerala apparently in exercise of the powers under sub-section (3) of S. 3 of the Act providing for appointment of various officers with headquarters as specified in column (3) and functional jurisdiction in column (4) for performing the various functions under the Act. It is pointed out that apart from the Commissioner himself under column (4), namely indicating the functional jurisdiction, it is indicated in respect of the officers that it will be "all the functions assigned by the Commissioner". It is, therefore, contended that when Ext. P1 followed by Ext. P1(a) was issued by the

Commissioner, it must be treated as vesting of the functions by the act of the Commissioner acting under the Notification issued by the Government under S. 3(3) of the Act. S. 3 of the Act being most crucial reads as follows:

3. Commercial Tax Authorities.-- (1) The Commissioner shall have and exercise all the powers and shall perform all the duties conferred or imposed upon him by or under this Act:

Provided that the Commissioner may, by an order in writing, delegate any power vested in him to any officer appointed under sub-section (3).

(2) The Commissioner shall have superintendence over all officers and persons employed in the execution of this Act and the Commissioner may,-

(a) call for returns from such officers and persons;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such officers and persons;

(c) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.

(3) The Government shall appoint as many Joint Commissioners, Deputy Commissioners, Deputy Commissioner (Appeals), Assistant Commissioner (Appeals), Assistant Commissioners, Commercial Tax Officers and such other officers as they think fit for the purpose of performing the functions respectively assigned to them by or under this Act. Such officers shall perform the said functions within such local limits as the Commissioner may assign to them.

(4) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) in the exercise of their appellate functions.

(5) The Commissioner or the Deputy Commissioner may by order in writing:-

(a) transfer any case or cases relating to any assessee or class of assessees pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or

(b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case or cases relating to any assessee or class of assessees.

(6) Where any case is transferred to an assessing authority under clause (a) of sub-section (5), such assessing authority may deal with the case either de novo or from the stage at which it was transferred.

It is, therefore, contended that when once the Commissioner in exercise of the

power granted to him under the statutory Notification has constituted the team of officers to not only investigate into the affairs of the appellants and three others, but if necessary also to initiate penal action and prosecution, the matter which was commenced with the issuance of such an order by the Commissioner supplemented with Ext. P1(a) must be brought to its logical and legal conclusion, if at all, by the whole team and not by a part of the team, leave alone, the sole member of the team. What is more, it is contended that the person who has actually issued the orders of penalty in these cases was not a member of the team. Apparently the Intelligence Officer, Thrissur at the time when Exts. P1 and P1(a) were issued, was a member of the team. But, subsequently, he was transferred. There is no order by the Commissioner adding the present incumbent in the post of Intelligence Officer, Thrissur to the team. Therefore, it is pointed out that the orders of penalty which have been issued by the Intelligence Officer are without jurisdiction. It is submitted that Exts. P1 and P1(a) would reveal that the members of the team who were constituted were indicated by their names and, therefore, it is not sufficient that the person who issued the orders of penalty was the Intelligence Officer. It is absolutely insufficient to clothe him with the authority to pass orders of penalty. Secondly, it is also contended that there is a transgression of the principles of natural justice in so far as certain witnesses were not allowed to be cross-examined.

5. As far as the first point is concerned, they would also seek support from the following case law:

Shri K. P. Mayankutty Mather would rely on the following case law:

(i) Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, . That was a case where the Court took the view that principles of natural justice will apply unless it is excluded.

(ii) He then relied on a Judgment of a Division Bench of this Court in Marico Industries Ltd. Vs. State of Kerala, . Therein a Bench of this Court was dealing with a case under S. 59A of the Kerala General Sales Tax Act, 1963 and the Court, inter alia, held that the decision is to be rendered by the Commissioner of Commercial Taxes and the hearing was not institutional but personal, and that the Commissioner was not entitled to permit a subordinate officer to conduct the hearing.

(iii) In Thomas Mathew Vs. The Secretary to the Government , a Bench of this Court again reiterated the principle that one who decides must hear and the successor in office cannot pass an order in a matter heard by his predecessor without hearing the affected person.

(iv) In Union of India v. E.K. Andrew, 1996 (1) KLT 133 , a Bench of this Court again took the view that the person who heard the case should pass the orders, and that it is an indispensable requirement for observing the principles of natural justice.

(v) In *P. Sivaramakrishnan v. State of Kerala* (1994 KLJ (Tax Cases) 369), a learned Single Judge of this Court dealt with the question as to whether the conferment of power under S. 3(2) of the KGST Act which is para materia with S. 3 of the Act, could extend to the entire State or only to defined areas of parts of the State. The learned Single Judge took the view that conferment of power throughout the State is not in consonance with S. 3(2) and it is ultra vires the provisions. The said view was, however, disapproved and overruled by a Bench of this Court in *Star Traders v. Intelligence Officer* (1995 (1) KLT 837 : 1995 KLJ (Tax Cases) 183).

6. Therefore, Shri K.P. Mayankutty Mather would contend that when under the Notification which we have already noticed issued under the Act, the Commissioner has been empowered to assign such functions as he deems fit with various officers and the Commissioner has assigned the functions in discharge of his functions, there is no geographical limitation and the team was constituted with persons outside from Thrissur, they could exercise that power even though they were stationed in another location. He would submit that this aspect may be viewed in the context of S. 67 of the Act under which penalty has been issued. He would submit that S. 67 of the Act speaks about an "authority" who is empowered to issue the order of penalty. When a team was constituted by the Commissioner under the Notification, then the team would become the authority under S. 67, irrespective of the exact place from which the officer may be drawn.

7. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , the case arose under the Motor Vehicles Act. Therein, the Court was concerned with the situation where the hearing was conducted by the Secretary-In-Charge of the Transport Department. Final decision was taken by the Minister-In-Charge. The question arose as to whether the principles of natural justice have been violated. The Court, inter alia, held as follows:

While the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the argument, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. Therefore, the said procedure followed in this case also offends another basic principle of judicial procedure.

Shri Mayankutty Mather would also submit that having regard to the wording of S. 67, the initial satisfaction must be entertained by the team itself and in this case it has not been so and when the Intelligence Officer who has purported to

entertain the said belief alone entertained the action is not permissible.

8. Turning to the decisions relied on by Shri K. Srikumar, we notice the following case law:

(i) In *South Travancore Distilleries Vs. Asst. Commr. of Commercial Taxes*, a Bench of this Court was dealing with the question as to whether a writ petition would be maintainable when there are alternate remedies available. The Court, inter alia, held that if there is violation of the principles of natural justice or if the proceedings are wholly without jurisdiction, the writ petition is maintainable.

(ii) *Hindustan Petroleum Corporation Ltd. v. Assistant Commissioner, Commercial Taxes, Ernakulam & Ors.* (2009 (4) KHC 819) was a decision of a Division Bench of this Court rendered under S. 17D of the K.G.S.T. Act. The Court, inter alia, held as follows:

Assessment has to be completed after hearing the party by the team on the objection filed to the pre assessment notice and in order to have a binding assessment, the assessment should be one completed with unanimous agreement of all the team members. In fact, ex parte assessment is contemplated only when parties who are served notices informing the venue and date of hearing fail to appear. Here again, we are of the view that there is no harm in giving one more opportunity, if the team of Officers feel that the party is not absenting deliberately.

He would, therefore, submit that the position here is similar and the team must together finalise the penalty proceedings.

(iii) *State of Kerala Vs. K.T. Shaduli Yusuff etc.*, was a case under S. 17(3) of the K.G.S.T. Act rendered by the Apex Court. Therein, the Court was concerned with the aspect of violation of principles of natural justice in a case where there was refusal of right to cross-examine witnesses.

(iv) In *Deepak Agro Foods Vs. State of Rajasthan and Others*, the learned senior counsel drew our attention to paragraph 17. Apparently, the said decision is enlisted to contend that the impugned orders are without jurisdiction. We may immediately notice that the said Judgment, in fact, related to a decree of a civil court being one passed without jurisdiction for the reason that there is inherent lack of jurisdiction in which case it would be a nullity and the Court, in fact, drew the distinction between the proceedings under the taxing laws and the proceedings instituted by way of a civil suit.

(v) In *Commissioner of Sales Tax, U.P. v. Sarjoo Prasad Ramkumar* ((1976) 37 STC 533), the Apex Court was concerned with the case where the facts were as follows:

Lucknow was one of the circles formed under the U.P. Sales Tax Act, 1948 and in that circle, there were several Assistant Sales Tax Officers. The assessee carried

on his business in Sector III for which sector, there was a separate Assistant Sales Tax Officer. For the assessment year 1959-60, the Assistant Sales Tax Officer, Sector II, issued to the assessee a notice under S. 21 of the Act and, in due course, made an assessment on him. It was not shown that the Assistant Sales Tax Officer, Sector II, had also been conferred with jurisdiction to assess the dealers in Sector III. On appeal, the assessee contended that the Assistant Sales Tax Officer, Sector II, had no jurisdiction to assess him. That contention was upheld by the appellate authority, the revisional authority and the High Court.

Therein the Court held as follows:

The Assistant Sales Tax Officer, Sector II, had no jurisdiction to assess the dealers in Sector III. The rule-making authority had empowered the Commissioner to allocate separate areas for separate Assistant Sales Tax Officers. When such an allocation was made, the jurisdiction of each officer was confined to the area allotted to him.

(vi) In *Chakkiath Engineering Works Vs. Sales Tax Officer*, , the Court held as follows:

This is a fit case where the High Court should interfere because if the petitioner is directed to pursue the statutory remedies against the killer dose of tax and penalty and wait for the result for continued business, the same will destroy the petitioner's business as no foreign party is willing to wait for protracted litigation in India to be over to continue the business. Above all, the impugned proceedings are an antithesis of the liberalised policies of the Government to promote international trade and commerce.

(vii) *Shri K. Srikumar*, learned senior counsel finally drew our attention to a two Judges Bench decision of the Apex Court in *Cantonment Board and Another Vs. Church of North India*, . It arose out of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The writ petition filed by the respondent which was allowed by the learned Single Judge and by the Division Bench was dismissed by the Apex Court. In the course of the said Judgment, the Apex Court, no doubt, made the following observation:

It is undoubtedly true that objection to the maintainability of a proceeding must be raised at the earliest, but an objection that the authority did not have the jurisdiction to entertain the proceedings over the subject-matter goes to the root of the proceeding. In a number of judgments, this Court has held that a defect, with respect to the lack of inherent jurisdiction is basic and fundamental and validity of such an order can be challenged at any stage, even in execution or in collateral proceedings (for reference see a judgment of a bench of three judges of this Court in *Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others*, .

We may immediately notice that the decision which was referred by the Apex

Court, that is, Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, arose from a civil suit and therein the Court held that where the court lacks inherent jurisdiction, the decree is void. It may be true that Cantonment Board and Another Vs. Church of North India, arose out of a Writ Petition.

9. Shri G. Sreekumar, learned senior counsel drew our attention to the decision in Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others, . That was a case which arose out of a suit filed for partition. In the course of the Judgment, the Apex Court, inter alia, held as follows:

22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. (See Chief Justice of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, & M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd.,).

Thereafter, the Court proceeded to deal with classification of the issue as to jurisdiction, namely territorial, pecuniary and jurisdiction over the subject matter or inherent. For reasons which we will indicate later on, we would think that the principles in the said Judgment may not assist the appellant.

10. Per contra, learned Government Pleader would contend that this is a case where the sixth respondent Intelligence Officer undoubtedly possessed jurisdiction. He also had jurisdiction to impose penalty. He would submit that by Exts. P1 and P1(a), the Commissioner had, having regard to the nature and the volume of the work, constituted a special team for the disposal of the pending files relating to six persons. As the investigation required more man power, the team was reconstituted. He drew our attention to the wording of Ext. P1 to indicate that the essential purpose of the team was to investigate. He emphasised the words "if necessary" appearing before "initiating penal action". He would also contend that even going by Ext. P1 order of the Commissioner, what was contemplated is only initiating penal action by the team, even accepting the argument of the appellants. He would further draw our attention to the decision of this Court in Trivandrum Co-operative District Wholesale Society Ltd. Vs. Deputy Registrar of Co-operative Societies, Trivandrum, wherein a Bench of this Court held as follows:

This Court has been for nearly two decades declining jurisdiction when the lack of jurisdiction of a tribunal or authority was not taken before that tribunal or authority but was urged for the first time in proceedings under Art. 226 of the Constitution. The exercise of a writ jurisdiction being discretionary in nature, this Court ordinarily must exercise its discretion against those who take the chance of

a decision and were not diligent enough to urge the lack of jurisdiction of a tribunal or authority before the tribunal or authority itself.

He would submit that the said Judgment has been followed by this Court in *Raghavan Pillai v. Travancore Devaswom Board* (1980 KLT 782), *Kuriakose v. Varkey* (1987 (1) KLT 345) and *Madhavikutty, S. Vs. State of Kerala and Others*. He would, in other words, contend that the appellants are persons who sat on the fence. He would submit that notice was issued proposing penalty to be imposed on the appellants by the Intelligence Officer. In particular, he would point out that in the notice, the factum of the constitution of the team was specifically mentioned. The objections were filed before the Officer. Various communications were addressed by the parties to the Intelligence Officer. According to the Statements filed by the Government, there were, no doubt, four persons. He would submit that the Inspecting Assistant Commissioner in whose office the sixth respondent was working was supervising and there were two other officers also. But, he would submit that the decision was taken by the Intelligence Officer who is the authorised officer. According to the learned Government Pleader, the matter falls to be considered within the four walls of S. 3(2)(c) of the Act and it is a case where the Commissioner has assigned the Officers concerned with certain duties. He would submit that actually the other Officers who are members of the team constituted under Ext. P1 supplemented by Ext. P1(a), would not have jurisdiction to impose the penalty. As far as the question relating to violation of natural justice, he would point out the order and contend that there is no merit in the same.

11. This is a case where, undoubtedly, a team was constituted by the Commissioner. There is no dispute for the proposition that the Intelligence Officer, Thrissur is an empowered person to impose penalty. The empowered person, if he is the Intelligence Officer and if he is considered as the empowered officer, has indeed issued the notice proposing the penalty and there is no case that he has not considered the matter as a statutory authority and he has imposed the penalty. The only question is whether by reason of a constitution of a team, the team alone could consider and the team alone could impose the penalty? No doubt, the argument flows from a combined reading of S. 3(3) of the Act and the terms of the Notification and the powers which are vested with the Commissioner. The argument is that the order passed by the officer is without jurisdiction. The word "jurisdiction" has many shades of meaning based on the context. In the context of civil law, broadly it is divided into pecuniary, inherent and territorial. Any flaw as far as inherent jurisdiction, in that, there is lack of inherent jurisdiction, would be fatal and lack of inherent jurisdiction would deprive the decision of the legal authority which it would otherwise possess. It can be set up at any stage. There can be no element of discretion in the matter of entertaining the plea relating to an order or a decree being without jurisdiction in the sense there was lack of inherent jurisdiction.

12. But, we are inclined to think that different considerations may arise when a

matter arises before this Court in proceeding under Art. 226. Art. 226 of the Constitution is a discretionary jurisdiction. Various considerations will weigh with the court in granting the relief or declining relief. It includes the conduct of the party. It includes considerations, like whether the order which may be granted in favour of the appellant will result in the resurrection of another injustice or illegality. Whether it produces justice, is also germane in considering the matter under Art. 226. It is along with the host of relevant inputs that the court bears in mind the conduct of a party who is proceeded against by a statutory authority or a quasi-judicial authority, as in fact noticed by Justice T. Kochu Thommen in *Raghavan Pillai v. Travancore Devaswom Board* (1980 KLT 782). Undoubtedly, penalty proceedings are quasi-judicial proceedings. Appellants have received elaborate notices proposing to impose penalty on them. The notices were, undoubtedly, issued by the Intelligence Officer (I.B.). It was issued by the team member, that is the Intelligence Officer, Thrissur at the relevant time. In the notice, it is not in dispute, reference is made to the constitution of the team mentioned in Exts. P1 and P1(a). Still, it was the officer who deemed it appropriate to issue the notice. There is no indication in the notice which is brought to our notice that the notice was issued on behalf of the team. At least, nothing is brought to our notice. Therefore, for all intents and purposes, the notice proposing penalty was issued by only one of the members of the team who, undoubtedly, was competent in his own right otherwise to propose and to impose penalty. The appellants have admittedly filed elaborate explanations. They have admittedly not taken up the contention that the Intelligence Officer has no jurisdiction to proceed all by himself. An argument is sought to be put up that they were swayed by the subsequent event, namely the continued presence of the members of the team along with the Intelligence Officer. Even there, we may immediately notice that there were only three other members. If the argument of the appellants is to be accepted, then necessarily all the members of the team should have been present. There is no case at any point of time that the matter was being considered after ten members congregated. We notice that communications were addressed by the appellants to the intelligence Officer alone. What is more, one of the appellants approached this Court twice by filing two Writ Petitions. No contention was taken in the said Writ Petitions that the Intelligence Officer was without jurisdiction in proceeding by himself. Most importantly, in the facts of this case, as many as about 886 documents were looked into. The reference itself runs into several pages. Witnesses were examined and cross-examined. The penalty order runs into 384 pages. In such circumstances, we would think that proceeding on the basis of the case of the appellants that here is a case of patent lack of jurisdiction, they should have raised the contentions before the Officer. They sat on the fence, acquiesced, and gambled for a favourable decision. Having courted an unfavourable one, they cannot be permitted to turn around and seek the discretionary relief under Art. 226 of the Constitution in the facts of these cases.

13. A contention is raised that the fact that the appellants received notice from

one person who was undoubtedly a, member of the team, did not alert them to raise their objections for the reason that they were under the impression generated by the presence of the members of the team that ultimate decision will be rendered by that team. Here again, we are at a loss how such argument would lie at the mouth of the appellants. Even according to them, there are ten members going by Exts. P1 and P1(a). There were only four members who participated. Matters were being processed even according to them, by four members out of the team of team of ten members. They should have been on guard and immediately objected to it, if advised. They acquiesced and the conduct of the appellants instills in us the impression that here is a case where the appellants were clearly sitting on the fence. Still further, we may notice another development. Though the notice was issued by the Intelligence Officer who was a member of the team, subsequently he was transferred. The successor incumbent in the office of the Intelligence Officer, Thrissur (I.B.) took over. He continued with the proceedings and the final order was passed by him. Appellants must be treated as aware that he was not made a member of the team by the Commissioner. So, here is a case in which there were ten members in the team vide Exts. P1 and P1(a). Midway through, the subsequent incumbent who was not a member of the team previously, nor was made a member of the team either proceeded with the matter. This again, to our mind, indicates that at any rate the appellants were gambling for a favourable decision by sitting on the fence. Unlike the facts situation in the case law which were cited for the proposition that the persons who hear must decide being part of the principles of natural justice with which proposition we can have no quarrel, we do not see how it can be said that if the officer has jurisdiction and he hears and he decides, the said principle is flouted. We are only called upon to consider whether the order is bad for the reason that as all the Officers in the team have not decided the matter.

14. The further important consideration which we cannot brush aside, is the fact that we are considering the matter in a Writ Appeal, in a case where the learned Single Judge exercised the discretion not to entertain the Writ Petition and the parties were relegated to the statutory remedies available to them.

15. There is the other side to the matter. Under Exts. P1 and P1(a), as contended by the learned Government Pleader, there is a scope for the argument that it envisages the team continuing for investigation and thereafter if necessary the competent body taking over the matter and proceeding to impose penalty which could be done only by the Officer concerned. However, we are in the petitions under Art. 226 of the Constitution only purporting to decline jurisdiction in the exercise of our discretionary powers. We are informed that the appellants have already approached the appellate forum and sought alternate remedies. Therefore, we would think that it may not be appropriate for us to conclude the issue and the appellants will be at liberty to pursue their remedies before the appellate authority. A contention was raised that witnesses were not allowed to be cross-examined. Learned Government Pleader would submit that the

appellants produced a list of witnesses and their affidavits were given and there is no question of cross-examining the appellants' witnesses by the appellants. At any rate, we feel that this is again a matter, in the facts of these case, which can be left open to be pursued before the appellate forum.

Having regard to the circumstances of these cases, we are inclined to confirm the view taken by the learned Single Judge. Accordingly, we dismiss the Writ Appeals. We make it, however, clear that the appellate forum will be free to proceed with the matter untrammelled by anything contained in this Judgment and the appellants will be free to seek interim reliefs also.