
(1989) 09 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 9199 of 1988

George Eapen

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 105(A), 85

Citation : (1990) 1 LLJ 243

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad, K.V. Prakash and Babu Mathew P. Joseph, for the Appellant; K.R.B. Kaimal, Govt. Pleader, for the Respondent

Judgement

Sivaraman Nair, J.—Petitioner challenges Ext.P7 Memo of Charges and Ext.P9 order whereby he was placed under suspension pending departmental action against him. In support of the first submission, counsel relied on the decision reported in C.S. Kesavan Vs. State of Kerala and Others, . In support of his second submission counsel relied on the decision reported in N. Subramoniam v. State of Kerala 1973 II LLJ I56) and Veeramani v. State of Kerala 1974 KLT 6301 do not propose to go into the details of the facts involved in this Original Petition, because the disciplinary proceedings initiated under Ext.P7 is now pending against the petitioner. Suffice it for me to say that the allegation against the petitioner, is that Ext. P1 report which he submitted on 19th October, 1976 in respect of a ceiling case which resulted in exclusion of 94 acres of Government land in Sy.No.745/1 of Kulathupuzha Village in favour of the declarant under S.85 of the Kerala Land Reforms Act, was false and motivated. He submits that members of the Taluk Land Board themselves had conducted a local inspection of the area and recorded Ext.P2 report dated 30th April, 1977, finding the area to be a plantation and the report to the contrary which the Tahsildar, Pathanapuram, submitted on 5 August, 1977 was not accepted by the Taluk Land Board in its proceedings dated 30th April 1977. The matter was discussed at the meeting of the Taluk Land Board on 30th July 1977. In Ext.P4 order dated 31st

October 1977, the Taluk Land Board granted exemption in favour of the declarant in respect of 94 acres of land as covered by plantation. The State challenged Ext.P4 order in C.R.P.No.2180 of 1978. My learned brother Khalid J., as he then was, dismissed that petition by Ext.P5 order dated 5th December 1980. This court placed reliance on Ext.P1 report of the petitioner. The State then filed S.L.P.No.2833 of 1981. The Supreme Court dismissed that application in Ext.P6 order dated 9th August 1982. Petitioner submits that his report having been accepted and acted upon by the Taluk Land Board, this court and the Supreme Court, and that being a statutory report in aid of quasi-judicial proceedings of the Taluk Land Board, cannot be the subject matter of disciplinary proceedings against him. It is for that proposition that he placed reliance on *Kesavan v. State of Kerala*, (supra).

2. The question as to whether an officer discharging quasi-judicial functions under a statute can be penalised for his conduct in exercise of such powers came up for consideration before this Court in *Govinda Menon v. Union of India* 1966 KLT 519, where this court held, that the conduct of a Government servant in whatever capacity can be the subject-matter of disciplinary proceedings and the only fact that the officer was discharging a quasi-judicial function will not preclude the employer from resorting to such proceedings. The following observations of Mathew J., as he then was, on behalf of the majority, is relevant in this regard:

"The fact that the propriety or the legality of an order could be questioned in appeal or revision but was not so questioned, would preclude the disciplinary authority from showing that the order was passed in utter disregard of the provisions of the statute and the rules thereunder amounting to recklessness, is a proposition for which I have not been able to find any authority. When the question of the propriety or legality of an order of sanction is brought before the Government in appeal or revision what the Government are concerned with is the propriety or the legality of the order as such. They are not concerned with the conduct of the officer who passed the order. They are only concerned with the merit of the case. But in disciplinary proceedings Government are concerned with the conduct of the officer in the discharge of his duties."

xx xx xx xx "Even if any one of the words is inapt in the context of a particular action, that would not show that the charge itself is defective. The failure to prove that a particular action is grossly reckless will not prevent the Government from showing that it is either irregular or would amount to misconduct. The fact that an action is described as disclosing "misconduct, irregularity or gross recklessness", will not prevent the disciplinary authority from showing that the act proved would disclose the one or the other among them".

That decision was approved by the Supreme Court in the decision reported in *Govinda Menon Vs. Union of India (UOI)*, The following extract from that decision is relevant (p.255):

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission, even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service."

In the light of the above decisions, I am not in a position to accept the submission that the conduct of the petitioner in submitting the report in his capacity as an officer assisting a quasi-judicial tribunal should not be the subject matter of disciplinary proceedings. I cannot therefore accept the submission that Ext.P7 charge-memo is totally devoid of jurisdiction and unsustainable. It is obvious that these two earlier decisions respectively of a Full Bench of this court and the Supreme Court were not brought to the notice of my learned brother Sreedharan J., when he heard and disposed of *Kesavan v. State of Kerala*, (supra). I am bound by the decision of the Supreme Court, and naturally therefore I should reject the first contention which the petitioner has raised challenging the validity of Ext.P7 show cause notice.

3. Petitioner was promoted as Deputy Tahsildar on 27th September, 1974. It was while he was working as Deputy Tahsildar, Pathanapuram that he functioned as the authorised officer u/s 105(A) of the Kerala Land Reforms Act and it was in that capacity that he submitted Ext.P1 report. Thereafter, he was promoted as Tahsildar on 12th November, 1979 and still later as Deputy Collector on 27th May, 1979. He was reverted as Tahsildar on 17th November, 1979. Since 19th July, 1988 he was working as Special Tahsildar, Land Acquisition, Kallada Irrigation Project. He is due to retire from service on 30th November, 1989. It was in the meantime that the Government passed Ext.P9 order on 16th November, 1988. Petitioner filed this Original Petition promptly on 21st November, 1988. In C.M.P.No.30597 of 1988, this court ordered interim stay of Ext.P9 order of suspension. Hence P9 order has not taken effect. Petitioner is therefore still continuing in service. He submits that he ought to have been

promoted as Deputy Collector but for Ext.P9 order in the vacancy that arose subsequent to 12th January, 1988. He also submits that no such circumstance which justifies his suspension is in existence now.

4. In view of the fact that Ext.P9 order of suspension has not taken effect so far, and the fact that the petitioner is due to retire from service on 30th November, 1989. I am of the opinion that interests of justice will be sufficiently met if I direct completion of disciplinary proceedings without giving effect to Ext.P9 order of suspension. It is relevant to note that in his capacity as Tahsildar, Land Acquisition, Kallada Irrigation Project, the petitioner may not have any access to the records of the Land Board, Pathanapuram, which passed Ext.P4 order and whose files contain Ext.P1 report. On a reading of Ext.P7 charge memo, I am reasonably satisfied that the Government has in its possession all the necessary materials in support of the charge. It is relevant to note that the Government relies on a statement which the declarant had filed relating to the extent and period of planting in Sy.No.745/1 of Kulathupuzha Village as also the statement which he had filed before the Deputy Development Commissioner of the Rubber Board. In the circumstances disclosed by the pleadings, it appears to me that it is not necessary to keep the petitioner under suspension particularly since the order of suspension was kept in abeyance since 21st November, 1989 and the petitioner is due to retire from service on 30th November, 1989.

5. I therefore dispose of this Original Petition with the following directions: The petitioner-having submitted his explanations to Ext.P7 show cause notice, the first respondent shall complete the disciplinary proceedings initiated in Ext.P7 as early as possible and in any case within a period not exceeding two months from today. Till such time as State Government takes a final decision in the matter, status quo as on today shall be maintained. In other words, the order of suspension Ext.P9 will not be given effect to till such time as the disciplinary proceedings initiated by Ext.P7 are duly completed. Parties will suffer their respective costs.