

(1996) 10 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 6565 of 1996

K. Bhaskaran

APPELLANT

Vs

Kerala Khadi and Village Industries Board and Another

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Citation : (1996) 10 KL CK 0013

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : S. James Vincent and K. Radhakrishnan Nair, for the Appellant; C.P. Ravikumar, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The Petitioner retired as Manager (Godown Keeper) from the services of the first Respondent (hereinafter referred to as the "Khadi Board") on 31st March 1993. By Ext. P-4 dated 6th September 1994 the Secretary of the Khadi Board informed the Petitioner that an amount of Rs. 1,10,846-78 had been outstanding as liability against him as per the Accountant General's inspection and also as per the audit report of the Khadi Board in the nature of stock deficit, short remittance and advance pending clearance. The break up of the amounts was also shown in Ext. P-4. The Petitioner was requested to furnish his explanation with regard to the above alleged liability. The Petitioner filed his explanation which is Ext. P-5. According to the Petitioner, there was a shortage of 98 numbers of bed cover and 44 numbers of bed sheets. But in the same period, there was an excess of 198 numbers of double dhoties, and therefore the shortage value should be adjusted in the excess stock value. After considering the above explanation, the Khadi Board issued Ext. P-2 notice to the Petitioner by which the earlier liability was slashed down to Rs. 28,304-95. Again the Petitioner was requested to furnish his explanation regarding the above liability. The Petitioner has filed his explanation which is evidenced by Ext. P-13. In this Original Petition the Petitioner challenges Exts. P-4 and P-12. He has also prayed

for a direction to disburse the entire retirement benefits to him with interest.

2. The main legal contention put forward by Sri James Vincent, learned Counsel for the Petitioner is that the fixation of the liability by the Khadi Board is illegal and arbitrary. When the loss sustained is to the Khadi Board and if the Petitioner disputes the above liability, the Khadi Board cannot unilaterally and arbitrarily fix the liability. The principle that no man can be a Judge in his own cause is pressed into service by the learned Counsel for the Petitioner, in order to drive home the above legal argument, the Petitioner first cited a ruling of a learned Single Judge of this Court reported in *Joseph v. State of Kerala* 1973 (2) S.L.R. 712 : 1973 KLT 366. But the above ruling has been over ruled by a Division Bench of this Court in the ruling reported in *State of Kerala v. Joseph* 1975 KLT 551. With regard to the ruling of the learned Single Judge, the Division Bench in a well considered judgment held as follows:

2. We regret we are unable to sustain the reasoning and the conclusion of the learned Judge. The learned Judge was of the view that no man can be a Judge in his own cause, and that this elementary rule of natural justice was contravened by Clause (4) in Ext. P-1, which clothed the Government, one of the contracting parties, to decide for itself the disputes between it and the first Respondent. The learned Judge was of the view that a provision dispensing with the rule of natural justice cannot be readily inferred in the case of even legislative enactments, and that stronger reasons for similar dispensation in case of contracts with similar provision as in Ext. P-1 was necessary. The learned Judge has noticed the passage from the 10th Edition of Broom's Legal Maxims at page 72. That passage itself has sufficiently emphasised that "the legislature can, and no doubt in a proper case would, depart from the general rule, and an intention to do so being clearly expressed, the Courts give effect to the enactment". Therefore if the principle of applicability of rules of natural justice were to be extended to the region of contract, we have little doubt that the clearly expressed intention in Clause (4) in Ext. P-1 must have its full sway and operation and cannot be allowed to be overridden by the rules of natural justice.

3. Confronted with the ruling of the Division Bench referred to above, learned Counsel cited two rulings of the Supreme Court, in order to sustain his argument. In the ruling reported in *General Manager, N.E.F. Rly. v. D. Chakraborty* (1970) 1 S.C.W.R. 392 the Supreme Court, while considering the power of the Controlling Officer of the Railways to deduct any amount due under a liability incurred by the subscriber to the Government held as follows:

Under the rule the Controlling Officer is empowered to deduct any amount due under a liability incurred by the subscriber to the Government. Therefore before any deduction can be made it must be established that under a liability incurred by the subscriber, the amount in question is due to the Government. In the instant case, the Respondent has disputed his liability. His contention is that he was not responsible for the loss in question. Under the provident Fund Rules, no authority is constituted for deciding any dispute that might arise between the

subscriber and the Government as regards any alleged incurring of liability nor as regards its quantum. Therefore the only form in which these disputes can be decided is the Civil Court. The Government cannot be a Judge in its own cause in the absence of any statutory provision empowering it to act as such. Hence the High Court was right in its conclusion that the action taken by the Government is an arbitrary one.

It is pertinent to point out that the Supreme Court held that the Government cannot be a Judge for its own cause in the absence of any statutory provision empowering it to act as such.

4. The second ruling of the Supreme Court cited by the learned Counsel is the one reported in *State of Karnataka v. Rameshwara Rice Mills, Thirthahalli* AIR 1987 S.C. 1350. In the above case the Supreme Court was considering the power of the Government to adjudicate the quantum of damages for the breach of condition of a contract entered between a contractor and the State. Dealing with the above aspect of the matter, the Supreme Court held as follows:

The powers of the State Government under an agreement entered into by its with a private person providing for assessment of damages for breach of conditions of the agreement and recovery of the damages is confined only to those cases where the breach of conditions is admitted or it is not disputed. The crucial words in the 4 relevant clause of the agreement, are "and for any breach of conditions set forth hereinbefore, the first party (contractor) shall be liable to pay damages to the second party (State Government) as may be assessed by the second party". The terms of the clause do not afford scope for a liberal construction being made regarding the powers of the officer of the State Government to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. On a plain reading of the words it is clear that the right of the State Government to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it.

5. The learned Counsel also brought to my notice a decision of a learned Single Judge of this Court following the above Supreme Court ruling, reported in *P.S. Ramavarma Raja v. Tahasildar and Ors.* 1987 K.L.J. 1490. That was also a case which arose out of a contract which allowed the Government to realise the amount due from the guarantor under the provisions of the Revenue Recovery Act, in the above context this Court held as follows:

Where a party to a contract disputes his liability on an alleged breach of condition of that contract, the adjudication should be by an independent person or body. It should not be by other party to the contract. The State Government being a party to the agreement cannot be the arbiter in its own cause. The dispute between the parties ought to have been adjudicated upon by a Court or tribunal competent to do the same. That should not be done by the Government, a party to the contract. Such a decision has not been rendered by any authority. An independent body has not examined the matters in dispute and quantified the

damages, if any, due to the Government. In the absence of such an adjudication, the Government cannot realise any amount from the Petitioner.

An analysis of the two rulings of the Supreme Court and the ruling of this Court in Ramavarma Raja's case 1987 K.L.J. 1490 will go to show that the above principle of no man shall be a Judge in his own cause has been applied in the cases of breach of conditions of contract. In assessing the liability of damages, arising out of breach of contract, one of the parties to the contract cannot arbitrarily or unilaterally decide the matter to the detriment of the opposite party. At the same time, in North East Frontier Railway's case (1970) I.S.C.W.R. 392 the Supreme Court was cautious enough to hold that in the absence of any statutory provision, empowering the Government to act, the Government cannot be a Judge of its own cause.

6. According to me, the ruling of the Division Bench of this Court in Joseph's case 1975 KLT 551 reversing the judgment of the learned Single Judge squarely applies to the facts of this case. In that case also a Government servant was proceeded against for shortage of stock of rice for which he was liable as a godown keeper in the foodgrains depot under the Civil Supplies Department. The Petitioner therein was also given an opportunity of placing his case and contesting the findings of the Government in regard to the liability as well as the quantification of damage. Only thereafter the Government assessed the damage and fixed the liability. The Division Bench was of the view that after considering the whole process of assessment and quantification of damages, there was no element of arbitrariness.

7. In this case also the provisions contained in Part III K.S.R. empowers the authorities to fix the liability against a pensioner. It is not disputed before me that the provisions contained in the K.S.R. will apply to the services under the Khadi Board. Therefore this is a case where the rules empower the authorities to fix the liability. Moreover, the Petitioner has been given ample opportunity to prove his part of the case. In fact, as noticed earlier, the original liability shown in Ext. P-4 has been now reduced in Ext. P-12. Under these circumstances I do not find any illegality or lack of jurisdiction on the part of the Khadi Board in issuing Exts. P-4 or P-12.

8. At the same time, I feel it is only just and proper to direct the first Respondent to finalise the proceedings against the Petitioner in the matter of fixation of liability as early as possible, at any rate within two months from the date of receipt of a copy of this judgment.

The Original Petition is dismissed as indicated above.