

(1973) 09 KL CK 0011
In the High Court Of Kerala

K.C. Thankappan Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-09-1973

Acts Referred:

Citation : (1974) 2 LLJ 30

Hon'ble Judges : V.P. Gopalan Nambiyar, J;George Vadakkal, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner, an advocate of Quilon, seeks to quash the appointment of the 3rd respondent as Government Pleader and Public Prosecutor of that District, and has prayed for incidental and consequential reliefs. The appointment of Government Pleaders and Public Prosecutors in the Districts of this State, according to the petitioner, has to be made in conformity with certain rules framed for the purpose, from among persons to be nominated by the Collector in consultation with the District Judge of the District concerned. It is the petitioner's case that after such consultation, the District Collector had nominated only two persons, of whom the petitioner was the first ; that the 3rd respondent, who had not been nominated, sent a letter of willingness to be considered for the post to the Minister of Law, which was forwarded to the Collector, who still stood by his nomination ; whereupon, he was asked to submit a panel of five names ; which he did, including that of the 3rd respondent from which the impugned appointment was made. It is the petitioner's case that according to the Rules framed for transaction of Government business, the appointment of Government Pleader has to be made by the Council of Ministers and that the original nomination of the Collector was not placed before, or considered by, the Council of Ministers ; and that the appointment has been made mala fide at the instance of the Minister for Law.

2. The allegations in the petition have been denied in a counter-affidavit by the Law Secretary on behalf of the 1st respondent, and a separate counter-affidavit by the 2nd respondent, and the Minister for Law.

3. For the purpose of this writ petition alone, it was conceded by Sri T.C.N. Menon, the Government Pleader appearing in this case, that it may be assumed that office of the Government Pleader is a public office. The petitioner's counsel contended that the appointment to the same is governed by certain statutory rules. Sri T.C.N. Menon was not prepared to agree that there were any statutory rules ; but took the position that, assuming there was, they have been substantially complied with, and there is no ground for interference.

4. What has been put forward as "Rules" regulating the appointment are to be found printed in a booklet issued by the Government of Kerala entitled ""Rules regulating the conditions of service, duties, remuneration, etc., of the Law Officers in Kerala State". At page 13 of the booklet, we got the Government Notification No. LD (A) I-3006/56/ Law, dated 1st November, 1956. Rule 1 states that a Government Pleader is usually appointed for each District, and appointments are made by Government on the nomination of the Collector in consultation with the District Judge and are for a term of three years, but the Government are not precluded from reconsidering an appointment, if they think fit, before the close of that period. Rule 5 provides for appointment of Public Prosecutor in the same way. By Government Memorandum No. 5939/57/Law/A-I, Law Department, Trivandrum, dated 10-12-1957, (p. 45 of the booklet) the District Collectors were requested to bear in mind certain broad considerations while submitting their panel of names for appointment as District Government Pleader, Additional Government Pleaders, and Public Prosecutors. According to these instructions, the Collectors may discuss with the District Judge the desirability of calling for applications. While ordinarily the recommendations may be from out of these applicants, neither the Collector nor the District Judge is precluded from recommending one who has not chosen to apply, but considered eminently suitable for the post. The applicants are required in the applications to declare that they are not active political workers, and the Collector is empowered to make independent investigation in regard to the matter. (There is apparently no need for such a declaration if the nomination is of one who is not an applicant). At page 47 of the booklet, we find Memorandum No 11124-A.1/62/ Law Department, Trivandrum dated 3-11-1962, in which it was clarified that it was not necessary to call for applications for appointment, we shall assume, without deciding, that the Rules have statutory force.

5. In view of the controversy in regard to the facts, we called for the files from the learned Government Pleader who appeared before us. The position disclosed is as follows: The Collector was asked by the Law Secretary's letter dated 9-1-1973 to send up a panel of names for appointment of the District Government Pleader and Public Prosecutor. He consulted the District Judge, who invited applications from the members of the Bar. The Collector, by his letter dated 21-2-1973, sent up two names from among the applicants from the Bar, after discussion with the District Judge, stating that those were the only two among the applicants, who, in his opinion, were suitable for the post. The petitioner's name was the first. This letter of the Collector was received by the

Government on 24-2-1973. Meanwhile, the 3rd respondent by his letter dated 12-2-1973 addressed to the Minister of Law, and received on 16-2-1973, stated that he was willing to be considered for the appointment, but could not apply within the time fixed by the District Judge or signify his willingness owing to personal inconvenience. On this letter, the Law Minister minuted on 16-2-1973 that a report may be called for from the Collector. The Law Secretary, followed, by his endorsement dated 19-2-1973 to call for a report from the Collector. In pursuance of these, by letter dated 20-2-1973 from the Government, referring to the earlier letter dated 9-1-1973 and a teleprinter message dated 14-2-1973, the Collector was asked to submit a report about the 3rd respondent, and to send up a panel of names for appointment as Government Pleader. Be it noted that this was before the Collector had even sent up his nominal ions of the two persons by letter dated 21-2-1973 received on 24-2-1973.

6. In answer to the Government letter of the 20th, the Collector sent up his report about the 3rd respondent by letter dated 1st March, 1973 received by the Government on 5-3-1973. He stated that he had discussed the matter with the District Judge, who had stated that the 3rd respondent had handled some cases and done them satisfactorily ; and the Collector added that the 3rd respondent's name was not being included as he had already sent up his panel of two names by his letter dated 21-2-1973.

7. Meanwhile, the nomination of two names sent up by the Collect as on 21-2-1973, received by the Government on 24-2-1973. was submitted by the Law Secretary to the Chief Secretary on 26-2-1973, and placed by the letter before the Law Minister on 6-3-1973. On 6-3-1973, the Law Minister endorsed that the Collect or be asked to send tip a panel of five names. This was called for by letter dated 7-3-1973. The Collector then sent up a panel of five names on 9-3-1973, in order of merit, adding that they represented the names of the live top advocates who have expressed willingness to be appointed to the post. The 3rd respondent's name was No 3 in the panel. Nos. 1 and 2 in the panel were the two persons included in the Collector's original nomination dated 21-2-1973. All the five names were placed before the Council of Ministers with the relevant data, and the appointment of the 3rd respondent was ordered.

8. On the above facts, we are unable to see any case of contravention of the "Rules"", or of mala fides. The requirement by the "Rules" is that the person appointed should have been "nominated" by the Collector in consultation with the District Judge Authority is not wanting that the Government are not bound to accept the nomination made by the Collector, nor precluded from calling for fresh nominations (See A. Mohambaram Vs. M.A. Jayavelu and Others, . In the instant case, it is not necessary to go even thus far. Before the first nomination was received by (he Government on 24-7-1973, a report about the 3rd respondent and request for a panel of names had been made by the Government's letter dated 20-2-1973, The report came with the Collector's letter dated 1st March, 1973 received by the Government on the 5th. The Collector only said that he was

not including the 3rd respondent as he had already sent up his nomination by his letter dated 20-7-1973. Thereupon, he was asked to send a panel of five names. This he did by letter dated 9-3-1973, including the 3rd respondent as No. 3 in the panel.

9. The petitioner's counsel contended that a fresh panel could be called for only by the appointing authority, namely, the Government, or the Council of Ministers, and that the Law Minister was not competent to do so. We are not inclined to agree, especially as the panel was called for, even by the Government letter dated 20th February, 1973, and request for the same was only repeated in the subsequent letter of the Law Secretary on 7-3-1973, after the report about the 3rd respondent dated 1-3-1973 was received on 5-3-1973. We have examined the files ; and the same does not show that there was any pressure exerted on the Collector to make the nomination of the 3rd respondent, nor any feelers sent to him for the purpose. The nomination appears to be free and independent act of the Collector. The files do not show that the Government angled till they hooked the particular fish they wanted to catch on to the bait.

10. It was contended that the Collector had pronounced that except the two persons nominated by his letter dated 21-2-1973 no other person was suitable for appointment. But, as rightly pointed out by Sri T.C.N. Menon, this had reference only to the applicants in pursuance of the applications called for by the District Judge. The 3rd respondent was not one of the applicants. Nomination of one who had not applied was permitted by the Rules ; and the Collector's Report dated 1st March, 1973 contains sufficient indication that he was suitable. The Collector himself had no hesitation to include him as No. 3 in the panel of five names submitted on 9-3-1973 ; and, although he prefaced by saying that it, was difficult to send five names of advocates suitable for the post, and he was sending five names as the Government wanted a panel of live, he wound up by stating that they were the five top advocates among those who had expressed willingness. We are not prepared to hold that the Collector had pronounced the 3rd respondent unsuitable.

11. Very little has been made out to establish the plea of mala fides. It was said that the 3rd respondent was a prominent member of a political party and that the same would be disclosed by the letter presented by him, to the Law Minister. We are unable to discern any trace of this from the letter, and no other material was placed before us in support of the plea.

12. It was argued that despite the instructions or Rules dated 3-11-1962, the practice in Quilon District was to make the appointment by inviting applications from the members of the Bar. Sri T.C.N. Menon stated that the instruction not to invite applications was in deference to the Supreme Court decision in *In re. A. an Advocate* AIR 1962 S.C. 1317. Whatever it was, in the face of the instruction, or the "Rule" as the petitioner would allege it to be, he cannot make a grievance of the Collector having sent up the name of one who was not an applicant ; and the "Rules" themselves, as noticed earlier, provide for nomination outside the sphere

of applicants. We are not altogether happy that in the face of the instructions, the District Judge and the Collector should have invited applications from the members of the Bar; nor, at the manner in which, while this was being done from one end, the 3rd respondent directly approached the Law Minister at the other end. It is not very edifying to see these. But they do not appear to affect the merits of the case.

13. From the allegations in the counter-affidavit and the files before us, we are satisfied that all the five names, namely, the original two nominations and the subsequent three, were fairly and squarely placed before the Council of Ministers; and after considering all of them, the appointment of the 3rd respondent was made. There is no ground for interference. We dismiss this writ petition, but without any order as to costs.