

**(2011) 01 MAD CK 0328**

**In the Madras High Court**

**Case No :** W.A. (MD) No's. 737, 738, 810 of 2010 and M.P. (MD) No's. 1 and 2 of 2010

K.P. Navaneetha Krishnan

APPELLANT

Vs

Dr. C. Gopalakrishnan and Others

RESPONDENT

---

**Date of Decision :** 27-01-2011

**Acts Referred:**

**Citation :** (2011) 3 CTC 294 : (2011) 3 MLJ 123

**Hon'ble Judges :** R. Subbiah, J;N. Paul Vasanthakumar, J

**Bench :** Division Bench

**Advocate :** Issac Mohanlal, for T. Kokilavane and D. Malaichamy, for the Appellant; M. Mariappan and R. Janakiramulu, Special Govt. Pleader, Veerakathtravan and P. Jessi Jeeva Priya, for the Respondent

---

## **Judgement**

N. Paul Vasanthakumar, J.—Since the issue involved in all these writ appeals are common, all the writ appeals are disposed of by this common judgment.

2. W.A. No. 737 of 2010 is filed against the order of the learned single Judge dated 2.11.2010 passed in W.P. No. 359 of 2009, which was filed by one Dr. C. Gopalakrishnan. W.A. No. 738 of 2010 and W.A. No. 810 of 2010 are filed against the order dated 2.11.2010 made in W.P. No. 1194 of 2009, which was filed by one K. Santhanakaruppasamy.

3. In both the writ petitions, Petitioners challenged the proceedings of the Director of Collegiate Education dated 9.1.2009 canceling the approval granted in favor of Dr. C. Gopalakrishnan as Secretary of the Yadhava College and approving the appointment of the Appellant in W.A. Nos. 737 and 738 of 2010, as Secretary of the College. It is the contention of Dr. C. Gopalakrishnan that approval granted to his Secretary ship was cancelled by the Director of Collegiate Education on 9.1.2009 without issuing any notice or giving opportunity of hearing. He is also claiming that he was elected by the Executive Committee of the Yadava Kalvi Nidhi as Secretary on 28.12.2008 and approval of Secretary ship was granted on 31.12.2008. The vacancy for the post of Secretary of the

college arose due to the death of the then Secretary named A.R. Chandran.

4. According to the Appellant in W.A. Nos. 737 and 738 of 2010, the General Body of the Kalvi Nidhi is the authority to appoint the Secretary for administering the College and therefore, if any vacancy arises for the post of Secretary of the College, the same can be filled up only by the General Body and not by the Executive Committee and the General Body which is the supreme body, having selected him as Secretary on the proposal submitted before the Joint Director of Collegiate Education, and based on the recommendation, the Director of Collegiate education approved his Secretary ship by order dated 9.1.2009 and cancelled the approval granted to Dr. C. Gopalakrishnan, which was granted on 31.12.2008.

5. The parties raised various contentions before the learned single Judge including filing of earlier W.P. No. 2181 of 2009 by the Yadava Kalvi Nidhi and the learned single Judge dismissed the writ petition by following the Full Bench decision in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal Vs. The District Registrar and Others, as well as in the light of the suit filed between the parties in these writ appeals in O.S. No. 587 of 2008, which, is pending as on date and directed the parties, to agitate their claim before the competent Civil Court in the pending suit.

6. The learned single Judge while disposing of W.P. Nos. 359 and 1194 of 2009 also held that all those matters relating to the election are to be agitated only before the Civil Court. The learned Judge however, set aside the order granting approval as Secretary in favor of K.P. Navaneetha Krishnan and restored the order passed in favor of Dr. C. Gopalakrishnan dated 31.12.2008 on the ground that no notice was given to the said Dr. C. Gopalakrishnan before canceling his approval and also gave a finding that his selection as Secretary is valid. As against, the said portion of the finding and the order dated 9.1.2009 canceling the approval granted in favor of K.P. Navaneetha Krishnan. W.A. Nos. 737 and 738 of 2010 are preferred. W.A. No. 810 of 2010 is filed, challenging the order in W.P. No. 1194 of 2009 questioning the restoration of the order granted in favor of Dr. C. Gopalakrishnan to function as Secretary of the college, among other things.

7. Heard the learned Counsels appearing for the respective parties.

8. The point arises for consideration in these writ appeals are as to whether the learned, single Judge is right in permitting Dr. C. Gopalakrishnan to continue as Secretary of the College when the parties are relegated to the Civil Court to decide the issue involved in the administration of the Yadava Educational Fund and the College Committee.

9. It is not in dispute that Dr. C. Gopalakrishnan was selected as Secretary of the College, whose Secretary ship was approved by the Director of Collegiate Education by order dated 31.12.2008. Whether his selection by the Executive Committee on 28.12.2008 after the demise of A.R. Chandran on 25.8.2008 is valid or not can be gone into only before the Civil Court and the parties can also

urge their point of view regarding the said issue before the Director of Collegiate Education. Subsequently, the very same Director of Collegiate Education by order dated 9.1.2009 cancelled the said approval of Secretary ship passed in favor of the said Dr. C. Gopalakrishnan and approved the Secretaryship of K.P. Navaneetha Krishnan taking note of the general body resolution said to have been passed on 28.12.2008. Whether the said election/resolution is in terms of the bye-laws or not can also be agitated only before the competent Civil Court as the said issues are disputed facts.

10. The learned Counsel appearing for the Appellant in W.A. No. 737 and 738 of 2010 submitted that Form-VII was also sent to the District Registrar, which was also recorded in the register and nobody has challenged the said recording of Form-VII by the District Registrar. The point can be urged before the Director of Collegiate Education by the Appellants.

11. The only issue to be answered in these writ appeals is whether the cancellation of order dated 31.12.2008 by the Director of Collegiate Education without giving any notice to the affected person viz.. Dr. C. Gopalakrishnan can be justified or not. By virtue of the approval granted on 31.12.2008 the said Dr. C. Gopalakrishnan was given the status as Secretary of the College. Before canceling the same and taking away the status conferred on him, a notice is bound to be issued to him as cancelling the said order will have some civil consequences, at least loss of his status as Secretary of the College. The theory of useless formality cannot be applied under the facts and circumstances of this case in the light of the order granting approval dated 31.12.2008 which has been set aside by order dated, 9.1.2009. The Supreme Court in the decision in Uma Nath Pandey and Others Vs. State of U.P. and Another, , considered similar issue of hearing the party concerned before passing an adverse order, which is having the effect of civil consequences. In the said judgment, it is held as follows:

3. 7. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated and if so, to what extent any prejudice has been caused, it may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.

8. Natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice do not present a

watertight classification, It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As LORD BUCKMASTER said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defense.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences; is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem (sic) rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated:

(Even God himself did not pass sentence upon Adam before he was called upon to make his defense. "Adam" (says God), "where art thou? Hast thou not eaten of, the tree whereof I commanded thee that thou shouldest not eat?".

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

....

14. Concept of natural justice has under-gone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules, framed there under.- They may be implied from the nature of the duty to be performed under a statute, What particular rule of natural justice

should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

11. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

12. In the light of the undisputed fact that before canceling the order dated 31.12.2008, the said Dr. C. Gopalakrishnan was not given any notice, there is violation of principles of natural justice. Therefore, the order passed by the Director of Collegiate Education dated 9.1.2009 insofar as canceling his order dated 31.12.2008 cannot be sustained and the matter has to be remitted to the Director of Collegiate Education for fresh consideration after issuing notice to all the parties and consider their objections if any before passing any fresh order.

13. The college is an aided college administered by the said K.P. Navaneetha Krishnan from 9.1.2009. Even though the order granting approval dated 9.1.2009 was set aside on 2.11.2010 pending disposal of W.A. Nos. 737 and 738 of 2010, this Court on 8.11.2010 granted stay of the order of the learned single Judge insofar as permitting Dr. C. Gopalakrishnan to function as Secretary of the Educational Agency, which is running the Yadhava College, without prejudice to the rights of the parties which has to be decided at civil Court in O.S. No. 587 of 2008. Thus, it is evident that the said K.P. Navaneetha Krishnan is continuously functioning as Secretary of the college from 9.1.2009. Since we are remitting the matter to the Director of Collegiate Education to consider afresh the issue of approval of the secretary of the College as an interim measure, we are permitting the Appellant in W.A. Nos. 737 and 738 of 2010 to continue as Secretary till a fresh order is passed by the Director of Collegiate Education for the smooth day-to-day administration of the college. We also direct the Director of Collegiate Education to issue notice to all the parties in these proceedings and consider their objections/representations before coming to a fresh decision regarding the Secretary ship of the college. The Director of Collegiate Education is directed to complete the said process and pass final orders before the end of February, 2011. We make it clear that the merits of the contentions raised by the parties herein are not decided in any manner in these appeals and the observations made by the learned single Judge regarding the merits of the matters are set aside and all the issues are left open to be decided in the civil Court. As to who should continue as Secretary of the college is the only question to be decided by the Director of Collegiate Education.

The writ appeals are disposed of on the above terms. No costs. Connected miscellaneous petitions are closed.