

(1959) 12 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 261 of 1959

Krishna Pillai

APPELLANT

Vs

Municipal Commissioner, Alleppey and Another

RESPONDENT

Date of Decision : 07-12-1959

Acts Referred:

Travancore District Municipalities Act, 1116 — Section 59(1), 62

Citation : (1960) KLJ 297

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : Kalathil Velayudhan Nair and V.S. Moothathu, for the Appellant; S. Narayanan Potti, P. Karunakaran Nair and N.K. Varkey, for 1st Respondent, for the Respondent

Judgement

Velu Pillai, J.—The petitioner was employed as an accountant in the Vanchi Poor Home at Alleppey, which was affiliated to the Vanchi Poor Fund, Trivandrum, and was managed by a Committee. Finding it difficult to carry on the management, the Committee requested the Municipal Council at Alleppey, to take over the management of the Poor Home. At the request of the Municipal Council, the Government of Kerala transferred the Poor Home to the Alleppey Municipal Council "on the terms and conditions proposed by Executive Committee of the Vanchi Poor Fund" by proceedings Ext. P. 1 dated the 10th February, 1958. Thereafter, a Committee consisting of eleven Municipal Councillors and six others was constituted for managing the Poor Home, and this Committee has been impleaded in this petition as the second respondent. The first respondent, who is the Municipal Commissioner, Alleppey, is the Secretary of that Committee. For alleged irregularities committed by the petitioner between the 1st January, 1957, and the 31st August, 1957, the petitioner was placed under suspension pending enquiry, by the first respondent by Ext. P. 2 on the 18th October, 1958. Some correspondence ensued between the petitioner and the first respondent, and by Ext. P. 7 dated the 2nd January, 1959, the first respondent ordered the suspension of the petitioner from service pending enquiry until further orders. It

is said, that no enquiry has been commenced yet, and the petitioner is still under suspension. The first respondent had also called upon the petitioner by Ext. P. 4 dated the 15th December, 1958, to reimburse the amount said to have been misappropriated by him. This petition is to quash Exts. P. 2, P. 4 and P. 7. One of the grounds to quash them was, that the first respondent had no authority, by himself, to place the petitioner under suspension from service. The power of the first respondent so to order suspension, was traced by his learned counsel to Section 72 of the Travancore District Municipalities Act, 1116 which may be referred to hereafter as the Act, and also to Rule 26 framed under the Act. The material part of Section 72 is that

.....the executive authority may.....suspend, remove or dismiss any Municipal officer or servant in its service.....for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct.

The executive authority under the Act is the Municipal Commissioner. u/s 16(c) of the Act, he may "perform all the duties and exercise all the powers specifically imposed or conferred on the executive authority by this Act; and, subject, whenever it is hereinafter expressly so provided, to the sanction of the Council, and subject to all other restrictions, limitations and conditions hereinafter imposed, exercise the executive power for purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purpose of this Act". It was contended, that the power u/s 72, is a power specifically imposed or conferred on the first respondent. Even so, only a Municipal officer or servant of the Municipality can be so dealt with by the first respondent u/s 72 and the question therefore arises, whether the petitioner can be deemed to be "a Municipal officer or servant in its service".

2. Though the management of a Poor Home is not specifically mentioned as one of the objects or purposes of the Act, Section 62 enables the Government, with the consent of the Municipal Council "to transfer to the Council, the management of any institution.....not provided for by this Act and it shall thereupon be lawful for the Council to undertake such management or execution." Apparently, this was the provision under which the Government transferred the institution--the Poor Home--to the Municipal Council and the latter accepted that responsibility. The proviso to Section 62 is important and reads "provided that in every such case, the funds required for such management or execution shall be placed at the disposal of the Council by Our Government". The learned counsel for the first respondent contended, that once these funds of the institution are transferred to the Municipal Council, they form part of the Municipal Fund. He then relied on Section 59(1) of the Act which provides, "that management, control and administration of every public institution maintained exclusively, out of the Municipal Fund shall vest in the Municipal Council". The true meaning of Section 59(1) of the Act will be clear, only if Section 59(2) also is understood. Section 59(2) reads :--

When any public institution has been placed under the direction, management

and control of the Municipal Council, all property, endowments and funds belonging thereto shall be held by the council, in trust for the purposes to which such property, endowments and funds were lawfully applicable at the time when the institution was so placed:

Provided that the extent of the independent authority of the Council in respect of any such institution may, from time to time, be prescribed by Our Government.

It seems to me, that the Act makes a distinction between institutions maintained exclusively out of the Municipal Fund, and institutions placed under the management of the Municipal Council, as those which may be transferred u/s 62 of the Act quoted above. With respect to the latter category, Section 59(2) provides, that the funds belonging thereto shall be held by the Council in trust for the purposes to which they were applicable. Certainly, the Municipal Fund is not (sic) held in trust, within the meaning of Section 59(2). It is therefore clear, that the funds of the Alleppey Poor Home which had been transferred to the Municipal Council, and the grant undertaken to be paid by Government in accordance with Ext, P. 1, do constitute funds of the institution, the management of which was transferred to the Municipal Council, but do not form part of the Municipal Fund. It was not contended before me, that the petitioner was being paid his salary out of the Municipal Fund so understood, and it was not disputed that he was being paid out of the funds of the institution. Rule 26 relied on, cannot go further than Section 72 of the Act; but it was pressed into service on behalf of the petitioner, because, according to it, the period of suspension pending enquiry, cannot exceed more than six months in the aggregate, and Exts. P. 2 and P. 7 are in violation of it. For the reasons stated above, I am of the view that neither Section 72 nor Rule 26 has any application to the case of an employee like the petitioner.

3. It is also seen, that the Poor Home is now managed by the second respondent a Committee constituted as above. The contention of the learned counsel for the petitioner was, that the second respondent-Committee, is only a part of the Municipal Council, and reliance was placed on Section 26 of the Act. It seems to me, that Section 26 speaks of a Committee constituted by some of the members of the Council, the object being, to bring about a division of functions so as to facilitate the business of the Council. An exception is provided by Section 27, in favour of persons who are not Councillors but who possess special qualifications for serving on such committees. Clearly, it was not in pursuance of Section 27, that the second respondent-Committee was constituted. It was open to the Municipal Council, having assumed management of the Poor Home, to set up a Committee to manage it and this was what it did. The argument does not advance the case of the first respondent, that the petitioner is a Municipal officer or servant. It was urged, that the second respondent can function only under the Municipal Council, and therefore the ultimate authority is vested in the Municipal Council; even so, the Municipal Council as such, has not acted in this matter. Section 16(c) of the Act is not attracted, so as to empower the first respondent

by himself to exercise the power u/s 72 of the Act. In any view, the first respondent by himself was incompetent to suspend the petitioner from service. This does not mean that the competent authority cannot deal with the petitioner, in accordance with law. If there is a case, for enquiry or as suggested by a communication by Government to the Municipal Council for investigation by the police, it is not clear why this was not initiated or proceeded with. The order Ext. P. 4 calling upon the petitioner to reimburse the amount alleged to have been misappropriated, appears to have been passed without adjudging the petitioner's liability to do so.

In the result, Exts. P. 2, P. 4 and P. 7 are quashed; but I make no order as to costs.