
(1984) 03 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 2750 of 1983

M. K. Kunjappan	Vs	APPELLANT
President of India and others		RESPONDENT

Date of Decision : 08-03-1984

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (1984) KLJ 255

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : A. X. Varghese, for the Appellant; K. Narayana Kurup, for the Respondent

Final Decision : Allowed

Judgement

M.P. Menon, J.—When C.M.P. No. 423 of 1984 was allowed, counsel on both sides agreed to have the Original Petition heard and disposed of forthwith. The Original Petition was accordingly heard. The petitioner was a Class IV employee: Jamadar of the Telegraph Store Depot, Ernakulam. He was involved in a murder case, and by Ext. P1 order, he was suspended from service. The criminal case is still pending; but in the meanwhile, he was dismissed from service by Ext. P3 order dated 9-2-1983, reading as follows:-

Whereas the President is personally satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to hold an enquiry in the case of Shri M. K. Kunjappan. Jamadar"WatchTnan. Telegraph Store Depot, Kaloor.

And whereas the President is satisfied that, on the basis of the information available, the activities of Shri M. K. Kunjappan are such as to warrant his dismissal from service. Accordingly, the President hereby dismisses Shri M. K. Kunjappan from service with immediate effect.

The challenge is to Ext. P3.

2. In the counter-affidavit filed on behalf of respondents (2) to (5), the main point raised is that President's satisfaction under clause (c) of the Second proviso to Article 311 (2) is not justiciable, and that the concerned authority has exercised its power bona fide. It is also stated that the criminal case "is not the basis of the order of dismissal".

3. Article 311 of the Constitution reads:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

4. There was at one time a view that the "satisfaction" in clause (c) must be the personal satisfaction of the President, but that view is not valid after the decision of the Supreme Court in *Samsher Singh Vs. State of Punjab* and *Another*, . It is now settled that the power exercised under clause (c) is only an executive power, reviewable like the exercise of any other executive power, on limited grounds. There was also a view that "subjective satisfaction" was outside the pale of judicial scrutiny, but after *Padfield* (1968 A.C. 997) the courts have not been readily and fully accepting "the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of

the exercise of the power is predicated" (See M.A. Rasheed and Others Vs. The State of Kerala,).

5. The three circumstances under which enquiries can be dispensed with in cases covered by Article 311 (2) require careful consideration. Under clause (a) to the proviso, enquiries can be avoided when a person is convicted of a criminal charge. No question of any "satisfaction" is involved in such cases; all that is required is the fact of a conviction. Similarly, the applicability of clause (b) depends on the question whether it is reasonably practicable to hold an enquiry. Where the appropriate authority is satisfied that it is impracticable, and records reasons in writing in support of such satisfaction, the requirements of clause (b) will be met. Clause (c) deals with an altogether different situation. The question there is one of expediency and security of State. Where the President is satisfied that it is inexpedient, in the interest of the security of the State, to hold an enquiry, none need be held. Inexpediency is different from impracticability. And the question of expediency has to be examined in the interests of the security of the State. Expediency with regard to other interests will not be relevant for the purpose of clause (c). In other words, the satisfaction of the President as to any other fact, and without reference to interests to security of the : State, will be insufficient for the purposes of clause (c).

6. Again, as pointed out by this Court in *Balakrishnan Nair v. State of Kerala* (1980 KXT 264), dismissal of a Government servant with or without an enquiry pre-supposes some wrongful conduct on his part. What could be dispensed with under clauses (a) to (c) is only an enquiry, but not the existence of some allegation which should otherwise have been enquired to. Therefore, " when the authorities exercise power under these clauses, they have at least to show that there was some allegation of improper conduct against the Government servant concerned. In other words, clauses (a) to (c) can operate only in an area where:

(i) the conduct of a Government servant has been examined by a criminal court and he has been found guilty by the court, or

(ii) The nature and circumstances of the conduct are such that it is impracticable to hold an enquiry; or

(iii) the nature and circumstances of the conduct are such that it is inexpedient to hold an enquiry.

The clauses of the proviso cannot operate in a vacuum; they can operate only when the authorities find that allegations regarding improper conduct are on the horizon.

7. It is also settled law that the validity of subjective satisfaction can be tested on the following, among other grounds:

(i) where the authority whose satisfaction is in question has totally failed to apply its mind to relevant consideration;

(ii) where its satisfaction is based on considerations which are not relevant under the statute;

(iii) where the satisfaction is arrived at by the application of a wrong test, or where the right questions are not asked;

(iv) where the satisfaction is not grounded on materials which are of rationally probative value:

and (v) where the power is exercised without bona fides.

Where an authority arrives at a satisfaction by misdirecting itself on facts or law, or where its conclusion is one which no person reasonably conversant with the requirements of the statute could have arrived at, the exercise of the discretionary power by it will be deemed to arise from a misconception of law, and therefore reviewable by the superior courts.

8. Since the counter-affidavit in the case proceeded on the misapprehension that all that the respondents had to show was that the President was satisfied about something, and that there was no scope for any further enquiry into any matter, I enquired of the learned Central Government Pleader he would like to rely on the relevant files and produce them in court to show how the mind of the concerned authority had travelled over relevant matters. The first reaction was negative, and an affidavit was filed claiming privilege; but subsequently, the files were produced and the Government Pleader himself wanted me to go through some of its pages to get myself satisfied that the satisfaction of the authorities were properly grounded. And what is revealed is this. There were reports from the "IB" in 1976 that the petitioner was associating himself with the CP(ML) which was then an illegal organisation. He was considered a "security risk" and a suggestion was mooted to dismiss him from service, in exercise of power under clause (c). But before this could be finalised, the policy of the Government changed, and the ban on the organisation was lifted. The proposal was therefore dropped. By January, 1981 however, reports were again received about the petitioner's activities and his involvement in the criminal case; and it was suggested that he could be dealt with either under clause (b) or under clause (c). These alternatives were thereafter examined, and it was found that procedure under clause (b) would be time consuming in view of Rule 19 of the Classification, Control and Appeal Rules. Since no firm recommendation was received about the need to proceed under clause (c) also, it was decided to await the outcome of the criminal case. This was in April, 1981. The matter was again considered, and again, the opinion was expressed in July, 1981 that the proper course was to wait for the result of the criminal case. It appears that the P & T Department was pressing for some kind of action, but the Department of Personnel & Administrative Reforms was not in favour of action under clause (c), as there was nothing "specific and clearly relatable to the security of State". According to a noting made in the file in April, 1982 the case for action under clause (c) was "very weak" on the basis of information then available. However, a

note was drawn up a few months later to point out that though the CPI (ML) was not an unlawful association, its philosophy was violent and that the involvement of the petitioner in a murder case was capable of creating "strong suspicion". An enquiry into all such matters was likely to expose the source of information,, and that was not desirable. It was in the background of this note and connected notes that a decision was taken by an Advisory Committee, towards the end of 1982, to dismiss the petitioner under clause (c).

9. I have referred to the report only for inferring certain things which are favourable to the respondents, and not for the purpose of sitting in judgment over the merits of their decision. The first favourable aspect is that there was some allegation or charge of misconduct against the petitioner: he was taking part in political activities against the provisions of the Conduct Rules. The second is that the decision was taken after detailed examination of all the relevant aspects at various levels; it was not as if some report was received and that was treated as an excuse. The third aspect is that the advice of a high-level committee was obtained before the final decision was taken. But can these conclude the matter?

10. In terms of the relevant Constitutional provision, the first question that the authorities should have asked was whether it was inexpedient to hold an enquiry. There is enough in the file to show that in their opinion, it was impracticable to hold an enquiry, but that is irrelevant for the purpose of clause (c). The second question was whether there was inexpediency relatable to the interests of the security of the State. On this question, the noting in February, 1982 was that there was nothing to take such a view. In April, 1982 also, the case in this connection was considered "very weak". The only other noting was that if an enquiry were to be held under the Classification, Control and Appeal Rules, the source of information would be exposed. This may have some relevance to the question of expediency; even so, that was not enough to relate it to the interests of the security of the State. So far as I could see from the files, the real question connected with the security of State was raised only twice, and on both these occasions, the view taken was that it was not possible to correlate the two. This therefore can be characterised as a curious case where the right question was once asked and a right conclusion arrived at, but a final decision was yet taken contrary to the said conclusion. In my opinion, even the files are insufficient to show that anyone had formed an honest opinion that it was inexpedient, from the stand-point of the security of the State, to hold an enquiry into the petitioner's conduct. If that is so, the order impugned cannot be sustained.

11. Some other aspects of the case also deserve notice. So long as the political group in question was not an unlawful organisation, could the petitioner's association with it, which apparently consisted of addressing public meetings and holding study classes, be treated as a threat to the security of the State even for correlating it to expediency? The authorities themselves were not inclined to take up such a position, after 1977. The petitioner was no doubt involved in a murder

case; and it may be possible to assume, as the authorities have done, that the crime was perpetrated as part of the political activity of his group. If that is so, the "source of information" is bound to be exposed in the course of the criminal trial: no person can be prosecuted in a criminal court for murder, without adducing evidence about the circumstances, the motive and the intention. The theory that the holding of an enquiry would have adversely affected the security of the State by exposing the source of information, can have little relevance to a case where a full-fledged enquiry by a competent court into one of the manifestations of the political philosophy was itself in the offing. One can certainly visualise the case of an employee occupying a sensitive post in the Defence or Foreign Affairs Department where he would be in a position to have access to material vital to the security of the State. There may be employees in other Departments also who could indulge in activities, like spying, so as to endanger the nation's security. The nature of the post, the nature of the activity, the loyalty of the employee will all be relevant in assessing his security-rating. But can the activities of a watchman in a telegraphic store, going about making public speeches about some political philosophy he believes in, be considered as something which it would be inexpedient to enquire into for reasons connected with the security of the State, when propagation of the philosophy itself is not made unlawful. To me, this seems to be a simple case where the P & T Department thought, may be for valid reasons, that the petitioner should be weeded out from service. The concerned authorities examined the question as to how best this could be done. The normal course was to charge-sheet him for violation of the Conduct Rules and institute an enquiry. It was found that this course was not possible. The alternative of proceeding under clause (b) was also examined, and this too was considered not feasible. The third alternative was to await the outcome of the criminal case, to take action under clause (a). For some reason or other, this counsel of patience did not prevail for long. Resort to clause (c) was then thought of. And notwithstanding the warning that it would be risky to do so, a decision was ultimately taken to proceed, on the basis that the petitioner was believing in the philosophy of violence, that the murder case was evidence to create a strong suspicion in this regard, and that an enquiry would expose the source of information. What information? That the petitioner was an activist of the CPI (ML) was a well-known and notorious fact, as he was going about addressing public meetings. That he was an accused in a criminal case, accused of committing murders as part of his philosophy, was also a notorious fact. At any rate, there was nothing to show that the holding of an enquiry into the conduct of the petitioner was reasonably linked with the interests of the security of the State. The power under clause (c) was thus exercised, not because it was inexpedient to hold an enquiry from the stand-point of security, but because the Department wanted to be rid of his presence for some reason or other. That was not a bona fide exercise of the power, according to me.

I therefore quash Ext. P3 and allow this Original Petition. No costs.