
(1959) 10 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 570 of 1958

Prabhakara Menon

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-10-1959

Acts Referred:

Travancore-Cochin Public Health Act, 1955 — Section 12, 160

Citation : (1960) KLJ 84

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : V.K.K. Menon and C.S. Padmanabha Iyer, for the Appellant; Kalathil Velayudhan Nair for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Joseph, J.—The petitioner is the Sanitary Inspector of Mattancherry Municipality, having been appointed to the post nineteen years ago, by the Government of the erstwhile State of Cochin. On 31--8--1957, the Municipal Council resolved to terminate the services of the petitioner and the Health Officer of the Municipality. Pursuant to this resolution, the executive authority of the Council served a memo, Ext. P. 1, on the petitioner on 11--11--1957 framing five charges against him and calling for his explanation. The petitioner was also placed under suspension pending enquiry. The petitioner duly submitted his explanation (Ext. P. 3) and he also presented a petition to the Government on 12--11--1957 praying that the order of suspension be cancelled. While the petition before the Government was pending, the executive authority, by order Ext. P. 4, cancelled the order of suspension on 21--12--1957 and directed the petitioner to join duty forthwith. On the termination of the enquiry, the executive authority passed a final order (Ext. P. 5) on 21-1-1958 exonerating the petitioner of all the charges. Thereafter the petitioner was working as Sanitary Inspector till he took leave on medical grounds on 10--2--1958. Ext. P. 6 is the order granting him leave. However, the Government had passed an order (Ext. P. 7) on 3rd January, 1958,

dismissing the petitioner's prayer for cancellation of the order of suspension. This order directed the executive authority to place the petitioner under suspension pending enquiry which was being conducted by him at that time. Another order (Ext. P. 8) was passed by the Government on 12--2--1958 pointing out to the executive authority that it was improper for him to have allowed the petitioner to continue in office after receipt of the order dated 3--1--1958 and directing the executive authority to implement the said order. On receipt of Ext. P. 8, the executive authority passed two orders, Exts. P. 9 and P. 10, on 19--2--1958. Ext. P. 9 stated that the leave granted to the petitioner was cancelled and Ext. P. 10 that the petitioner was again placed under suspension pending enquiry. The petitioner filed O.P. No. 106 of 1958 in this court to quash Exts. P. 9 and P. 10 and this court allowed the petition on 19--8--1958. Thereafter, the executive authority issued another order (Ext. P. 11) on 3--9--1958 stating that the Government had cancelled the order (Ext. P. 5) dated 21--1--1958 exonerating the petitioner and that the executive authority therefore proposed to hold another enquiry into the same charges. The petitioner was again placed under suspension pending the de novo enquiry. This order (Ext. P. 11) is based on an order of the Government passed on 26--2--1958 which reads as follows:--

Sri. K. Gopala Menon, Municipal Commissioner, Mattancherry, has enquired into the charges against Sri V.K. Prabhakara Menon, Sanitary Inspector under the Municipal Council and passed orders in his proceedings R.C. A3-7471/57 dated 21--1--1958. Government find that the Commissioner has not made full-fledged enquiry into the matter and that the enquiry proceedings have been conducted and orders passed in haste. Government therefore cancel the proceedings of the Commissioner dated 21--1--1958. The present Municipal Commissioner will conduct a de novo enquiry into the charges after placing the Sanitary Inspector concerned under suspension. The Municipal office records on the subject are returned herewith to the Director of Local Bodies."

The petitioner therefore prays for a writ of certiorari quashing the order of the Government dated 26--2--1958 and of the executive authority dated 3--9--1958 (Ext. P. 11) and a writ of prohibition directing the executive authority to drop all proceedings relating to the enquiry. The main grounds relied on by the petitioner are that the Government had no jurisdiction under the Cochin Municipal Act to quash the order of the executive authority, that even if disciplinary action has to be taken against the petitioner the competent authority is the Health Officer of the Municipality and not the executive authority, and that the action taken against him is mala fide. Respondents 1 to 3 are respectively the State of Kerala, the Municipal Council, Mattancherry, and the Municipal Commissioner (executive authority of the municipal council). A counter-affidavit has been filed on behalf of the first respondent contending that the order in O.P. No. 106 of 1958 was practically an agreed order and that the petitioner is therefore incompetent to question the order of the Government or the proceedings taken on the basis of the same. The third respondent has filed a counter-affidavit on behalf of

respondents 2 and 3. He contends that the several orders passed and the proceedings taken are valid, that the order exonerating the petitioner was passed by the then executive authority after the Council had passed a vote of non-confidence against him and the Chairman had asked; him not to proceed with the enquiry, that when the papers relating to the enquiry were submitted to the Director of Local Bodies, he recommended to the Government to quash the order of the executive authority as the previous enquiry was not an impartial one, and that the Government had jurisdiction to pass the impugned order. It is further contended that the Government can quash any order of the executive authority, that disciplinary action has to be taken under the Municipal Act and not the Public Health Act as contended by the petitioner and that the allegation of mala fide is not true.

2. Before considering the matter on the merits, I may dispose off the objection taken by the State that the petition is not maintainable in view of the order in O.P. No, 106 of 1958, which is extracted below:

Exhibits P. 9 and P. 10 the orders impugned in this petition are stated to be in pursuance of a direction from the Government. Exts. P. 9 and P. 10 are dated 19--2--58 and the direction from the Government is dated 26--2--58. In view of this, I think the best course will be to quash Exts. P. 9 and P. 10 and leave the Executive Authority free to take such further action as it deems fit in the light of the communication dated 26--2--1958 and other circumstances, in accordance with the law. The petition is allowed in the manner and to the extent indicated above. No Costs."

The argument is that the order in O.P. No. 106 of 1958, having become final, it is not open to the petitioner to question the validity of the order of the Government dated 26--2--1958 or the proceedings taken on the basis of the same. I am unable to accept this argument. O.P. No. 106 was for quashing the orders Exts. P. 9 and P. 10, which were passed not on the basis of the order of the Government dated 26--2--1958 but the earlier order dated 12--2--1958 (Ext. P. 8). However, the Government had passed a later order on 26--2--1958 and the same was not sought to be quashed in O.P. No. 106. It appears to me that it was because of the later order, the validity of which did not arise for consideration in the original petition, that the Municipality was allowed to take further action in the light of the same. This court did not and was not called upon to express any opinion regarding the validity of the order dated 26--2--1958 in O.P. No. 106 of 1958. It may also be mentioned that the order dated 26--2--1958 was not made available to the petitioner at that stage or later. I do not feel justified in construing the order in O.P. No. 106 as one upholding the validity of the order dated 26--2--1958. The objection raised by the State regarding the maintainability of the petition must therefore be over-ruled.

3. I shall first take up the question whether the executive authority of the Municipality has jurisdiction to proceed with the enquiry against the petitioner. The petitioner's case is that he is a member of the Public Health establishment

and that the Health Officer of the Municipality is the only person competent to take disciplinary action against him. Reliance is placed on section 12 of the Travancore-Cochin Public Health Act, XVI of 1955, which reads as follows :

12 (1) The Health Officer in charge of any local area shall exercise supervision and control over all the members of the public health establishment in such area.

(2)(a) Save as otherwise provided in this Chapter or in any rules or regulations made under it, all transfers and punishments of the members of the public health establishment under the supervision and control of the Health Officer shall be made by Health Officer, subject to the approval of the executive authority.

(b) If for any reason the executive authority disagrees with the orders of the Health Officer under clause (a), the executive authority shall refer the matter to the Government whose decision shall be final

"Local area" has been defined by the Act as "the area within the jurisdiction of a local authority"; and "local authority" means

(a) in the City of Trivandrum, the Corporation of Trivandrum; (b) in any other Municipal area, the Municipal Council concerned;

X X X

Section 160 of the Travancore-Cochin Public Health Act provides:

If any provision relating to public health contained in any other enactment in force in the State is repugnant to any provision contained in this Act, the latter provision shall prevail and the former provision shall, to the extent of the repugnancy, be void".

The petitioner's argument is that by virtue of these provisions the executive authority has ceased to have jurisdiction to take disciplinary action against members of the public health establishment of the Municipality. The Government and the Municipality proceeded under the provisions of the Cochin Municipal Act, XVIII of 1113. Section 69 of this Act provides :

The officers and servants appointed u/s 65 may be fined, suspended, reduced or dismissed under such rules as may be framed by the Government from time to time".

The Government framed rules u/s 69 in 1114 M.E and published the same in the Cochin Government Gazette dated 3rd Makaram 1114. Rule 1 prescribes the procedure for dismissal, removal, reduction, suspension, not being one pending enquiry, withholding increments or promotion of officers or servants of a Municipal Council. The third proviso to the rule is in the following terms:

Provided further that no punishment shall be inflicted on any member (excluding nontechnical staff) of the Health Department or the Public Works Department of a Municipality on charges involving technical matters relating to the respective Departments without consulting in writing the Health Officer or the Municipal

Engineer as the case may be; and if there are no such officers, the Director of Public Health or the Assistant Engineer of the Division in which the Municipality is situated, as the case may be, shall be consulted before the punishment is made".

Rule 5 provides for an appeal to the Council against all orders of the executive authority imposing punishments other than those referred to in rule 4, i.e., censure, fine not exceeding Rs. 3/- recovery of any sum not exceeding Rs. 5/- under rule 3 and suspension pending enquiry under rule 2. Under rule 5 (2) the Government have power to call for records relating to punishment of any officer or servant of a Municipal Council and pass such orders as may be deemed fit. According to the petitioner, these rules have ceased to have any force in view of the provisions of the Travancore-Cochin Public Health Act. The first respondent, the State, has not referred to this allegation in the petitioner's affidavit. Respondents 2 and 3 merely state that no disciplinary control is or can be exercised by the District Health Officer over the petitioner. In my opinion, the petitioner's argument must prevail in view of the provision in section 160 of the Public Health Act referred to earlier. It cannot be denied that the provision in the Cochin Municipal Act and Rules relating to disciplinary action against a Sanitary Inspector is a matter relating to Public Health and that to the extent it is repugnant to the provision in section 12 of the Public Health Act, it is void. The executive authority is therefore incompetent to conduct the enquiry.

4. The above finding is sufficient to dispose off this petition, but another point was also argued, namely, that if the matter is governed by the Cochin Municipal Act, the order of the executive authority must be deemed to be final and that the order of the Government quashing the same is void. It is argued that though a right of appeal is given to an officer punished under the Act, such right is not available to the Municipal Council when the officer is not found guilty and that the council is bound to respect the order of the executive authority which was in favour of the petitioner. I do not think there is any substance in this argument. Rule 5 (2) of the Rules (Cochin) provides :

5 (2) Notwithstanding anything contained in the preceding rules, Government may call for the records relating to the punishment of any officer or servant of a Municipal Council and pass such orders as may be deemed fit".

It is seen from the records made available at the hearing that the Chairman of the Municipality and the Director of Local Bodies sent up reports to the Government criticising the action taken by the executive authority and that it was on the basis of such reports that the Government acted. Rule 5 (2) cannot be construed so as to exclude the jurisdiction of the Government in matters other than those brought before the Government by aggrieved members of the staff of the Municipal Council. Even apart from Rule V, the Government have power u/s 34 (Cochin Municipal Act) to call for any document in the possession or under the control of any council or executive authority, to require any executive authority or council to furnish any information or report on any municipal matter and to record in writing for the consideration of any executive

authority or council any observations in regard to municipal matters. This provision is made to enable the Government to exercise control over municipal bodies. In view of these provisions, it cannot be held that the Government had no jurisdiction to cancel the order of the executive authority exonerating the petitioner.

5. The only other ground raised in the petition is that the action taken against the petitioner is mala fide. The materials available do not enable me to come to the conclusion that the action taken is mala fide. It may also be observed that this ground was not seriously pressed at the hearing. In view of my conclusion on the first point, the latter part of the order of the Government, No. 1747I/L55/M1-B/57 dated 26--2--1958 directing the Municipal Commissioner to conduct a de novo enquiry into the charges against the petitioner as well as the Commissioner's order (Ext. P 11) must be quashed, and I order accordingly. The original petition is allowed as indicated above. In the circumstances, there will be no order as to costs. This order will not be a bar to the Health Officer of the Municipality for taking appropriate action against the petitioner.