
(2003) 12 KL CK 0018

In the High Court Of Kerala

Case No : W.A. No's. 1276 and 1306 of 2003

Premachandran, M.V.

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 311, 314

Kerala Police Act, 1960 — Section 36B, 6

Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 23, 3, 36, 36A, 36B

Citation : (2003) 12 KL CK 0018

Hon'ble Judges : Jawahar Lal Gupta, C.J.; M. Ramachandran, J

Bench : Division Bench

Advocate : Kodoth Sreedharan, for the Appellant; Roy Chacko, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Is the order of dismissal passed against the two constables for their having accepted a bribe of Rs. 20,000 each, vitiated only for the reason that the action was taken by the State Government under the Kerala Civil Services (Vigilance Tribunal) Rules, 1960 and not the "Kerala Police Departmental Officers Punishment and Appeal Rules, 1958"? This is the short question that arises for consideration in these two appeals.

2. The Appellants were working as constables in the Kerala Police Service. They had joined service on March 7, 1985 and January 27, 1987 respectively. On August 14, 1988 they were on patrol duty. They had found one Mr. Abdul Rahiman carrying a substantial amount of money. He was taken into custody. However, the Petitioners had released him on taking Rs. 20,000 each. They were placed under suspension. The preliminary enquiry was prolonged for more than 4 years. Thereafter, they were served with charge-sheet dated October 30, 1992. They had filed their respective replies on November 23, 1992 and March 17, 1993.

3. After examination of the matter, the Government decided that the enquiry should be conducted by the Vigilance Tribunal and not by the Circle Inspector who is normally entrusted with such a responsibility under the "Kerala Police Departmental Officers Punishment and Appeal Rules, 1958". The Tribunal, which is headed by a judicial officer, held an elaborate enquiry. On August 30, 1997 it submitted a report finding that the allegation was proved. It proposed that the penalty of stoppage of increment for ten years be awarded. The matter was considered by the Government in consultation with the Kerala Public Service Commission. Show-cause notices were given to the Appellants. Ultimately vide orders dated June 13, 2000 and October 11, 2001 two Appellants were ordered to be removed from service.

4. Aggrieved by the orders of removal from service, they sought review of the penalty. The prayer having been declined, they approached this Court through two separate petitions under Article 226 of the Constitution.

5. The matter was considered at length by the learned Single Judge. The contentions were rejected. The Writ Petitions were dismissed. Hence these two appeals.

6. Mr. Sreedharan, learned Counsel for the Appellants has made a two-fold submission. Firstly, it has been contended that the persons working in the Police Department are governed by the provisions of the Kerala Police Act, 1960. Under the Act, Rules have been framed. The procedure for enquiry etc. has been laid down in these rules. The prescribed procedure was not followed. Instead, the enquiry proceedings were held under the Kerala Civil Services (Vigilance Tribunal) Rules, 1960. In view of the provisions contained in the Special Rules, resort to general rules was illegal and vitiates the orders of penalty. Secondly, it has been contended that by the violation of the prescribed procedure prejudice has been caused to the Appellants. They were deprived of the opportunity to avail of the remedies of Appeal and Revision before the departmental authorities. On this basis it is contended that the Judgment delivered by the learned Single Judge deserves to be reversed and the orders of removal from service quashed.

7. The Legislature had promulgated the Kerala Police Act, 1960 with the object of consolidating the law relating to the police force in the State. Section 6 of the Act, on which reliance has been placed by the learned Counsel for the Appellants, specifically provides that "the Inspector General, Deputy Inspector-General, Assistant Inspector-General and Superintendents of Police may, at any time, dismiss, remove, suspend or reduce to a lower post or time scale or to a lower stage in time scale, any officer of the subordinate police whom they shall think remiss or negligent in the discharge of his duty...." This power is "subject to the provisions of Article 311 of the Constitution and to such Rules as the Government may, from time to time, make under this Act".

8. A perusal of this provision shows that the prescribed authorities have been empowered to impose the penalty of removal etc. This power has to be exercised

in conformity with the provisions of Article 311 of the Constitution and the Rules that have been framed by the Government.

9. The State Government has actually framed Rules. These Rules are called the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. In a nutshell, these rules embody the procedure for departmental enquiry and delineate the penalties that can be imposed. A fact, which deserves mention is that under Rule 36A the Government has the power to review any order passed by a subordinate authority. It also contemplates that the Government can confirm, modify or set aside the order passed by the disciplinary authority. It can also impose any penalty or vary it by following the prescribed procedure. Section 36B is relevant. It reads as under:

36B. Powers of Government to call for records at any stage.--The Government may call for the records of any enquiry at any stage pending before any authority other than a Tribunal appointed under these Rules and may themselves conduct the inquiry or pass such other orders in accordance with these rules as they think fit having regard to the circumstances of each case.

A perusal of the above provision shows that even in a case where enquiry proceedings have been initiated by an authority other than a Tribunal appointed under the Rules, the Government can itself hold an enquiry and pass such orders as it thinks fit in the circumstances of the case. Thus, the Rules confer an overall supervisory jurisdiction on the Government, which can be exercised at any time during the course of the proceedings.

10. After the promulgation of the 1958 Rules, the Government had framed another set of Rules called the "Kerala Civil Services (Vigilance Tribunal) Rules, 1960". These Rules were also framed under the proviso to Article 309 of the Constitution. These Rules "apply to all officers under the Rule making control of the State Government other than those referred to in Article 314 of the Constitution of India". Thus, the Rules take within their ambit all classes of civil servants except those, which were covered by Article 314 of the Constitution. This special class of employees is no longer available after the 28th amendment of the Constitution. Under Rule 3, the Government is empowered to appoint a person who has been or is eligible to be appointed as District and Sessions Judge or a person with not less than 7 years experience in the conduct of criminal or disciplinary cases as a Tribunal. Under Rule 4 the Government can direct that a case or class of cases should be dealt with by the Tribunal. In particular, the provision provides that "all cases relating to Gazetted Officers in respect of matters including corruption on the part of such officers in the discharge of their official duties shall be referred to the Tribunal". Rule 5 inter alia provides that the departmental authorities can also forward to the Government the records of cases other than those of corruption which they think fit to be considered by the Tribunal and the Government "is competent to decide whether they shall be considered by the Tribunal or not". Rule 8 deals with the procedure for enquiries. It is intended to ensure a reasonable opportunity to the employees. This detailed

procedure guarantees the right to adduce evidence and to controvert the statements etc. made against the employee. It provides for oral hearing of arguments. Thereafter, under clause 10 the Tribunal has to record its finding in respect of each charge and in the event of the employee being found guilty the Tribunal can make a recommendation regarding the punishment to the Government.

11. On a perusal of the statutory provisions it is evident that normally an enquiry against a police official shall be held under the 1958 Rules. However, in cases involving allegations of corruption, the Government has constituted a separate Tribunal under the 1960 Rules. It is manned by a legally trained person. Surely, an officer who has worked as a District Judge or a person who is eligible to be appointed as a District Judge is better than a Circle Inspector contemplated under the Police Rules. The enquiry under the 1960 Rules apparently causes no prejudice.

12. Mr. Sreedharan submits that the provisions of the Police Act provide a protection to the police personnel. Under these Rules the authorities have been specified. The employee has the remedy of Appeal and Revision. Thus, the action of the State Government in referring the matter to the Tribunal was wholly without jurisdiction.

13. The contention is untenable. As noticed above, the cases of corruption are treated as a separate class. In any event, even if this aspect of the matter is overlooked, a perusal of the Police Rules shows that under Rule 8, the authorities, which can conduct an enquiry have been specified. It inter alia provides that the enquiry can be conducted by the appointing authority or the Head of the Department or an officer appointed by the appointing authority. Still further Rule 8(iv) postulates that the enquiry can be conducted by "a Special Officer or Tribunal appointed by the Government for the purpose". Thus, the Constitution of a Tribunal for the purpose of conducting an enquiry against a police official is not in violation of the statutory rules. In fact Rule 8(iv) makes a specific provision as indicated above. The Government is clearly competent to constitute a Tribunal even under the Police Rules and if such a Tribunal exists in the State, it can surely refer a case or a class of cases to the Tribunal. This is precisely what has been done in the present case.

14. Mr. Sreedharan contends that if under the Act or the statutory rules a particular duty is required to be performed by a specified authority, none other than the prescribed authority can exercise that power. He places reliance on the decision of Their Lordships of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, .

15. There is no quarrel with the proposition propounded by the learned Counsel. In the present case it is manifest that Rule 8(iv) specifically authorises the State Government to appoint a Tribunal to have the enquiry conducted by it even in the case of a police official. Thus, there is no violation of the Special Rules

governing the police officials in the present case.

16. In addition to the above, the power under Rule 36B is also relevant. It clearly empowers the State Government to call for the records of any enquiry pending before any authority and conduct the enquiry or pass such orders as it deems fit. Thus, it is open to the Government to pass an order and impose a penalty even in a case where an enquiry has been held by an authority specified in Rule 8. Reading the provisions harmoniously, it is clear that the Government is not a stranger in the case of imposition of penalty against police officials. Thus, the Government has got the power to refer a case to a Tribunal and has the power to pass an order of penalty. Under Rule 36A it can even review an order passed by any of the authorities in the Police Department.

17. Mr. Sreedharan contends that the passing of the order by the State Government has deprived the Appellants their right of appeal and revision that was available under the Rules. Thus, the action vitiates the entire proceedings.

18. The contention cannot be accepted. Firstly, it deserves mention that the proceedings had been initiated against the Petitioners as far back as the year 1992. The enquiry proceedings had commenced before the Tribunal in the year January 1995. These had continued till August 30, 1997. During all this time the Petitioners had kept sitting on the fence. They had never raised any objection regarding the jurisdiction of the Tribunal to hold an enquiry. They had taken their chance. It is only after they were found guilty and awarded a penalty that the objection of jurisdiction was raised. If it was the case of the Appellants that the enquiry proceedings should not be conducted by the Tribunal, they should have raised the objection at the threshold. They had failed to do so. Having taken their chance, they are now estopped from contending that the proceedings were not in conformity with law.

19. Secondly, it also deserves mention that the conduct of the proceedings by the Tribunal is in strict conformity with Rule 8(iv) of the 1958 Rules governing the Appellants. There being no infirmity of law, they cannot say that the proceedings were not validly conducted.

20. Mr. Sreedharan submits that the remedy of appeal and revision guaranteed under the statute and rules was taken away.

21. The remedy of appeal or revision is conferred by statutory provisions. If the very provision under which the remedy is provided contemplates that a higher authority can pass an order and then the remedy is not available, it cannot be said that the proceedings are vitiated. The remedy provided by the statute would itself be subject to the provisions of the rules. In the present case the rules provide for appeal and revision. However the provisions in Rules 23 and 36 have to be read along with the provisions of Rules 8, 36A and 36B. When harmoniously construed, we find that there was no violation of any right guaranteed under the Rules.

22. Besides all the technicalities pointed out by the Counsel, a fact, which deserves mention, is that the Appellants were members of the police force. Men in uniform are the symbol of State's authority. They have the power to deprive a citizen of his liberty. They are charged with a duty to enforce law. Their conduct must inspire confidence.

23. In the present case, they were found to have taken Rs. 20,000 each from a person who was not working according to law. Instead of apprehending him, they had let him off. The charge is found to have been proved. During the enquiry full and reasonable opportunity was given. It has not even been suggested that the proceedings were not fair or that the Appellants did not have an adequate opportunity. In such a situation, we find that even if there was a technical defect in some respect, persons like the Appellants are not entitled to any indulgence in the exercise of discretionary jurisdiction under Article 226 of the Constitution. Corruption is a menace, which deserves to be checked with a heavy hand. The Appellants who were custodians of law had themselves committed acts of corruption. Their removal from service was the only way they deserved to be treated. In such a situation, no ground for interference under Article 226 is made out.

24. Mr. Sreedharan was at pains to point out that even some other officers were involved. It may be so. However, for the present we are only called upon to consider the claim of the Appellants. They have only been given what they richly deserved. Nothing more. They should have no cause to complain.

25. No other point has been raised.

In view of the above we find no merit in these appeals. Resultantly, both the appeals are dismissed.