

(1970) 07 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 2433 of 1966, etc.

R. Mohammed Kuthubuddin and Others

APPELLANT

Vs

The Additional Tribunal for Disciplinary Proceedings and
Another

RESPONDENT

Date of Decision : 07-07-1970

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Criminal Procedure Code, 1898 (CrPC) — Section 161, 162, 251A
Evidence Act, 1872 — Section 24
Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 — Rule 5

Citation : (1971) ILR (Mad) 623

Hon'ble Judges : K. Veeraswami, C.J.;Gokulakrishnan, J

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari, for G. Ramaswamy, R. Ramachandran and V. Krishnaswamy, for the Appellant; S. Govind Swaminathan, Advocate-General and S. Mohan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Veeraswami, C.J.—The due place and value of signed statements of witnesses examined by a Police Inspector of the Directorate of

Vigilance and Anti-Corruption, in the course of investigation leading to disciplinary proceedings arises for consideration in this batch of petitions.

They were originally before a single Judge, who having regard to the importance of the question referred them to a Division Bench. On petitions

from certain Village Officers in Tirumangalam taluk in Madurai district, that specified Revenue Subordinates, Tahsildars and Deputy Tahsildars

demand and obtained illegal gratification from them in connection with passing of village accounts the Inspector investigated into the allegations

and made a report. The materials of investigation he sent up contained signed

statements from certain witnesses who were mostly village officers, stated to be the victims. The cases were eventually referred to the Disciplinary Tribunal which, on the basis of such signed statements, framed charges against the Petitioners to the effect that actuated by corrupt motives and abuse of their position and authority as upper division clerks in the Collector's Office at Madurai, they demanded at the specified place and time and received illegal gratification of specified amounts from named village officers whose accounts were checked during the Jamabandhi. The propriety of these charges is questioned by them. This they do on the analogy of the provisions of Chapter XIV of the Code of Criminal Procedure, and of *P. Sirajuddin, etc. Vs. State of Madras, etc.*, .

They go so far as to suggest that Rule 5(b) of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 is ultra vires and is violative of Article 311 of the Constitution inasmuch as it permits a decision to be taken by the Government on the investigation records, including such statements, to refer the cases to the Disciplinary Tribunal. On these grounds they pray that the proceedings before the Tribunal should be quashed.

2. We think that the question is basically one of fairness to the persons charged, and application of the disciplinary proceedings of the elementary principles of justice. In criminal investigations, the Law of this land as embodied in Chapter XIV of the Code of Criminal Procedure abundantly ensures it by safeguards and limitations on the powers of the police. In cognizable cases, the police register a case on first information, and commence investigation in which they are empowered to examine witnesses, and reduce to writing any statement made by them. Lest the power is misused by employing unfair methods, a signed statement by a person to a police officer in the course of an investigation is forbidden. This is by way of protection to the accused, for the deponent at the trial may be pinned down to his former signed statement. The protection is extended by limiting the use of such statements for contradiction. Such statements can never be used as substantive evidence. As an instance of ensuring fairness, is enjoined on the police officer not to offer any inducement or make threat or promise as is mentioned in Section 24 of the Indian Evidence Act, to any person. But at the same time, he shall not prevent any

person from making, in the course of the investigation, any statement which he may be disposed to make of his own freedom. Still further safeguards are to be found in the Code as well as the said Act in respect of confessional statements made to police officers, and certain other matters during investigation. After investigation the police officer is required to make a report to the Magistrate having jurisdiction. *Sirajuddin v. Government of Madras* (1968) I.M.L.J. 480 held that statements recorded during an investigation in violation of the mandatory safeguards provided by Sections 161 and 162 of the Code, should not be considered at the stage of framing charges u/s 251-A. That was a remarkable case of exceptional nature in which the records of investigation brought out a kind of pre-determination on the part of the police as to the guilt of the accused, and not only statements signed by witnesses were taken, but they were provided with certificates of amnesty. The charges based on such statements were quashed. With this conclusion, the Supreme Court in *P. Sirajuddin, etc. Vs. State of Madras, etc.*, concurred. In doing so, it was pointed out that as the Government had set up a Vigilance and Anti-corruption Department and it was entrusted with enquiries of the kind, no exception could be taken to the enquiry by the officers of the department, but any such enquiry must proceed in a fair and reasonable manner. Then, followed the observations:

The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeachable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to, the scope thereof must be limited to the examination of persons who have knowledge of the delinquent officer and

documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must

take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.

The substance of the approach should, in our view, equally apply to investigations leading to disciplinary proceedings which, in certain respects, are of a quasi-criminal nature. Parallels can be drawn between the two kinds of proceedings. At the same time, we should think that there are many

gaps in the line of disciplinary proceedings, which make it distinct and different from prosecutions for corruption, and this aspect necessarily bears

on the question we have to decide.

3. The investigation by officers of the Directorate of Vigilance and Anti-corruption, into allegations of corruption as a prelude to disciplinary

proceedings, is not governed by any statute, or rule of law. Chapter XIV of the Code of Criminal Procedure has no application to it. Such

investigation is only controlled and guided by what is fair and just, and the same principles should guide the authority to decide to refer any matter

to Disciplinary Tribunal on the basis of the materials furnished by the investigation. We have to bear in mind that the proceedings before the

Disciplinary Tribunal are not under the Code of Criminal Procedure, but governed by the Madras Civil Services (Disciplinary Proceedings

Tribunal) Rules made in exercise of the powers conferred by the proviso to Article 309 of the Constitution and other powers. These rules make

the Tribunal but an advisory body, with no power to take the ultimate decision. It is only required to submit its findings and recommendations after

an enquiry, to the Government which decides on the punishment after observing the requisites of Article 311 of the Constitution. To the disciplinary

proceedings, the Evidence Act has no application, though the Tribunal should, as far as possible, observe the basic rules of evidence relating to

evidence, examination of witnesses, and the marking of documents, besides following the procedure of framing appropriate charges,

communicating them to the person charged together with a list of witnesses likely to be examined, giving an opportunity to him to file a written

statement of his defence along with a list of witnesses whom he wishes to examine, and at the end of the enquiry to submit his arguments. The

nature of the disciplinary proceedings before the Tribunal is not criminal, in the sense that the Tribunal is concerned with a criminal offence. It is primarily concerned with the conduct of the person charged, which if found to be against the delinquent, may result in penalties with reference to his service.

4. Having regard to the essential differences between the two kinds of proceedings, therefore, we think that the analogy of Chapter XIV of the

Code cannot be extended to investigation into conduct of Government servants by the Directorate of Vigilance and Anti-Corruption and the

materials collected in the course of it before and for the purpose, of the authority concerned deciding whether there is prima facie case to initiate

disciplinary proceedings, or for prosecution in a Criminal Court. It is pressed on us that the very fact that a police officer attached to the

Directorate of Vigilance investigates, carries with it the notion of fear and compulsion with the consequent unfairness, and that there is also the fact

that once the witness has given a signed statement he is obliged to stick to it, against his wish and belief at his examination at the enquiry. We are

also told where the Directorate is declared as a police station for a defined area, as in the instant case, the position would be even worse. In our

opinion, it is neither proper nor wise to lay down a rule on such a sweeping generalization. All that is necessary to say is, in the words of P.

Sirajuddin, etc. Vs. State of Madras, etc., the means adopted no less than the end to be achieved must be impeccable and if the officers of the

Directorate of Vigilance and Anti-Corruption should keep this in view in making investigations, there can then be no room for complaint. The

Courts will only interfere where signed statements from witnesses during investigation leading to disciplinary proceedings have been forced or

involuntary, or have been obtained by unfair means. The facts and circumstances in these cases do not establish any such defect.

5. On our view of the entire matter in question, we are not persuaded to find any invalidity of Rule 5(b) or any other related Rule of the Madras

Civil Services (Disciplinary Proceedings Tribunal) Rules, or of the charges framed by the Tribunal against the Petitioners. We decline to interfere.

The petitions are dismissed. No costs.