

(1970) 03 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 51 and 81 of 1969

Rev. Mother Alexius

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 17-03-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) KLJ 392

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : M.I. Joseph, for the Appellant; S. Easwara Iyer and N.K. Sreedharan, for the Respondent

Final Decision : Allowed

Judgement

M.U. Isaac, J.—The St. Joseph Training College for Women at Ernakulam is an institution established and owned by a Roman Catholic Religious Sect known as Congregation of Mother of Carmel. Rev. Mother Alexius, who is the petitioner in this case, is the Provincial of that Congregation. She is also the President of the managing board of the College. Smt. Lily Kurien, the fourth respondent, is the Principal of the College. By an order Ex. P-1 dated 23-12-1968, Shri. P.K. Rajaretnam, M. Sc., M. Ed., who was then a teacher in Government service, was deputed as Lecturer in Education to the above College for the period from 1-1-1969 to 30-4-1970, subject to the usual terms and conditions of foreign service laid down in Chapter XI in Part I of the Kerala Service Rules. Shri Rajaretnam is said to be a highly qualified and efficient teacher; and his deputation was at the request of the petitioner. On 24-12-1969, the principal sent to the petitioner a copy of a Government Order, Ex. P-2 dated 9-12-1969, which stated that the deputation of Sri. Rajaretnam would be terminated with effect from 1-1-1970, and that the Director of Public Instruction would take immediate action to give him a posting on his reversion. Ex. P-2 shows that it was passed on the basis of two representations dated 6-10-1969 and 5-11-1969

made by the Principal to the Government. The management was not given any opportunity to know what these representations were, before the said order was passed. The Government did not also communicate it to the management, who only got a copy of it about two weeks after it was passed. Naturally, the management was greatly upset by this extraordinary conduct on the part of the Government. The sudden removal of an efficient teacher like Sri. Rajaretnam from the staff in the above fashion at the commencement of the third term of the academic year, when the students had to be prepared for the final examination would seriously affect their studies and the reputation of the institution. The petitioner, therefore, made a representation, Ex. P-3 dated 25-12-1969, to the Honourable Minister for Education, for cancellation of the above order. She also sent another representation, Ex. P-4 dated 27-12-1969, to the Honourable Minister, soliciting immediate orders. As there was no reply, and the deputation of Sri. Rajaretnam would end on 1-1-1970 according to Ex. P-2, this Original Petition was filed on 31-12-1969 to quash Ex. P-2, mainly on the ground that it was a mala fide order, passed in naked violation of the principles of natural justice. My learned brother Gopalan Nambiyar, J. admitted the petition stating that, in the face of the allegations of mala fides and the facts disclosed in Exs. P-3 and P-4, an investigation was necessary and called for as to the circumstances that led to the passing of the order Ex. P-2. He also granted an interim stay of the above order. On 19-1-1970, a counter-affidavit was filed on behalf of the Government denying the charge of mala fides and seeking to justify the impugned order. The case came for hearing before me on 22-1-1970; and on bearing the learned counsel for the petitioner in part, it appeared to me that it would be unnecessary for me to go into the controversies arising in this case, if the Government, after considering the representations, Exs. P-3 and P-4, made by the petitioner, happened to take a decision in favour of the management; and as desired by the learned Government Pleader I posted the case to 9-2-1970, to enable the Government to dispose of the above representations and further hear the case, if necessary. In the meanwhile, the petitioner made another representation, Ext. P-7 dated 22-1-1970, to the Honourable Minister for Education, stating, among other things, that the representations made by the Principal, on 6-10-1969 and 5-11-1969 on the basis of which Ex. P-2 was passed contained serious allegations against the management and the holy congregation, and requesting that the petitioner may be given copies of the said representations and an opportunity for being heard, before any decision is taken in this matter. On 5-2-1970, the Government passed an order, Ex. P-8, rejecting the petitioner's request for copies of the aforesaid representations made by the Principal, and affirming the impugned order, Ex. P-2, subject to the decision of this Court in this Writ petition. On 9-2-1970, the petitioner moved for an amendment of the Writ Petition by adding a prayer for quashing Ex. P-8 also. I disallowed the amendment as being unnecessary. The case was again heard on 12-2-1970. One of the controversies before me has been whether Ex. P-2 was passed only on the basis of the representations made by the Principal behind the back of the management as contended on behalf of the petitioner, or "purely as

an administrative measure and after having satisfied that it is necessary and expedient to do so in the interest of the educational institution" as stated in the Government's counter-affidavit. As usual, no documents have been produced by the Government in support of their assertions in the counter-affidavit. I, therefore, called upon the Government Pleader to submit the concerned files for my scrutiny; which he did. The files contain the two representations made by the Principal of the College, on the basis of which the impugned order, Ex. P-2 was passed, and also one representation dated 31-10-1969 from the petitioner, and another representation dated 30-10-1969 from Sri. Rajaretnam both addressed to the Secretary to the Government. As these four representations are necessary for a proper appraisal of the background of the case and the circumstances which led to the passing of the impugned order, the writ petition was posted for further hearing; and the learned Government Pleader was asked to produce copies of the said representations. They were produced on 2-3-1970, and have been marked in the case as Exs. R-1, R-2, R-3 and R-4.

2. I shall now refer to the circumstances which led to the passing of the impugned order. The college staff consists of eight members including the Principal. Six of them are nuns; and Sri. Rajaretnam is the only male member. The Principal bitterly disliked the nuns and the management. According to them the Principal was a very objectionable element in every respect. Sri. Rajaretnam sided with the management for reasons of his own. Ex. R-1 is the representation dated 6-10-1969 from the Principal requesting the Government to take disciplinary action against Sri. Rajaretnam for certain alleged misconduct, and to withdraw his deputation forthwith. The main charges in Ex. R-2 are that he was indifferent to his work that he failed to meet the Principal for discussion of important matters, that he showed defiance & disrespect to the orders of the Principal, that he failed to acknowledge receipt of notices sent to him by the Principal, that he was taking an active part in fostering disaffection indiscipline among the students and the staff and trying to undermine their loyalty to the institution and their attachment and respect to the Principal, that he was signing an illegal and frivolous representations made by nun members of the staff against the principal, that he was inciting the nuns in their unbecoming activities, that he participated in a strike staged by the religious members of the staff, and that on one occasion he talked to the Principal in abusive and obscene language.

3. Ex. R-2 dated 5-11-1969 is the second representation by the Principal to the Government against Sri. Rajaretnam. That refers to an ugly incident that took place in the College on 30-10-1969. Ext. R-4 dated 30-10-1969 and Ex. R-3 dated 31-10-1969 are the representations made by Sri. Rajaretnam and the Management respectively to the Government against the Principal in respect of the same incident. I shall first refer to the earliest version contained in Ex. R-4. According to Sri. Rajaretnam, at about 3.30 P.M. on 30-10-1969, the Principal sent two notices to him, one asking him to assist the English Lecturer, and another making a modification in the time-table. On receiving these notices, he went to the Principal's room at about 3.45 P.M. for a discussion about the above

matters. In the course of the discussion, the Principal became furious, rushed towards him, caught hold of him, and raised her hand to assault him. A lady sweeper was present in the room at this time. She intervened; and she got him released from the Principal's hold and saved him from her assault. Sri. Rajaretnam returned to the staff room, and sat there. While he was sitting there, one Dr. B.A. Varghese, husband of the Principal trespassed into the staff room, forcibly removed his spectacles from Sri. Rajaretnam's face and slapped him with the trespasser's slippers. At this time, the Principal was also by the side of her husband; and both of them abused him in filthy languages. After that both of them went away, threatening to attack Sri. Rajaretnam again. The occurrence took place in the presence of many members of the College. Dr. B.A. Varghese is a medical officer in Government Service. Sri. Rajaretnam is said to be a cripple; and the Principal and her husband are alleged to have taken advantage of his physical infirmity. Ex. R-3 fully supports the above version of the occurrence. It also adds that Sri. Rajaretnam has filed a complaint to the police in the matter, the Principal has not yet given any report to the management about the incident, and that the staff and students have given notice to abstain from work as a protest against the high-handed acts of the Principal and her husband.

4. Reference may now be made to the version of the Principal contained in Ex. R-2 dated 3-11-1969. According to her, Sri. Rajaretnam, on receipt of the notices sent by her, burst into her room in a rage, abusing her & throwing the notice at her, and assaulted her. She cried for help; and as no help came from the staff members, she rang-up to her husband. He immediately came to the College, met Sri. Rajaretnam and questioned him about the incident. Nothing more took place, and all the allegations against her and husband were false. Ex. R-2 then proceeds to level very serious charges against the management of the College and the nuns belonging to the congregation of Mother of Carmel. It is unnecessary to refer to them. To complete the narration, Sri. P. Narayana Menon, retired Principal, Maharaja's College was appointed by the management to conduct an enquiry into the above incident. Ex. P-3, the petitioner's representation dated 25-12-1969 to the Minister for Education states that Sri. Narayana Menon conducted the enquiry and reported that Sri. Rajaretnam was innocent and the Principal was at fault, and that the Board of Management has issued a show cause notice to the Principal on 2-12-1969 on the basis of the above report. Ex. P-3 also states that the matter was reported to the University on 7-12-1969, that the University sent a Commission to enquire into it, and that the Commission visited the College on the 16th and 17th December 1969. The impugned order, Ex. P-2, was passed by the Government in the wake of the above happenings.

5. The above facts speak for themselves. Admittedly the Principal did not report to the Management about the Rajaretnam incident. On the other hand, she called in her husband, who is a doctor in Government service; and he trespassed into the staff room in a women's college and directly confronted Sri. Rajaretnam, assisted by his wife, thereby causing a commotion there. She sent the

representation, Ex. R-2, to the Government six days after the incident. Ex. P-2 shows that it was passed only on the basis of Exs. R-1 and R-2 which the Principal sent to the Government behind the back of the management. They contain serious allegations against Sri. Rajaretnam and the Management. The Principal is a party to this Original Petition; and she has not filed any affidavit in support of any of the allegations made by her in Exs. R-1 and R-2, or denying the allegations made against her in the Original Petition. The first respondent has no case that the Government enquired into the matter and found that there was any substance in the said allegations. There is also no material before me to show that there is any element of truth in any of the allegations contained in Exs. R-1 and R-2. It follows that Ex. P-2 was passed on the basis of apparently unfounded allegations, & without caring to enquire whether they are true or not, & without giving the persons affected thereby an opportunity of being heard in the matter. The plea that the said order was passed in the interest of the educational institution is to say the least only the use of a common expression without meaning it. If the interest of the institution was ever a consideration in passing the said order, the first thing that the Government should have done before passing it was to contact the Management, enquire into the allegations contained in Exs. R-1 and R-2 and ascertain the view of the Management. The Government cannot be more interested in the institution than the Management; and it must be all the more so in this particular case, as six out of the eight members of the staff are nuns belonging to the congregation of Mother of Carmel to whom the College belongs. On the other hand, the sudden removal from the College Staff of an efficient teacher like Sri. Rajaretnam without any notice at the commencement of the third term of the academic year, when the students require intense coaching for the approaching examinations, would seriously affect their studies and the reputation of the institution. The only inference possible is that the Government acted influenced by extraneous considerations, and without caring in the least for the interest of the institution. The order was also passed in flagrant violation of the principles of natural justice.

6. The learned Government pleader contended that the impugned order is an administrative one, and that there is no question of any natural justice in such a case. He also submits that the termination of deputation of the teacher amounted at best only to breach of contract, for which a writ would not lie. In my view, it is a wrong position for any Government to take that principles of natural justice have no application to administrative decisions. Natural justice is the essence of a democratic system of Government; and an administration cannot be said to be fair and just, if the citizens are denied a right of hearing before administrative decisions affecting their rights are made. This principle has been now well established by the decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . The following passage appearing in that decision is instructive:-

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not

covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. It the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

There is a very lucid statement of the above principle in the judgment of Lord Parker C.J. in *In re H.K. (An Infant)* 1967 2 Q.B. 617. The learned Chief Justice stated :-

Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because hereto before at any rate the decisions of the courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially.

There is also no substance in the contention that the petitioner is not entitled to any relief under Article 226 of the Constitution, as the impugned order terminating the deputation of Sri. Rajaretnam amounts only to a breach of contract, and that the petitioner's only remedy is an action for damages. The deputation of Sri. Rajaretnam was for a specified period under the provisions of the Kerala Service Rules. The immature termination of the deputation is a violation of an act done under the said Rules. The petitioner may have a claim for damages against the Government for the said violation. But that cannot stand in the way of the petitioner's right to invoke the constitutional jurisdiction of this

Court to quash an order passed by the Government in flagrant violation of natural justice, which involves civil consequences. Reference may in this Context be made to the decision of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . In that case, the Government of Orissa on receipt of some anonymous letters that a lady doctor in their service had mis-stated her age, made certain enquiries determined her date of birth, and retired her from service on that basis. She filed a writ petition in the High Court to quash the said order and for a declaration that she was entitled to continue in service on the basis of the date of birth entered in the civil list, on the ground that the said date was the correct date and that the impugned order was passed mala fide and without any proper enquiry. The High Court allowed the petition. In appeal, it was contended, among other things, that the order retiring the petitioner was an administrative one, and the High Court had no power to sit in appeal over the decision of the State authorities in such matters. The above contention was rejected by the Supreme Court; and in doing so, the Court stated--

It is true that the order is administrative in character, but even administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice.....

Reference may also be made to another decision of the Supreme Court in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , wherein the following passage appears:-

Under our jurisprudence, the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen of an ex parte appraisal of the circumstances in which the obligation has arisen.

The order, Ex. P-2, cannot, therefore, be sustained on any ground.

7. It is obvious from Ex. P-2, as I have already mentioned, that the said order is based only on the representations, Exs. R-1 and R-2, made by the Principal. I have also held that the allegations in Exs. R-1 and R-2 are apparently unfounded, and that the order Ex. P-2 was passed without enquiring whether the said allegations are true or not, and without caring in the least for the interest of the institution, and that the only inference possible from the facts and circumstances of the case is that it was passed influenced by extraneous considerations. At the time this writ petition was filed, two representations, Exs. P-3 and P-4 filed by the petitioner were pending consideration before the Government. On hearing the case in part, I hoped that the Government would re-consider the matter and pass a just and proper order in compliance with the principles of natural justice: and in that event I would have had no occasion to consider this case on the merits. Accordingly, I adjourned the further hearing of the case, as desired by the learned Government Pleader, for enabling the Government to consider the

whole matter afresh. These representations and the subsequent representation Ex. P-7 dated 22-1-1970, have been disposed of by the Government as already stated by their order Ex. P-8 dated 5-2-1970, by which they affirmed their previous order, Ex. P-2, subject to the decision of this Court in this writ petition. Ex. P-8 is a speaking order; and it has stated the reason for passing the impugned order. According to Ex. P-8, the Government considered the representations received from the Principal as well as other administrative matters, which have arisen since the deputation of the teacher; but in passing the impugned order, "the Government considered only their administrative requirement to recall the teacher for their own purposes"; and "the reason for calling the teacher before the period of deputation is over, is purely administrative necessity, since Government required the service of the teacher for their own purposes." Ex. P-8 further adds that "that being the case, there was no necessity to refer the matter to the President of the Managing Board for remarks." It is, therefore, clear that even when passing the above order, the Government did not consider the representations made by the management; and they were not prepared to do so. On the other hand, the position now taken by the Government is that there was no necessity for that, as the deputation was not terminated on the basis of the representations made by the Principal. This statement is contrary to facts, as Ex. P-2 shows that the said order was passed only on the basis of the two representations made by the Principal. The other reason stated in Ex. P-8 for affirming the impugned order, namely that in passing the said order "the Government considered only their administrative requirement to recall the teacher for their own purposes" and that the reason for re-calling was "purely administrative necessity since Government required the services of the teacher for their own purposes" has no regard to truth. Ex. P-2 directs the Director of Public Instruction to give Sri. Rajaretnam a posting on his reversion; which means that the Director has to find out a place for accommodating Sri. Rajaretnam when he comes back from the College. Ex. P-8 states that, in order to avoid the difficulties caused to the College by the sudden withdrawal of Shri Rajaretnam, the Government are prepared to depute to the College any other qualified person from Government service. These things clearly establish that there was no administrative requirement or necessity for terminating the deputation of Shri Rajaretnam; and it was done in such an abrupt and shabby manner without even giving any previous information either to Shri Rajaretnam or to the Management, not for any purposes of the Government, but only to satisfy the Principal. When an order is justiciable, the Government have to place before the Court facts and circumstances which would show that the Government acted honestly and on a fair consideration of the materials available before them. An assertion that the said order was passed on administrative grounds or for their own purposes without disclosing the materials, if any, on the basis of which it was passed or which would justify passing of the said order, cannot serve any purpose. In this case, the Government have not placed before Court any materials on the basis of which they passed the impugned order, and their assertion that it was passed on account of administrative requirement and for

their own purposes has been found to be untrue. It is regrettable that even when the Government were given an opportunity to consider the matter afresh on the merits, they declined to do so; but they sought to justify the impugned order on fresh grounds, which have no relation to truth. In the result, I quash the order, Ex. P-2, and allow this Original Petition. The first respondent will pay the costs of the petitioner. Counsel's fee Rs. 250/-.