

(1999) 12 KL CK 0027
In the High Court Of Kerala
Case No : W.A. No. 408 of 1998

Saji

APPELLANT

Vs

District Court

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 15

Citation : (2000) 2 ILR (Ker) 173 : (2000) 2 LLJ 1039

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : G. Sasidharan Chempazhanthiyil, for the Appellant; C.T. Ravikumar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, C.J.—Heard.

2. The only point urged in support of the Writ Appeal is that the District and Sessions Judge on the basis of whose direction the process against the appellant was set in motion, should not have been acted any further in the matter. But he acted as enquiry officer, disciplinary authority and imposed penalty. After the disposal of the appeal preferred by the appellant before this Court, the action was challenged in the Original Petition which was dismissed on the ground that there is ample material to justify the punishment imposed. But, no definite finding was recorded so far as the appellant's specific stand of violation of principles of natural justice.

3. The factual position needs to be noted in brief. Appellant was proceeded against for alleged misconduct. He was found to have delivered some official documents unauthorisedly. Statements were recorded from the persons who allegedly knew about the misdemeanor. A departmental enquiry was conducted and final order of punishment was passed. In the entire process, the District and Sessions Judge was the key officer. That is the main ground of attack to attach

vulnerability to the action. Learned counsel for the State with reference to Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 (in short the "Rules") submitted that in the matter of imposing major penalties, it is inevitable that the appointing authority or the disciplinary authority has to do the needful. He relies on Rule 15(2)(b) for the purpose.

4. Bare reading of the provision makes it clear that the enquiry to be conducted is not restricted to the appointing authority or to the disciplinary authority. In an appropriate case, enquiry can be conducted by a Government or the head of the department or any officer of the department empowered by the appointing authority or the head of the department or a special officer or tribunal appointed by the Government for the purpose or a tribunal generally appointed for making enquiries into the conduct of Government servants.

5. The basic question that needs adjudication is whether the District and Sessions Judge would have taken action in the manner done. Somewhat similar situation arose in *Arjun Chaubey Vs. Union of India (UOI) and Others*, . It was observed that the authority should not have sat in judgment over the explanation offered by the employee and decide that the explanation was untrue when action was initiated on the basis of grievance of that authority. This was done by applying the well-known principle that no one can be a Judge in his own cause and no witness could certify that his own testimony was true. Adopting such a course amounts to violation of principles of natural justice. In *Baidyanath Mahapatra Vs. State of Orissa and Another*, position was same. In that case the Chairman of the State Administrative Tribunal was a party to the decision taken administratively. It was observed that even if there was no allegation of any personal bias and the concerned officer had acted bona fide, nonetheless, the principles of natural justice, fair play and judicial discipline required that he should have abstained from dealing with the case. In *Manak Lal Vs. Dr. Prem Chand*, , it was observed that the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. In *State of Uttar Pradesh v. Mohammed Nooh* AIR 1958 SC 86 it was observed that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. Even though the concerned authority may take action fairly without any bias, it is desirable that even the mere apprehension in the mind of the affected parties should be obliterated. The affected party should not go away with the feeling that the authority was biased. In the classic words of LORD DENNING MR in *Metropolitan Properties Ltd. v. Lannon* 1968 3 ALLER 304 (CA):

"Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking "The Judge is biased". "Judges like Ceaser"s

wife should be above suspicion". (Per Bo WEN LJ in Lesson v. General Council of Medical Education 1890 43 ChD 366.)"

6. The law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. In such cases, the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision making. This position is highlighted in Election Commission of India and another Vs. Dr. Subramanian Swamy and another, . But, as indicated above, this situation does not arise in the case at hand. The enquiry and the disciplinary action could be handled by any of the other authorities authorised to do it.

7. In the circumstances, we set aside the order imposing punishment and remit back to the stage of submission of show cause reply. Necessary follow-up action for appointing an enquiry officer and disciplinary authority shall be taken by the appropriate authority. The judgment of the learned single Judge is set aside.

8. The Writ Appeal is allowed to the extent indicated.