
(1960) 10 KL CK 0011
In the High Court Of Kerala

Sreedharan Pillai

APPELLANT

Vs

Kerala Khadi and Village Industries Board and Another

RESPONDENT

Date of Decision : 13-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) 1 LLJ 439

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—In this application under Article 226 of the Constitution, Sri Kalathil Velayudhan Nair, on behalf of the petitioner, challenges the order of respondent 1-Board, dated 29 July 1960, namely, Ex. P. 1. The relevant portion of that proceeding evidenced by Ex. P.1, in so far as it relates to the petitioner, consists of

(a) framing of certain charges against him;

(b) directing that he be placed under suspension pending enquiry with immediate effect; and

(c) the Government being requested to enquire into the allegations against the petitioner and the other persons mentioned therein along with the enquiry against the District Industries Officer. 2. It is not necessary to consider about the nature of the charges for which departmental action by way of an enquiry is being taken against the petitioner.

3. The attack on Ex. P. 1 by Mr. Kalathil Velayudhan Nair is threefold:

(i) the respondent 1-Board has no jurisdiction or power to place the petitioner under suspension pending an enquiry into the charges framed against him;

(ii) the Board has no jurisdiction or power in law to delegate its duty of enquiring into the charges to the Government as it has done under Ex. P. 1; and

(iii) that the direction regarding joint enquiry of the petitioner by the Government along with the District Industries Officer is certainly illegal.

4. So far as the last contention is concerned, it is now stated in the counteraffidavit filed by respondent 1 in Para. 3 that it is not correct to state that the enquiry against the petitioner will be a joint enquiry with the District Industries Officer. At this stage it is enough to record this statement from which it will follow that there will not be a joint enquiry of this petitioner along with other persons mentioned in Ex. P. 1. Therefore, this grievance voiced by Mr. Kalathil Velayudhan Nair on behalf of his client is amply satisfied by the assurance given in the counter-affidavit, the extract, of which I have already referred to.

5. The second contention of Mr. Kalathil Velayudhan Nair, as I have Indicated earlier, is that respondent-1, namely, the Kerala Khadi and Village Industries Board, functioning under the Kerala Khadi and Village Industries Board Act, 1957 (Kerala Act IX of 1957), has no power of delegating its duty to enquire in this matter to an outside body or person, namely, in this case, the Government.

6. To consider this contention, as also to consider the first and more serious contention raised by Mr. Kalathil Velayudhan Nair regarding the right of the Board to place the petitioner under suspension pending enquiry, it is necessary to advert to one or two provisions in the Act under which respondent 1 functions.

7. The Board is constituted u/s 4 of the said Act. So far as the conditions of service are concerned, they are provided u/s 10 of the Act. Section 10(1) provides for the Board appointing such members of the staff as it considers necessary. Sub-section (2) of Section 10 provides that the remuneration, allowances and other conditions of service of the members of the staff of the Board shall be such as may be determined by regulations.

8. The only other provision that has to be noted for the present is Section 34 which gives power to the Board to frame regulations consistent with the Act with the previous sanction of the Government. In particular, Section 34(2)(b) gives power to the Board to frame regulations relating to the remuneration, allowances and other conditions of service of the members of the staff of the Board.

9. Coming to the contention of Mr. Kalathil Velayudhan Nair, regarding the question of delegation that has now been made by the Board to the Government to enquire into the charges framed by it, there is no provision under the Act which enables the Board to so delegate its powers. Mr. Kalathil Velayudhan Nair contended that no regulations have been framed as provided u/s 34(2)(b) regarding the conditions of service of the members of the staff of the Board. Therefore, Mr. Velayudhan Nair, learned Counsel, contends that in the absence of any provision enabling the Board in such circumstances to direct the Government to enquire into these matters, the Board has acted illegally.

10. This contention of Mr. Velayudhan Nair is met by the learned Advocate-

General by referring to the decision of the Supreme Court in Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, . In my opinion, the decision referred to by the learned Advocate-General provides a very short answer to the contention raised by Mr. Kalathil Velayudhan Nair. That case related to the dismissal of the Registrar of the Calcutta High Court by the learned Chief Justice and the duty of enquiring and making a report into the charges framed against the Registrar was delegated by the learned Chief Justice of the Calcutta High Court to another learned Judge of the said High Court. The question arose how far the learned Chief Justice was justified in delegating that duty to another Judge of the High Court. In dealing with this matter the Supreme Court, after a consideration of various English decisions, records its finding on p. 291 in the following words:

But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.

It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power.

Their lordships of the Supreme Court rejected the contentions of the appellant in that case that the delegation by the Chief Justice to another learned Judge of that Court for enquiring into the charges and submitting a report was illegal and held it was perfectly within the jurisdiction of the powers vested in the learned Chief Justice. Therefore, the attack made on the order on this ground, was rejected by the learned Judges of the Supreme Court. In the extract from the judgment of the Supreme Court, there is one significant statement which, even at the risk of repeating, I may again refer, namely, this. Their lordships emphasize that:

What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power.

11. In this case, in the counter-affidavit filed on behalf of respondent 1, it has been categorically stated in Para. 4 as follows:

The final decision will be that of the Secretary of the Board and not that of the enquiring authority.

Therefore, the position, in my opinion, has been made very clear by respondent 1 to the effect that what is delegated to the Government is only to enquire into the charges and submit its report and the final action to be taken on that report will be that of the Secretary of the Board who is perfectly competent to deal with

the matter and not that of the enquiring authority. Therefore, In my opinion, the delegation of the power to enquire into the charges and send its report as per the order, Ex. P.1, is perfectly justified and is not bad in law.

12. Coming to the first contention of Mr. Kalathil Velayudhan Nair, namely, that the Board in this case has no power of suspension pending enquiry, the learned Counsel has contended that in the absence of any provision in the statute, or in the rules, or in the contract entered into by the parties, respondent 1 has no jurisdiction to place the petitioner under suspension pending enquiry. In my opinion, there is considerable force in this contention of Mr. Kalathil Velayudhan Nair. The learned Advocate-General attempted to meet this by trying to bring it under Clause (4) of the terms of the agreement, namely, Ex. R. 1. In Ex. R. 1 it is stated that the petitioner is appointed as a village industries officer on the salary mentioned therein under the Board on the terms and conditions mentioned therein. In particular, Clause (4) states that the incumbent will be under the supervision and disciplinary control of the Secretary of the Board. I am not able to accept the learned Advocate-General's contention that the suspension in this case pending an enquiry and the award of final punishment, can be brought under Clause (4) of the agreement, namely, Ex. R. 1, as being one provided under the contract itself.

13. The position is made clear by the decision of the Supreme Court on which Mr. Kalathil Velayudhan Nair has relied, namely, *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, Their lordships of the Supreme Court have held in that case that the power of the employer to suspend an employee under the ordinary law of master and servant in the sense of a right to forbid a servant to work, is not an Implied term in an ordinary contract between master and servant, and such a power can only be the creature either of a statute governing the contract, or of an express term In the contract itself. The Supreme Court further has laid down that ordinarily the absence of each a power either as an express term in the contract, or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so he will have to pay wages during the so-called period of suspension.

14. The learned Advocate-General raised a minor contention that if at all, this question may arise only when a claim for salary is made for this period during which the petitioner is placed under suspension. I am not impressed with this contention of the learned Advocate-General, especially when this Court has to consider whether the order of suspension, as such, can be justified either by virtue of the provisions of the statute or the rules, or by the terms of the contract. In my opinion, none of those three, either the statute or the rules, or the contract Ex. R. 1, gives power to respondent 1 to place the petitioner under suspension. Admittedly, no regulations have been framed giving power to respondent 1-Board by virtue of Section 34(2)(b) of the Act. There is no provision in the statute itself and the contract, Ex. R. 1, also, in my opinion, does

not give any such power.

15. The order evidenced by Ex. P. 1, in so far as it relates to placing the petitioner under suspension pending enquiry into the charges framed as against him, will stand quashed. In all other respects, the order, Ex. P. 1, will stand subject to the observations contained in this judgment. Parties will bear their own coats.