

(1966) 01 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 1 of 1964

Srikandath Govinda Menon

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-01-1966

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3
All India Services (Discipline and Appeal) Rules, 1955 — Rule 4
Constitution of India, 1950 — Article 226

Citation : AIR 1966 Ker 216

Hon'ble Judges : S. Velu Pillai, J;P. Govinda Menon, J;K.K. Mathew, J

Bench : Full Bench

Advocate : V.R. Krishna Iyer, K.C. Sankaran, A.D. Krishnan Asan and P.C. Chacko, for the Appellant; K.V. Surianarayana Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—This writ petition has been referred to me u/s 23 of the Travancore-Cochin High Court Act, 1125, as the learned Judges. Velu Pillai and Mathew, JJ., who originally heard the petition differed in their conclusions as to the jurisdiction of the Union of India to take disciplinary proceedings against the petitioner on some of the charges.

2. A few facts may now be stated -

The petitioner, Shri S. Govinda Menon, is a member of the Indian Administrative Service. He was the First Member of the Board of Revenue, Kerala State and was also holding the post of Commissioner of Hindu Religious and Charitable Endowments. On the basis of certain petitions containing allegations of misconduct against the petitioner in the discharge of his duties as Commissioner, the Kerala Government, after conducting certain preliminary inquiries, started disciplinary proceedings against him, keeping him under suspension under R. 7 of the All India Services (Discipline and Appeal) Rules, 1955 (shortly stated the rules). A copy of the charges was then served on him, together with the

statement of allegations directing him to submit his written statement of defence. The petitioner filed his written statement and after a careful scrutiny of the same, Government passed orders that the explanation to the charges was unacceptable and that the charges should be enquired into by an Inquiry Officer to be appointed under Rule 5 (5) of the Rules. Accordingly, Shri T. N. S. Raghavan, a retired I. C. S. Officer was appointed as the inquiry Officer.

This writ petition was, therefore, filed praying for a writ of certiorari to quash the proceedings initiated against the petitioner and for a writ of mandamus calling upon the second respondent, the State of Kerala, to allow him to function as the First Member of the Board of Revenue. No application for stay was sought for and as there was no stay the Inquiry Officer proceeded with the inquiry and submitted his report to the Union Government, finding the petitioner guilty of charges 1 to 4 and 9. The Union of India after a consideration of the report issued a show cause notice Ext. P9. Thereupon the petitioner filed an application for amendment of the writ petition and learned Judges who heard the petition allowed the prayer for amendment. The prayer in the amended petition was for the issue of a writ of prohibition restraining the first respondent the Union Government, from proceeding further in pursuance of the show cause notice and also for quashing the same. The contention of the petitioner is that the proceedings initiated against him were entirely without jurisdiction as no disciplinary proceedings could be taken against him for acts or omissions in respect of his work as Commissioner under the Madras Hindu Religious and Charitable Endowments Act (shortly stated the Act), that orders passed by him being quasi judicial in character can be impugned only in appropriate proceedings as provided under the Act.

3. The question for decision, therefore, before the learned Judges was whether the Government had jurisdiction to continue the disciplinary proceedings. In support of the contention that the Government had no jurisdiction, learned counsel for the petitioner formulated five propositions for consideration before the learned Judges. They were :--Proposition No. 1

The Commission is a corporation sole, not the servant of the Government that against a person acting in the capacity of a Commissioner, the Government has no jurisdiction to take disciplinary proceedings: Proposition No. 2.

That quasi-judicial orders and administrative orders of the Commissioner unless vacated under the provisions of the Act are final and binding on the Government and cannot be questioned by the executive Government through disciplinary proceedings: Proposition No. 3.

For acts intra vires the Commissioner's powers, no charge can lie against the Commissioner.

Proposition No. 4 Under the acts and rules of business of the Government the concerned Minister alone representing the Government may revise or review the acts and orders of the Commissioner in exercise of the judicial power of the

State; no other minister or the Government in the exercise of the executive power may question in any manner either by disciplinary proceedings or otherwise the correctness, regularity, legality or propriety of the Commissioner's acts and orders;

Proposition No. 5.

Assuming, the Commissioner is a servant of the Government against whom disciplinary proceedings could be taken, yet leases granted by the Commissioner have been authorised, approved and ratified by the Government through its duly delegated Minister and it is not open to the Chief Minister to initiate disciplinary proceedings in respect thereof.

4. After hearing elaborate arguments advanced by learned counsel appearing on either side. Mathew, J., negatived the objections raised regarding the want of jurisdiction and held that the Government had powers to proceed with the inquiry into the charges. Velu Pillai, J., on the other hand, took the view that quasi-judicial decisions become final and conclusive if they are not set aside or modified in any of the modes prescribed by the statute in that behalf, and if the decisions are not so challenged their propriety, correctness and legality must be deemed to be conclusive and such quasi-judicial decisions should not be the subject of the charges in a disciplinary proceeding and the Union Government had, therefore, no jurisdiction to proceed with the enquiry into the first part of charge 1, charge 2, the first part of charge 3 and charge 4 and that enquiry into the second part of charge 1, second part of charge 3 and charge 9 alone could be enquired into. In view of this difference of opinion between the two learned Judges, the matter has been placed before me for my opinion.

5. The matter on which there is disagreement has been indicated in the judgment of Mr. Justice Velu Pillai. At the beginning of his judgment the learned Judge observed :

On the jurisdictional issue, learned counsel for the petitioner formulated five propositions for consideration; besides, he raised a few points, two of which alone, we think, pertain to jurisdiction and merit consideration at this stage. On all these and on the issue as to mala fide. I am in agreement with my learned brother, except on the second proposition, or to be precise, on the application of that proposition to some of the charges of which the petitioner has been found to be guilty, on the consequential order to be passed on the writ petition and subject, on the third and fourth propositions, to the reservations. I propose to indicate in dealing with them All other points which learned counsel had urged before us are not being considered or dealt with because they do not relate to patent lack of jurisdiction."

6. Before I deal with the charges on which difference exists, it would be useful to see what the charges are. The main and the most important of the charges is charge No. 1, which relates to the sanctions accorded by the petitioner u/s 29 (1) of the Act in respect of certain long term leases of large extents of forest land

belonging to certain Devaswoms mentioned by the Inquiry Officer in Appendix I of his report. The period of the lease is 36 years in 17 of the cases. 96 years in one case and 99 years in all the rest of the cases. The total extent covered by these leases comes to over 50000 acres.

Charge No. 1 reads as follows :

"That you, Shri Govinda Menon, I. A. S. while employed in the Government service as a member, Board of Revenue and Commissioner H. R. & C. E. (administration) department from 1-2-1957 to 19-10-1962 issued sanctions granting leases of extensive and valuable forest lands belonging to the Devaswoms under your control as Commissioner such as (1) Pulpally Devaswom, (2) Kallekulangara Emoor Bhaga-vathi temple, (3) Naduvil Vellat Devaswom, (4) Kottiyoor Devaswom (5) Mundayanparamba Devaswom in utter disregard of the provisions in the Madras Hindu Religious and Charitable Endowments Act, 1961 and the rules issued thereunder, In several cases, you had yourself initiated the proposal for leases which should have been made by the trustee and acted in judgment on them by sanctioning the leases. In many cases of the leases afore said and otherwise generally in regard to the control and supervision of endowments, your conduct has been such as to render you unfit for the performance of your statutory duties under the Madras Hindu Religious and Charitable Endowments Act or as a responsible officer of the Government. "

7. The statement of allegations under this part of the charge sets out, in detail, the provisions of Section 29 and the rules and states that contrary to these provisions, leases were sanctioned by the petitioner. Section 29 (1) of the Act requires the Commissioner to satisfy himself that the lease for which he has to accord sanction is either necessary or beneficial to the institution. The proviso to the section says that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

Rules have been framed under the section in regard to the particulars to be published and the manner of publication and the rules require that the notice of the proposals should contain among others, particulars regarding the nature of the proposed transaction, the correct description of the properties with information regarding survey number, extent and boundaries and the probable price or rental expected and the notice should specify a reasonable time being not less than 80 days within which objections or suggestions should be sent and also the date on which the enquiry would be held.

Rule 1 of the Rules framed u/s 100 (2) (m) of the Act provides that all leases have to be made by public auction.

So the first part of charge No. 1 regarding the sanctioning of the leases read with the relevant allegations show that the gravamen of the charge is that in utter

disregard of the provisions of Section 29 and the rules thereunder and without taking care to see whether such leases were either necessary or beneficial to the Devaswom concerned the petitioner sanctioned them, which action of the petitioner discloses misconduct, irregularity and gross recklessness in the discharge of his duties as Commissioner. The charge is thus one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of the Act and the rules in the matter of sanctioning leases.

8. The Inquiry Officer has found that the rule u/s 100 (2) (m) regarding auction is not intended to cover long term leases falling within the scope of Section 29 (1) of the Act and both the learned Judges are agreed that that is the correct interpretation of the Rule. The contention of the learned counsel for the petitioner is that the only rule said to have been violated in this part of the charge is the rule regarding auction and when once it is seen that the rule has no application, the entire charge would fall to the ground. But failure to hold auction is not the, only rule that is said to have been contravened. The statement of allegation in respect of charge 1, as stated already, sets out the provisions of Section 29 of the Act, the rules made under clauses 1 and 3 of that section and the, rules made u/s 100 (2) (m) and it says that contrary to the above provisions leases were sanctioned. So contravention of not only Rule u/s 100 (2) (m), is referred to, but contravention of Rule made under clauses 1 and 3 of Section 29 also comes within the charge.

9. Apart from the rule regarding auction, the Inquiry Officer has referred to the contravention of various other rules in the matter of publication of notice fixing the date for enquiry, in some cases holding no enquiry at all, granting leases without specifying the period of lease and so on. Reference has been made in para. 43 of the report to an instance where on the date of enquiry at which the objectors were present, a discussion took place in the presence of the petitioner and an agreement was reached that in case 100 acres of forest land were allotted to each of the 11 objectors they would withdraw their objections and in pursuance of the agreement, the objections were withdrawn and leases were actually sanctioned to these objectors by the petitioner without the requisite proposal or publication and calling for objections or entering a finding as to the beneficial nature of the transaction.

Likewise, reference has been made in the report as to the undesirability of granting long term leases, for example, for 99 years and that too of large blocks extending even up to the 30,000 acres amounting practically to permanent alienation of trust properties bestowing little or no thought to the harm that is likely to be caused to the Devaswom, not to speak of the want of any real benefit to the institution. It is unnecessary for the purpose of deciding the question of jurisdiction to enter into a detailed discussion of these matters. I am mentioning this only for the purpose of showing that the failure to hold auction is not the only contravention of rules that is relied on in support of the charge. Various other contraventions of rules and dereliction of duty and misconduct on the part

of the petitioner in sanctioning these leases have been referred to Dereliction from duty would amount to misconduct, according to the definition of misconduct given in Black's Law Dictionary (4th Edn.)

Whether in the statement of allegations, each contravention should have been separately mentioned apart from generally stating that there was contravention of the rules, or whether they are matters which need be proved only at the time when evidence is adduced and whether by such omission any prejudice has been occasioned and thereby the inquiry is vitiated are not questions which would affect the jurisdiction to hold the disciplinary enquiry.

10. If, therefore, the correct position is that the contravention of the rule regarding auction is not the only contravention that is included in the charge, then the decision in *O.K. Ghosh v. E. X. Joseph* AIR 1963 SC 812 relied upon by Velu Pillai, J. can have no application. In the said case disciplinary proceedings were started against a Central Government employee only on the ground of having contravened the provisions of rules 4-A and 4-R of the Central Civil Services (Conduct), Rules, 1955, in that he actually participated in the various demonstrations organised in connection with the strike of the Central Government employees and that he had taken an active part in the preparations made for the strike. The High Court had found that rule 4-B was ultra vires. On appeal the Supreme Court held that Rule 4-A, in the form in which it stood prohibiting any form of demonstration is "violative of the Government Servants" rights under Article 19(1) (a) and (b) and therefore struck down the rule. Thus the departmental proceedings were quashed on the ground that the rule said to have been contravened by the Government servant was held void as infringing the fundamental rights guaranteed under Article 19 of the Constitution. The decision can be of no help to the petitioner as the contravention alleged against him is not merely of the rule regarding auction.

11. Learned counsel then raised the argument, that judicial officers are immune from liability at the instance of a party deeming himself to be aggrieved by their judicial acts or orders passed by them. Justice Mathew has exhaustively dealt with this question after referring to the observations made by the learned Judges in *Anderson v. Gorrie* (1895) 1 QB 868 and summed up by saying.

"The effect of the decision, as I understand it, is this : a person exercising a quasi-judicial power is liable in damages to a party injured if the person exercising it has acted without bona fides or dishonestly or has failed to comply with the essential conditions for its exercise. The words of Lord Haldane would bear repetition : that the officer will be immune from liability if he "keeps within jurisdiction, observing the prescribed conditions, and action bona fide and honestly." If these are not fulfilled, an action in damages would by implication lie. All the Law Lords except perhaps Viscount Finlay seems to insist on bona fides, honesty and the observance of the prescribed conditions for the exercise of the power as essential conditions for immunity from liability. Gross recklessness even if held to be not malice is hardly consistent with bona fides. If for such an

improper exercise of quasi-judicial power an action would lie at the instance of the party injured. I can see no reason why it should not form the subject of a charge in a disciplinary proceeding."

I am in respectful agreement with the view expressed by the learned Judge.

12. Learned counsel for the petitioner cited the decision in *State of Madhya Pradesh Vs. Singhai Kapoorchand of Seoni*, . The question that arose for decision in that case was whether the State Government could be made liable for the negligence of one of its officers. On behalf of the Government it was contended that the officer concerned was acting under the powers vested in him by provisions of the C. P. Land Revenue Act and was exercising statutory powers and duties imposed on him by the legislature. Their Lordships held that the officer was acting under the statutory powers which were more or less of a judicial nature and was, therefore, protected u/s 1 of the Judicial Officers Protection Act. No question arose in that case whether the officer was answerable to the Government and whether any departmental action could be taken by the State Government against its employee for his gross dereliction of duty.

13. Learned counsel for the respondent, on the other hand, has brought to my notice an extreme case decided by the Orissa High Court reported in *Braja Kishore Das Vs. The State of Orissa*, where a subordinate Judge presiding over a civil court had been dealt with under the disciplinary proceedings on the ground that he acted in abuse of his power where in exercising his functions as a judicial officer he passed an order of injunction in violation of the provisions of the Civil Procedure Code.

14. Learned counsel for the petitioner then proceeded to argue that if the provisions of Section 29 or the rules are disregarded the resultant order becomes an illegal and an improper order and such orders could be questioned only in an appeal u/s 29 (4) or revision u/s 99 and if not so questioned the order would become final and could not, in any way, be questioned or reopened even by way of disciplinary proceedings. When the question of the propriety or legality of an order of sanction is brought up before the Government in appeal or revision they are not concerned with the conduct of the officer who passed the order, they are concerned only with the merits of the case, about the propriety and the legality of the order. The petitioner is proceeded against in these proceedings because in discharging his function he acted in utter disregard of the provisions of the Act and the rules. It is the manner in which he discharged his function that is brought up in this proceeding in substance that he acted in abuse of his powers and is guilty of misconduct. In other words, the charge and the allegations are to the effect that in exercising his powers as Commissioner the petitioner acted in abuse of his powers and it is for such misconduct that he is proceeded against. Abuse is only one form of excess. If he has abused his power, then he is not acting under the statute. On the other hand, he is doing something which the statute has not authorised. Recklessness in the discharge of duties is

misconduct, or in other words utterly ignoring the principles in accordance with which alone the power u/s 29 of the Act has to be exercised.

Even though Justice Velu Pillai holds the view that quasi-judicial decisions become final and conclusive as decisions if they are not set aside or modified in any of the modes prescribed by the statute in that behalf and their propriety correctness and legality, must be deemed to be conclusive. Learned Judge himself has slated

"But this is not to say, that even if the authority is guilty of misconduct in the exercise of quasi-judicial powers. Government as the disciplinary authority, has no power to proceed against him for such misconduct, as distinguished from the quasi-judicial decision itself."

Learned Judge has also stated that if there is abuse of power disciplinary proceedings could be started; but what is stated is that there is no such allegation.

15. The charge against the petitioner is not that he, in the exercise of his quasi-judicial functions passed erroneous orders, for if it were so no disciplinary proceedings would have been competent. As stated by Justice Mathew.

"There never was a Judge or an officer exercising quasi-judicial functions who has not committed mistakes or errors in his judgment.

Bul the charge here is, that the petitioner gave sanctions for these teases without caring to satisfy himself whether they were really beneficial to the devaswom and in utter disregard of the relevant statutory provisions and rules find that he contravened various rules which ought to have been followed by him before granting sanction and that in certain cases he exceeded his power and such conduct discloses gross recklessness and misconduct in the dis-charge of his duties

I cannot agree with the contention that in view of sections 93 and 96 of the Act the Government is precluded from questioning the conduct of the petitioner, that he discharged his duties recklessly by utterly disregarding the conditions for the exercise of his power. Misconduct is not sought to be proved by showing that the conclusions reached by him were erroneous, but from the total disregard and flouting of the rules which is a condition precedent to the exercise of his power.

16. Learned counsel in support of his argument that it was not open to challenge the correctness or validity of the order made by the petitioner except in the manner provided, referred to the decision of the Privy Council in AIR 1940 105 (Privy Council) where Their Lordships observed :

"By Sections 188 and 191 (of the Sea Customs Act, 1878), a precise and self-contained code of appeal is provided in regard to obligations which are erected by statute itself.... It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil courts." The same

principles were applied by the High Courts in India In *Bhaishankar Nanabhai v. Municipal Corporation of Bombay* (1907) ILR Bom 604 their Lordships of the Bombay High Court held :

"Where a special tribunal, out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of these rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary courts for they never had any."

17. But these decisions can be of no help to the petitioner so long as it is clearly understood that what is sought to be challenged is not the correctness of the decision, but the question whether the petitioner had not complied with and not acted in conformity with the provisions laid down in the Act and the rules.

In AIR 1940 PC 105 (cited supra) Lord Thankerton observed:

"It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act had not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

The same view was expressed in the case in *Addanki Tiruvenkata Thata Desika Charyulu* (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, by their Lordships of the Supreme Court.

18. I may refer to an early case of the Privy Council in *Gaekwar Sarkar of Baroda v. Gandhi Kachrabhai* ILR (1902) Bom 344. In that case the defendants by the negligent construction of railway made in exercise of their powers under the Railways Act had caused the plaintiff's land to be flooded in the rainy season and consequently damaged. The Railways Act provided that a suit shall not be brought to recover compensation for damage caused by the exercise of the powers thereby conferred, but that the amount of such compensation shall be determined in accordance with the Land Acquisition Act, 1870. In spite of this bar the plaintiff brought a suit for damages for injury alleged to have been caused to his field. It was argued that though the statutory authority of the Act of 1890 might have been abused or exceeded, the remedy of the aggrieved party was only to proceed under the Land Acquisition Act and not by a Civil suit. Rejecting the plea the Judicial Committee observed:

"It would be simply a waste of time to deal seriously with such contentions as these. It has been determined over and over again that if a person or a body of persons having statutory authority for the construction of works exceeds or abuses the powers conferred by the legislature, the remedy of a person injured in consequence is by action or suit, and not by a proceeding for compensation under the statute which has been so transgressed."

19. The same view was expressed by a Full Bench of the Lahore High Court in *Administrator, City of Lahore v. Abdul Majid* AIR 1945 Lab 81 where also the argument that when in a special Act a special remedy is provided for the aggrieved persons, it is that re-medey alone which can be availed of and recourse to civil courts cannot be had. (Sic) Mahajan, J. after an exhaustive survey of the whole case law, both English and Indian on the subject stated:

"There was overwhelming authority in support of the view advanced by the respondents that the civil courts could interfere even with the discretionary orders of public bodies if those orders were an abuse of the power vested in them, or, in other words, were in any way unreasonable, arbitrary, capricious, oppressive or partial." It was further observed:

"When a jurisdiction is vested in a committee and it either irregularly exercises that jurisdiction or errs in the exercise of that jurisdiction, in those cases the remedy of the subject against the order of the committee is by preferring an appeal to the Commissioner under the provisions of Section 225 and the order of the appellate authority would conclude the matter. Such a decision cannot be collaterally attacked in a civil court. Where, however, the committee acts in excess of the powers conferred by the Act or abuses those powers, then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess and for usurpation of power the remedy provided by the Act cannot be held to be exclusive."

20. This question was considered by the Supreme Court in the decision in *Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana* AIR 1968 SC 1547 where again the question raised was whether a suit would lie in a civil court claiming refund of the terminal tax collected by the Ludhiana Municipality under the provisions of the Punjab Municipal Act. It was held therein that a suit for the refund of the terminal tax will not lie when the remedy provided by the Act is not pursued by the claimant, but even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its powers or does not act under the Act but in violation of its provisions.

If, therefore, a private individual can get reopened an order passed by a quasi-judicial authority, if he has acted beyond his powers or abused his position I am unable to see how the Government would be precluded from starting disciplinary proceedings on the same grounds. The Government do not seek to get the orders set aside or to take away the legal effect of the orders. What they want to do in this proceeding is to show that in exercising the quasi-judicial power u/s 29, the condition prescribed for the exercise of the power was not observed and that was because he utterly disregarded the provisions of Section 29 and the rules framed thereunder.

21. If, therefore, the view taken up by Velu Pillai, J., that the disciplinary enquiry

in-to the charges was, in truth and substance, no more than an enquiry into the regularity of the proceedings held or the correctness, legality or propriety of the orders passed by the petitioner in his capacity as Commissioner is not correct, and if really the petitioner is proceeded against for the utter disregard of the provisions of the Act and for the extreme callousness and recklessness exhibited by him in the discharge of his duties as Commissioner and for abuse of power, there is no scope for any difference of view between the two learned Judges. On a careful and anxious consideration of the points debated in the case, I express my respectful dissent from the view taken by Justice Velu Pillai that Part I of charge 1 is without jurisdiction and that it cannot form the subject-matter of disciplinary proceedings.

As for the second part of charge 1, that the petitioner himself had in several cases initiated proposals which should properly have been made by the trustees and that he should have only sanctioned the leases proposed, if the conditions are satisfied, both the learned Judges have agreed that this part of the charge is not without jurisdiction and could be proceeded with.

The third part of charge No. 1 is, I agree, not a separate charge but could be enquired in-to along with the other parts of charge No. 1.

22. Now, I come to charge No. 2. It reads

"That you fixed the premium for lease, rental and the timber value arbitrarily disregarding whether they were beneficial to the institution as you were required to do under the Act and you thereby caused wrongful gain to the lessees and wrongful loss to Devaswom."

In the statement of allegations in support of this charge it is stated that at the conference held on 2-11-1961 it was decided that the rate for timber would be fixed after negotiations with the Elixir Trading Company. Kotta-yam, who had offered attractive rates and that no such negotiation was, in fact held. It is then stated that in certain instances, particular by in regard to lease to P. Narayanan Nair and Vayala Idiculla the objector had offered higher premium and timber value but the objections were rejected only on the ground that the objectors were not present, without considering whether the objections were bona fide and if upheld, would have resulted in benefit to the Devaswom. The allegations further referred to two memos sent by the petitioner, one dated 17-9-1962 in the "fit person" of the Pulpally Devaswom directing him to consider whether the lease already sanctioned was beneficial to the Devaswom and another dated 3-9-1962 to the trustee of the Naduvil Vellal Devaswom directing him to dispose of the timber in public auction and it stated that these letters prima facie showed that in both the cases the petitioner had not properly exercised his statutory duty u/s 29 and satisfied himself that the leases sanctioned were actually beneficial to the Devaswom. Justice Mathew has stated that this charge is substantially the same as the first part of charge No. 1 and its scope being the same as that of the first part of charge No. 1, there is jurisdictional defect. (Sic)

Velu Pillai, J., on the other hand, would say that as none of the Pulpally leases referred to in the allegations have really been executed, there could be no question of wrongful gain to the lessees or wrongful loss to the Devaswom. As far as the first part of charge No. 2 was concerned Velu Pillai J., took the view that the main charge under this head was that some of the objectors had offered better terms, but their objections were rejected on the ground of their absence at the enquiry and without considering the bona fides of the objection or the benefit to the Devaswom. About the legality of the rejection of the objections in the absence of objectors, learned Judge referred to Ext. D-37, a judgment of Vaidialingam, J. Ext. D-37 arose on a writ petition filed by one of the objectors whose grievance was that the petitioner passed orders sanctioning the lease, without hearing him. Vaidialingam, J., held that there could be no grievance so far as the petitioner in the writ petition was concerned inasmuch as he did not appear on the date of hearing. That was the only point decided. The question as to what the duties of the Commissioner were in such circumstances did not come up for consideration and was not decided. The question whether objections should be considered or not will depend upon whether such objections have any relevancy in the determination of the propriety of the lease and whether the premium amount and timber value were properly fixed or were arbitrarily fixed. The question would be whether the petitioner even if the objectors were absent should not have exercised due care and attention in deciding upon the terms of the lease in the light of the better terms offered and whether the lease, in fact, was beneficial to the institutions concerned.

In any case, I am unable to see any jurisdictional defect in the charge and I agree with Mathew, J., that the inquiry into this charge should proceed.

28. Charge No. 3 is in the following terms :

"That you not only initialed proposals for the leases and sanctioned them yourself, but also took further action for putting the lessees in possession of lands and to fell the trees thereon for which you Had no authority under the Act and the rules. "

In the statement of allegations it is stated that the petitioner initialed proposals marking out particular plots in the sketch to be leased out to particular individuals took personal interest in the matter of granting leases to them, getting them permits from the Collector under the Madras Preservation of Private Forests Act and that his personal assistant wrote a demi official letter to the P. A. to the Collector to see that sanctions were accorded.

Mathew, J., has stated that analysing the allegations what appears is that the petitioner gave permission to construct sheds and post watchmen in some cases before permission to lease was granted by the Collector and in one case before his sanctioning the lease and directing the fit person to hand over possession. Learned Judge held that prima facie the petitioner has no power to permit persons to enter into the property before lease is actually executed after

obtaining permission of the Collector. But whether the petitioner would be justified and whether such directions were necessary and proper in the peculiar circumstances of the case are matters depending on the evidence, but would not affect the jurisdiction to proceed with the enquiry.

Velu Pillai, J., on the other hand found that the petitioner was competent to give directions u/s 20 of the Act and that the first part of charge No. 3 is not sustainable and that disciplinary proceedings could be continued only in respect of the second part of charge No. 3.

The report of the Inquiry Officer shows that in a number of cases the petitioner had issued directions to the fit person to permit the proposed lessees to enter upon the property, construct sheds and to employ watchmen. To P. Narayanan Nair permission was granted under letter Ex. P-39 on the same date on which an application was received from him by the petitioner. To one Sankaran permission was granted on 19-3-1962, while application for sanction of the lease was received only on 26-3-1962. In the case of leases to Kolathu Iyer and Kunhikrishnan Nair, they had on getting permission to enter the property started planting rubber even though the Collector's permission under the M. P. P. F. Act had not been received. Learned counsel for the respondent has argued that all these might lead to complications and if ultimately permission to lease is not granted the trustees will have to go to the civil court for evicting the persons who had already taken possession. There is considerable force in the submission made. Whatever that might be, I do not think any question of jurisdiction arises and the Government can proceed with the inquiry into this charge.

24. Charge No. 4 is as follows :--

"That you sanctioned the lease of extensive forest lands with valuable tree growth belonging to various Devaswoms to your relations, neighbours and friends contrary to the provision in Rule 3 of All India Services (Conduct) Rules, 1954 which enjoins every member of the service to maintain absolute integrity in all official matter."

Rule 3 of the All India Services (Conduct) Rules, 1954 enjoins on every member of the service to maintain absolute integrity and devotion to duty. In the relevant allegations mention has been made of sanctioning leases to Bala-krishna Menon and Bhavani Amma who were relations of the petitioner and to one Nanda Kumar, a neighbour of the petitioner. As stated in the report of the Inquiry Officer there is evidence that Balakrishna Menon is a relation and one of the two plots containing the greatest density of tree growth was allotted to him. As far as Bhavani Amma is concerned though there is no evidence that she is related to the petitioner, the Inquiry Officer has in paragraph 79 referred to the keen personal interest taken by the petitioner in the matter of granting the lease to her and her group. If what the petitioner is alleged to have done is calculated to reflect on his integrity and devotion to duty, disciplinary proceedings could be taken.

Velu Pillai, J. has stated that the sanctioning of leases in favour of relations or neighbours is not ultra vires the powers of the Commissioner as the power to accord sanction is solely vested in him, and secondly that it could be sustained by the doctrine of necessity.

Justice Mathew, on the other hand, has stated that the Commissioner cannot initiate a proposal for lease in favour of relations and then invoke the doctrine of necessity to justify his sitting in judgment over it.

Reading charge No. 4 in the light of the allegations and facts elicited in the course of inquiry, I am unable to hold that there is any patent lack of jurisdiction. Whether it was the petitioner who initiated the proposals in this case is a matter of evidence and cannot be gone into at this stage. It was open to the Government to take disciplinary proceedings against the petitioner in respect of his act or omission which would cast a reflection upon his reputation for integrity or devotion to duty as a member of the service. If a person conducts himself in a way inconsistent with the faithful discharge of his duty as a public servant it would amount to misconduct.

25. Both the learned Judges have agreed in holding that there has been a valid initiation of disciplinary proceedings and that the various objections raised against the validity of the disciplinary proceedings are not tenable; then it follows on this view of the law that in subsequent stages of the enquiry also no question of want of jurisdiction can arise. Even if there are defects in the formulation of the charges or in the allegations referred to or that in respect of any particular charge there is no sufficient evidence to sustain that charge, no question of want of jurisdiction can arise. Want of evidence on matters of fact cannot possibly take away jurisdiction. They are matters which the Inquiry authority and the Government have to take note of in dealing with the question as to whether a particular charge is proved and can be sustained. They are matters which are incidental to the exercise of jurisdiction legally vested in the Inquiry Officer. We cannot confuse defects, if any, in the charges with lack of jurisdiction. If this distinction is kept in mind and we do not embark on an exhaustive examination of the charges or the evidence in support of the charges at this stage, it can be seen that there is no jurisdictional defect calling for the issue of a writ of prohibition.

26. It was stated by the learned counsel for the petitioner that a writ of prohibition would lie not only against patent lack of jurisdiction but also in cases where there is contravention of statutory or other laws or legal principles, or there is violation of the rules of natural justice or where the conclusion is reached on no evidence. Decisions have been cited by learned counsel on both sides, but both the learned Judges. Velu Pillai and Mathew, JJ., have proceeded on the basis that they were considering only the question whether there was patent lack of jurisdiction. Mathew J. has stated.

"As regards other grounds which do not raise any patent lack or exercise of

jurisdiction but which are concerned with mere errors in the course of the proceedings alleged to have been committed by the Inquiry Officer. I do not think it proper to deal with them." Velu Pillai, J., has also taken the same view and it was on this ground that the learned Judge found that some of the charges cannot be enquired into when dealing with the matter on a reference. I am afraid, I can only consider whether there are any such patent lack of jurisdiction which would take away the right of the Government to continue the disciplinary proceedings in respect of any of the charges

The relief asked for by the petitioner is for a writ of prohibition. A writ of prohibition is an order directed to an inferior tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise (vide the decision in *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta*, at p 1903)

Writ of prohibition and writ of certiorari are usually issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings. But where a court has jurisdiction to entertain an application, it does not lose its jurisdiction by coming to a wrong conclusion, whether it be wrong in law or in fact. It does not lose its jurisdiction even if its conclusion on any aspect of its proper field of inquiry is entirely without evidential support; for the question whether a tribunal had jurisdiction or not depends not on the truth or falsehood of the facts into which it has to inquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinate at the commencement, not at the conclusion of the inquiry.

27. Nobody can seriously doubt the importance and necessity of proper disciplinary action being taken against Government servants for proved misconduct or abuse of power. Such action is absolutely necessary in the interests of general public for serving whose interests the Government machinery exists and functions. This Court will undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to

be canvassed before the High Court at this stage in a writ of prohibition. These are matters which it would be open to the petitioner to urge in showing that the finding provisionally arrived at by the Union Government is not correct, vide the decisions in Union of India (UOI) Vs. H.C. Goel, ; and State of Assam and Another Vs. Bimal Kumar Pandit, . The report of the Inquiry Officer is only a fact finding inquiry and Ext. P-9 does not embody a final decision. I am not prepared to agree with the learned counsel that the second opportunity is after all chimerical and illusory.

28. For all these reasons, I agree with the conclusions reached by Mathew, J., and find no good grounds for the issue of a writ of prohibition. The petition has only to be dismissed.

ORDER OF COURT

Velu Pillai and Mathew, JJ.

29. u/s 23 of the Travancore-Cochin High Court Act, 1125, the order has to follow the opinion of the majority of the Judges who have heard this case. We accordingly dismiss this petition. There will be the order as to costs.