
(1979) 02 KL CK 0001
In the High Court Of Kerala
Case No : C.R.P. No. 3260 of 1977 F

The Manager, S.N. College

APPELLANT

Vs

V.K. Chandrasekharan and Another

RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Calicut University Act, 1975 — Section 10(1), 60

Citation : (1979) 02 KL CK 0001

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : V.N. Swaminathan, for the Appellant; S.A. Nagendran and N.N.D. Pillai, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—This revision is preferred by the Management of the Sree Narayana Colleges and Sree Narayana Trust, Quilon, against the decision of the University Appellate Tribunal, allowing the appeal of the Principal of the Sree Narayana College, Cannanore against whom certain disciplinary proceedings were instituted, which ended ultimately in an order of dismissal being passed against him. The charge against the Principal was one of misappropriation of a fairly large amount of funds belonging to the College and to the Trust. The charges were enquired into by an Enquiry Officer, Sri V.K. Chandrasekharan, a retired District Judge. It is seen that a large mass of evidence was placed before the Enquiry Officer and that the Enquiry Report was based on the same. But the complaint most strongly ventilated by the Principal is that a larger mass of material which he wished to place before the Enquiry Officer had been wrongly kept out and prevented from going into the record. We shall be adverting to this aspect a little later. At the end of the enquiry, the Enquiry Officer sent up his report, on the basis of which the management found the Principal guilty of the charge of misappropriation and directed his dismissal. Against this order an appeal was filed to the University Appellate Tribunal.

2. The Tribunal found that the Enquiry Officer had not gone about the matter in the fair or proper way, and that it was necessary to appoint a fresh Enquiry Officer. The Tribunal also noted that according to the statutory provisions, the Enquiry Officer had to be either a Professor or an Advocate of ten years' standing. It observed that it was not clear whether the Enquiry Officer was an Advocate of the requisite standing (he was of course not a Professor); and remarked that if he was not, the entire proceedings would be vitiated. The Tribunal finally issued the following direction:

12. I would therefore issue the following directions: The present enquiry report and the proceedings following therefrom are set aside. The Management will appoint another Enquiry Officer who is qualified under the rules to conduct the enquiry. Even if the present Enquiry Officer has the requisite qualifications, some other person has to be appointed. The Management will place before him a panel of three qualified auditors according to its choice. From among the panel the Enquiry Officer will select one of them and appoint him as the auditor. That auditor will peruse the vouchers produced by the Appellant and first see whether they come under any of the heads of account which was the subject-matter of charge (a). That is to say they have to be classified in the first instance. After doing so the auditor will report whether they are genuine and can be accepted. If they are not, he will indicate the reasons for the same. He will prepare a statement of accounts showing whether and what all vouchers fall under the different heads and to what extent the liability of the Appellant is accounted for by the genuine vouchers. Before submitting his report, the auditor, if necessary, can call for the remarks of both sides. After the receipt of the audit report the Enquiry Officer will permit further evidence from the parties, if they so desire to produce such evidence. After considering that evidence along with the evidence already on record the Enquiry Officer will prepare his report which will be duly considered by the Management and who must pass appropriate orders on the same with the utmost expedition. The expense of the auditor must be met by the Appellant himself. It is made clear that pending fresh disposal of the matter the Appellant will continue to be under suspension as before.

13. It is contended by the learned Counsel appearing for the Management that an audit would reveal only the actual extent of liability on the part of the Appellant and for the purpose of disciplinary action it is not necessary to know the exact amount due, which would be relevant only in proceedings initiated for recovery of the same. He has contended that even if the Appellant is guilty of misappropriation of a much less amount, even then, the punishment of dismissal will be appropriate. It is true that a Principal who commits misappropriation of even a small amount of Rs. 50 must be held to have forfeited all his claims to that office. It does not very much matter what the amount is actually. But in this case all the charges depend for their proper finding on the question whether the vouchers produced do account for the entirety of the amount. If they do so then there can be no charge of misappropriation. The Principal may at best in that case be guilty of not maintaining accounts or maintaining them in an irregular

fashion. For that he may have his explanation. In that case the charge will lose most of its gravity. It is therefore incumbent that the vouchers must be examined by a person qualified for that job and proper findings can be entered only after knowing the opinion of a professional auditor. If only this request, which is quite reasonable and legitimate had been allowed by the enquiry officer, unnecessary delay could have been avoided.

14. The appeal is accordingly allowed as directed in paragraph 12 above. Parties will bear their own costs.

We think the Tribunal has flagrantly overstepped the limits of its powers. The enquiry against the 1st Respondent before us is governed by certain statutory provisions. Before noticing the same, let us define the power of the Appellate Tribunal. Section 60 Clause (7) of the Calicut University Act, 1974, enacts:

60(7) Any teacher aggrieved by an order passed after the commencement of this Act in any disciplinary proceedings taken against him may, within sixty days from the date on which a copy of such order is served on him or within sixty days after the Appellate Tribunal has been constituted under this Act, whichever period expires later, appeal to the Appellate Tribunal, and the Appellate Tribunal may, after giving the parties an opportunity of being heard and after such further inquiry as may be necessary pass such order thereon as it may deem fit, including an order of reinstatement of the teacher concerned:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the Appellant had sufficient cause for not presenting the appeal within the said period.

The above provision deals with the power of the Appellate Tribunal to deal with an appeal. The right of the management to appoint an enquiry officer and to enquire into the charges of irregularity and misconduct against any member of the staff is provided by Chapter L of the First Statutes of the University. This is in accordance with the provisions of Section 60 Clause (1) of the University Act which reads as follows:

60. Conditions of service of teachers of private colleges. -- (1) Notwithstanding anything contained in any law, or in any contract or other document, the conditions of service of teachers of private colleges whether appointed before or after the commencement of this Act, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement shall be such as may be prescribed by the statutes.

Chapter L, Clause (10)(a) and (c) of the First Statutes provides:

10. Procedure for imposing major penalties. -- (1)(a) No order imposing any of the penalties specified in items (iv) to (vii) of Statute 8 shall be passed except after an enquiry held in accordance with the following provisions:

(b) * * *

(c) The formal enquiry may be conducted by: (i) the Management of the private college, or

(ii) any authority or person authorised by the Management of private college:

Provided that the person so authorised shall be an Advocate of ten year's standing or a Professor not below the rank of the teacher concerned.

This provision had recently come up for examination before a Full Bench of this Court in W.A. No. 151 of 1978 and the Full Bench had emphasised that the statutory right of enquiry sanctioned by Section 10(1)(c) of the first Statute cannot be whittled down by considerations of Rules of natural justice or otherwise.

3. In accordance with the statutory provision, the Management in this case had appointed an Enquiry Officer who was a retired District Judge. The enquiry, so far as we can see, was a fairly protracted one, where a fair volume of evidence had been received. There is nothing on record to show that any objection was at any time taken to the personnel of the Enquiry Officer. The doubts cast by the University Appellate Tribunal on the eligibility of the Enquiry Officer to fill the role, were uncalled for. We would ignore the same.

4. The only other infirmity found by the Appellate Tribunal against the enquiry was that the Enquiry Officer had kept back without receiving on the record, a large number of documents which the 1st Respondent-Principal, wished to tender at the enquiry. The Tribunal has recorded that the ground of rejection or refusal to receive these documents was unsupportable viz. that the documents were produced not from proper custody of the Management of the College as it should have been, but from the custody of the Principal. It was the view of the University Appellate Tribunal that this by itself would not be a ground for rejection of documents. We shall assume that this is so. But we are by no means satisfied that this would warrant the displacement of the Enquiry Officer and his substitution by a new Officer as directed by the Tribunal. Much the less was there any ground made out for the Tribunal chalking out a programme of enquiry by the Enquiry Officer and directing his being assisted by an Auditor, and indicating the role to be discharged by the Auditor in the enquiry. These are quite outside the province of the University Appellate Tribunal. The Tribunal seems to have forgotten that the enquiry is essentially a statutory process, the limits of which have been defined and dealt with by the provisions which we have referred to earlier. The University Appellate Tribunal should not have done or said anything to trench on the statutory provisions noticed.

5. We cannot therefore sustain the order of the Appellate Tribunal, directing a fresh Enquiry Officer to be appointed and directing that the enquiry be proceeded with in the manner indicated by the Appellate Tribunal. The order of the Management appointing the Enquiry Officer Sri V.K. Chandrasekharan itself provided for the association of an auditor with the Enquiry Officer. In these circumstances, it is enough for us, to maintain the order of the Tribunal directing

a re-hearing by the Enquiry Officer. But we vacate the direction of the Tribunal for appointment of a fresh Enquiry Officer assisted by an Auditor to play the role indicated by the Tribunal. Instead, we direct that the enquiry would be continued by the same Enquiry Officer, Sri V.K. Chandrasekharan, who will be assisted by an Auditor. The Enquiry Officer will look into, and consider, the reception of the additional documents which the 1st Respondent has to tender before the said Officer. These records may be considered and dealt with by the Enquiry Officer properly and in accordance with law. In the light of such additional documents and evidence as the Enquiry Officer might deem fit to receive, the Enquiry Officer will submit a fresh or a supplemental report, as the case may be, which would be considered and dealt with in accordance with law and in the light of the observations contained in this judgment. Appropriate orders will be passed thereon. The order of the Tribunal will stand modified accordingly. This revision petition is allowed to the extent indicated above. No order as to costs.