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**(1971) 08 MAD CK 0019**  
**In the Madras High Court**

The State of Madras and Another

APPELLANT

Vs

M. Kandaswamy

RESPONDENT

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**Date of Decision :** 06-08-1971

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1972) 85 LW 221 : (1972) 1 MLJ 374

**Hon'ble Judges :** V.V. Raghavan, J

**Bench :** Single Bench

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**Judgement**

V.V. Raghavan, J.—The State of Madras is the appellant. The respondent entered service as Assistant Public Prosecutor, Grade II in 1942

at Coimbatore and was promoted to Grade I in 1945 and posted to Erode. He held the post till 1958 when as a result of investigation by the

Crime Branch into certain complaints, the Tribunal for Disciplinary Proceedings conducted proceedings dated 24th May, 1958 against him. The

Tribunal for Disciplinary Proceedings framed 14 charges and conducted an enquiry. After the evidence had been fully recorded and at the stage of

hearing arguments, there was a change in the personnel of the Tribunal. The succeeding Officer heard the oral arguments, perused the written

arguments as well and submitted his report to the Government. Out of the 14 charges framed against the respondent the Tribunal found that only

four charges were proved. The Government accepted the report of the Tribunal and issued a show cause notice to the respondent to show cause

why he should not be dismissed from service. The respondent submitted his explanation. After considering the same, the Government passed

G.O.Ms. No. 1438, Home, dated 25th April, 1961, dismissing the respondent from service. The respondent filed an appeal to the Governor and

the Governor, in G.O.Ms. No. 3724, Home dated 26th October, 1961 passed an order stating that the respondent's memorial was rejected

without giving any reason and treating the appeal filed by the respondent as a mere memorial. The respondent submitted another petition to

consider the appeal filed by him on the merits as required by the rules in view of the fact that his appeal was disposed of as a memorial. The

respondent was informed by Memorandum dated 12th June, 1962 that all aspects of the respondent's appeal were considered in passing

G.O.Ms. No. 3724, Home dated 26th October, 1961. The respondent thereupon filed W. P. No. 127 of 1963 in this Court seeking to quash the

order of the Government.

2. In support of his writ petition the respondent raised the following principal contentions; (1) The charges framed were vague and indefinite and

lacked precise particulars; (2) The findings of the Tribunal were perverse and based on no evidence or a misreading of the evidence recorded; (3)

The statutory appeal to the Governor was summarily rejected, without assigning any reason; (4) Certain arguments which were not supported by

the evidence on record were presented by the prosecution and the Tribunal placed reliance upon the same; (5) In respect of some of the charges

of bribery there was no corroboration by an independent witness; (6) The evidence recorded on behalf of the defence was totally ignored or

explained away without due consideration; (7) The evidence was viewed from a bias perspective speculatively and not impartially; (8) No Tribunal

with a judicial cast of mind can possibly reach the conclusion which the Tribunal had come to in this case; (9) Where the whole area of evidence

was in favour of the defence such evidence had been discarded without reason. The State of Madras filed a counter denying the averments in the

petition and stating that the Tribunal examined the matter carefully and impartially that the charges were clear and specific, that every opportunity

was given to the respondent to defend himself, that the findings of the Tribunal were supported by evidence, and that this Court has no jurisdiction

under Article 226 of the Constitution to re-examine and re-assess the evidence as if in an appeal.

3. In order to examine the above contentions, Srinivasan, J., who heard the writ petition had to consider the evidence broadly, the learned Judge

being fully alive to the limitation imposed under Article 226, namely, that he was functioning not as appellate authority but had to be satisfied

whether the specific attack made against the order of the Tribunal was justified.

4. The learned Judge set out the first of the charges held proved, namely charge No. 2 which related to the payment of an illegal gratification of Rs.

500 by one Ramanujam to the respondent. The learned Judge dealt with Ramanujam's version that the respondent demanded a bribe of Rs. 1,000

for arguing before the Sub-Divisional Magistrate the case filed against him for attempt to murder the Sub-Inspector and the case filed by him

against the Sub-Inspector for wrongful confinement and robbery as calendar cases, and that Ramanujam paid Rs. 500 as bribe to the respondent.

Referring to the evidence, the learned Judge held that the Sub-Divisional Magistrate decided the cases as P.R. casts suo motu without posting the

same for argument that the Tribunal had only the uncorroborated testimony of Ramanujam in support of the demand of a bribe and his giving Rs.

500 to the respondent on a date not specified, that the defence version of Ramanujam having ill-will against the respondent due to the successful

prosecution of some cases against Ramanujam was not considered, that there is no evidence to support the charge except by speculative and

argumentative reasoning adopted by the Tribunal, and that the finding of the Tribunal was vitiated by a total lack of acceptable evidence duly

corroborated. Under the above circumstances, the learned Judge, on a perusal of the entire material relating to the charge, held that the charge was

not established.

5. The learned Judge then dealt with the next charge held proved, namely, charge No. 7, that the respondent in the first week of January, 1957

demanded an illegal gratification of Rs. 100 from Sellamuthu Udayar and received Rs. 50 on the same evening. After setting out the charge the

learned Judge compared the statement of (P.W. 9) Sellamuthu Udayar made during the investigation and the statement recorded before the

Tribunal, and observed that in both these statements Sellamuthu Udayar did not say that the alleged bribe was paid, that the inference that the

Tribunal drew from the evidence that the bribe was paid in the presence of the Sub-Inspector of Police could not be true and was not justified, and

that the charge failed for want of corroboration of the evidence of Sellamuthu

Udayar as well as the failure of the prosecution to examine the Sub-

Inspector before whom the bribe was said to have been given. In the result the learned Judge held that charge No. 7 was not established.

6. The learned Judge then dealt with the third charge held proved, namely, charge No. 8, which related to the respondent demanding Rs. 500 from

M. George to get him out in a security case. The learned Judge examined the evidence relating to the charge and found that on 28th May, 1954,

on which date the bribe was alleged to have been given, it was not respondent's allotted day of work in the District Magistrate's Court, that he

was on casual leave on that date, and that the Tribunal had not properly adverted to this aspect of the matter in dealing with the evidence. The

learned Judge further referred to the evidence of P.Ws. 3, 7 and 8 to demonstrate that the reasoning of the Tribunal was wholly faulty, and that it

was based upon a total misreading of the evidence. In the result the learned Judge held that there was no evidence to justify the finding that the

charge was proved.

7. The 4th charge held proved by the Tribunal is the charge relating to the alleged violation of the Government Servants' Conduct Rules by the

respondent in that the respondent made Sri S.M. Ameer, Sub-Inspector of Police, Jalakantapuram, purchase a cow for him from one P.

Narayanan alias Gandhi, that though the price of the cow was Rs. 210 the respondent actually paid Rs. 200, and that he made the Sub-Inspector

to bear the balance Rs. 10 towards the cost of the cow. The learned Judge examined the evidence fully relating to the charge and held that the

Tribunal had not cared to analyse the evidence properly, and that, even if the respondent had not paid the amount of Rs. 10, it did not follow that

he acted in the abuse of his position and authority or that there was any deliberate violation of the Government Servants' Conduct Rules.

8. In dealing with the complaint of the respondent that the Tribunal had approached the case with prejudice, that there is no evidence to support

the conclusion on the charges held proved and that several aspects of the defence version were omitted to be considered by the Tribunal, the

learned Judge considered it necessary to examine the evidence closely. The learned Judge had emphasised in more than one place that the function

of this Court sitting in writ jurisdiction is not to appraise the evidence afresh as a

Court of appeal, but that in order to satisfy himself about the correctness of the attack made by the respondent it became necessary to scrutinise the evidence closely. In the result the order of dismissal of the respondent was quashed. This writ appeal is filed by the State against the decision of the learned Judge.

9. The learned Government Pleader for the appellant contends before us that the Tribunal is entitled to come to its own conclusion on questions of

fact, and that this Court sitting in writ jurisdiction is not entitled to a reappraisal of the evidence. The contention of the learned Government Pleader

as a general proposition of law is correct and indisputable. But, when an order of the Tribunal is sought to be quashed on the ground that there was

no evidence to support the finding of the Tribunal or that no Tribunal with a judicial cast of mind could possibly have reached the conclusion as in

the present case or that the Tribunal acted prejudicially and indulged in speculation instead of attempting to draw a reasonable inference from the

proved facts, the jurisdiction of this Court to examine the evidence and satisfy itself on the correctness of the complaint is not ousted under Article

226. In *State of Orissa v. Murlidhar* AIR 1963 S.C. 404, the Supreme Court held that, in proceedings under Article 226, the High Court cannot

sit in appeal over the proceedings recorded by a competent authority in departmental enquiry, but that it is open to the High Court to find whether

there is evidence or not justifying the conclusion. Adequacy or inadequacy of evidence to support a finding is not within the jurisdiction of the High

Court under Article 226 but when a complaint is made that there is no acceptable evidence at all to support the impugned conclusion of the

Tribunal or that no Tribunal with a duty to weigh the evidence could possibly have come to that conclusion, it is the duty of this Court under Article

226 to find out whether the complaint so made is justified or not. The entire evidence adduced both for prosecution and for the delinquent officer

has to be assessed by the Tribunal in coming to its conclusion, and if it fail to do so and its conclusion is based merely on surmises and not on

acceptable evidence, which conclusion no Tribunal with a judicial frame of mind could come to, the High Court is justified under Article 226 to

examine the evidence to satisfy itself whether the conclusion of the Tribunal is correct. The finding of fact recorded by a Tribunal is entitled to

respect only in so far as it is established that the finding has been reached after a consideration of all the relevant evidence and the surrounding circumstances and the setting in which the evidence is adduced. We are of opinion that the Tribunal cannot raise a barrier against scrutiny of its conclusion by the assertion that it believes a witness when the facts spoken to by the witness are exceedingly improbable. There is no substance in the contentions raised by the learned Government Pleader. The writ appeal fails and is dismissed with costs. Counsel's fee Rs. 100.