

(2001) 10 KL CK 0068
In the High Court Of Kerala
Case No : O.P. No. 20793 of 2000

Vilasanadas Daniel

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Citation : (2002) 93 FLR 286

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : N. Sugathan and A.V. Ramakrishna Panicker, for the Appellant; P. Nandakumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—"Delay defeats justice" is now a principle well accepted. Apparently, the said principle applies on all scores to the instant case where disciplinary action in respect of an incident that took place in 1976 was followed by a memo of charges in 1991 leading to suspension of the petitioner in the year 2000 when he was at the fag end of his service. In such circumstances, this Court issued orders pursuant to which the petitioner was reinstated in service and he has since retired from service. What remains to be considered is the legality, propriety or the very justifiability in continuing the proceedings.

2. The petitioner was the Village Officer, Kizhakkancherry-I Village in Alathur Taluk during the period 1.12.1975 to 13.6.1977. As per proceedings dated 13.11.1976, the Tahsildar, Alathur directed the petitioner to take possession of 19.19 acres of land which was declared as excess land. One C.P. Vijaykumar, Special Deputy Surveyor Grade-I attached to the Taluk Office prepared the sketch, petitioner inspected the land, verified the sketch and took possession of the land on 18.11.1976. Out of the 19.91 acres, 60 cents formed a Panchayat road and the land actually taken possession was only 19.31 acres. A report to that effect was forwarded on the same day. Thereafter, the petitioner was relieved from the said Village Office on 13.6.1977 and he was transferred as

Village Officer, Kavassery-I Village.

3. In 1978 the land was directed to be distributed among 26 people. In the process it appears there were complaints that there was shortage of land to the extent of 52 cent. In 1982 a direction was issued by the Tahsildar, Alathur to the Village Officer to recover the said extent of 52 cents. But apparently owing to resistance ti seems the same was not done and steps are still under way.

4. Petitioner was issued Ext. P2 show-cause notice in 1987 alleging dereliction of duty, stating that the land actually taken possession of in 1976 was short of 52 cents and Ext. P3 explanation was submitted by him refuting the allegations. Long thereafter, the petitioner was issued Ext. P5 memo of charges dated 5.2.1991 and he promptly submitted Ext. P6 explanation. Nothing took place for quite a few years and in 2000, the petitioner was issued Ext. P8 notice to appear before the respondent. But it is alleged that there was no verification or enquiry in the presence of the petitioner; nor was he required to make any oral explanation. Subsequently he was issued Ext. P9 suspension order 21.7.2000.

5. Ext. P9 was stayed by this Court by order dated 24.7.2000 in C.M.P. No. 34893 of 2000. Thereafter, by order dated 10.8.2000 in C.M.P. 36571 of 2000 there was a positive direction by this Court to allow the petitioner to continue as Additional Tahsildar, Taluk Office, Alathur.

6. The main ground of attack in the Original Petition, apart form repudiation on facts, is that the impugned proceedings are issued in violation of the principles of natural justice, mainly because of the delay.

7. In the counter-affidavit it is stated that the petitioner was proceeded against since ti was found out later that there was shortage of 52 cents in the extent of land actually taken possession of in 1976. Referring t the strong allegation that the shortage could only be owing to subsequent encroachment by strangers and that the petitioner was not responsible since he was relieved from the said place in 1977, it is stated that the said allegation cannot be believed in the light of Ext. P4 report of the Superintendent of Survey, Palakkad. But it has to be seen that there is no reference at all in Ext. P4 that the petitioner was the person responsible for the shortage. And at any rate, it may be seen that Ext. P4 is dated 21.4.1982 and Ext. P5 memo of charges was issued only in 1991. It is admitted in the counter-affidavit that "It is true that long time has bee taken to finalise the disciplinary proceedings in this case. It happened so only because of various administrative reasons and verification of land at different occasions". Though there is such a statement, there are no details in the counter-affidavit regarding any verification conducted between 1982 and 1991. At the same time the petitioner has produced Ext. P7, a report form the Tahsidar of Alathur Taluk concluding that there was no actual shortage in the land taken possession of, that some land is still available and that a parcel of land has been encroached by one Sri. Muthu and subsequently transferred to one Sri. Baby.

8. If that be the position, there is no justification at all in proceedings against the

petitioner. Steps could only have been against those persons responsible for not preventing the encroachment of the Government land. It is also not clear from the affidavit as to what steps have been taken for recovery of the encroached land.

9. Referring to the delay in the proceedings, it is further submitted at paragraph 13 of the counter-affidavit that "Even though the incident happened during 1976 there was administrative delay in processing the same and action could be taken against the petitioner and the other officers only recently". Such a casual statement, I am afraid, will not be sufficient at all to defend the proceedings now initiated against the petitioner. As already observed at the opening paragraph, the incident was in 1976, the memo of charges was issued only in 1991 and even thereafter there is a delay of more than 9 years in initiating a serious action in the matter of disciplinary proceedings by keeping the petitioner under suspension. Certainly serious prejudice is caused to the petitioner.

10. As held by this Court in *Krishnan Nair v. The Director of Agriculture* (ILR 1999 Ker 242), it would be humanly impossible for a person to effectively defend the proceedings in respect of an incident which took place almost a quarter of a century ago. That would amount to sheer harassment. It is also significant to note that even after issuing the memo of charges as early as in February, 1991 no serious steps were taken to proceed with the enquiry and conclude the same within a reasonable time. To quote from the Bench decision referred above:

"No fair and effective enquiry can be conducted unless it commences within reasonable time after the incident. To call upon the appellant to defend himself at this distance of time is to put him at considerable disadvantage and thus deny him the benefit of natural justice."

The Division Bench relied on the decision of the Apex Court in *State of Andhra Pradesh Vs. N. Radhakishan*, wherein the Apex Court held as follows:-

"Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings."

11. In the instant case, there is absolutely no allegation against the petitioner that he is in any way responsible for the delay; nor is there any explanation regarding the administrative delay, let alone proper explanation. In a recent decision of this Court in *Sheikh Meeran Rawther v. The Principal Secretary to Government* (ILR 2001 Ker 274), the same view was followed.

12. In the above circumstances, relying on the above mentioned decision wherein the principles are well settled and the facts therein as also the dictum laid down apply to the instant case, I have no hesitation to allow the Original Petition. Accordingly, I quash Exts. P5 and P9. Since the petitioner retired as

early as in June, 2001 there will be a direction to the respondent to take steps to settle the pension and pensionary benefits in accordance with law within a period of four months from today. The petitioner will be disbursed the benefits found due within two months thereafter.

The Original Petition is allowed above.

13. The petitioner will produce a copy of this judgment along with a copy of the Original Petition before the respondent.