courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 16/12/2025

(1973) 02 KL CK 0016

High Court Of Kerala

Case No: O.P. No. 748 of 1970

M.C. Joseph — APPELLANT

Vs

The State of Kerala and Others — RESPONDENT

Date of Decision: Feb. 16, 1973

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: AIR 1973 Ker 216

Hon'ble Judges: P. Narayana Pillai, J

Bench: Single Bench

Advocate: K. Chandrasekharan and T. Chandrasekhara Menon, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Narayana Pillai, J.

What is sought to be quashed here in Ext P-19-order dated November 27, 1969 of the State Government, the first respondent, end certain proceedings which preceded it. From May 2. 1958, to June 9. 1960 the petitioner was a Godown Keeper in the Foodgrains depot at Ponnani under the Civil Supplies Department. During that period there was shortage in the stock of rice in that depot. By orders passed by the first respondent and the Board of Revenue the second respondent, the liability of the petitioner for the shortage in the stock of rice was first fixed as Rs. 8,004,22. Later, on the recommendation of the Board of Revenue, the Government passed Exhibit P-11-order on August 27, 1963 enhancing the rate of shortage or shrinkage allowance in the case of Palghat milled rice. Consequent on that the Board of Revenue sent Ex. P-12 communication dated February 5. 1964 to the District Collector, Alleppey, the third respondent, informing him that the petitioner''s liability for the shortage of rice found in the depot had been reduced from Rs.

8004.22 to Rs. 2703.26. when he was informed of it the petitioner sent first. Ext. P-13 representation on June 4. 1964 and then Ext. P-14 representation on October 20, 1964 to the Government stating that the shortage found was not on account of any fault of his. The Government in its turn informed him by Ext. P-15 on September 19, 1966 that no further consideration was possible in his case. On September 26, 1966 the Board of Revenue by Ext. P-16 informed the District Collector that the security amount offered by the petitioner had been adjusted towards the money due from him and requested the District Collector to recover from the petitioner''s pay the balance due from him. The District Collector sent a copy of that communication to the petitioner. On October 17. 1966 the petitioner filed before this Court O. P. 3741 of 1966 for quashing the proceedings which culminated in Exhibit P-16 order. That was dismissed. From that Writ Appeal No. 229 of 1966 was filed. In disposing of that Writ Appeal on August 1. 1967 by Ext. P-17 judgment, a Division Bench of this Court observed that the petitioner proposed to move the Government for relief on the basis of some relevant materials and directed the Government to consider the representation when made, and dispose of the same untrammelled by the decision under appeal. On September 1, 1967 the petitioner sent Ext. P-18 representation to the Government. It was that that was disposed of by the Government on November 27. 1969 by Ext. P-19 order.

2. Even at the outset it has to be said that the disposal by the Government of Ext. P-18 representation by Ext. P-19 order was in utter disregard of the direction given by this Court in Ext. P-17 judgment. Ext. P-17 judgment reads:

"The appellant proposes to move Government for relief, on the basis of Ext. P-6 and other relevant materials. Government will consider the representation when made, and dispose of the same untrammelled by the decision under appeal. The writ appeal is disposed of as above. The appellant will be free to move this Court afresh, if so advised, at a later stave. No costs."

and the material portion of Ext. P-19 order reads:

"...,..... I am to inform you that no reconsideration of the petition is necessary. The petition is rejected ....."

The Government had already taken a decision against the petitioner. The representation that he proposed to make thereafter was for reconsideration of the matter and it was that this Court directed the Government to consider meaning reconsideration. Grounds to show that the previous decision was wrong were given by him in Ext. P-18 representation for reconsideration. It was stated in it that he had not violated any of the terms of the bond he had executed in favour of the Government and that no show-cause notice was issued to him in fixing, the rate of shortage allowance. The Government said in Ext. P-19 order that no'' reconsideration was necessary. To say that on reconsideration of the matter in the light of the grounds in Ext. P-18 the previous decision cannot be altered is one thing,

but to say that no reconsideration is necessary at all is another. It was because this Court found that reconsideration was necessary that that was ordered. Refusing to reconsider saying it is unnecessary is flouting the order of Court and showing scant respect to Court.

3. The petitioner is a Government Servant. For misconduct it is the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 that apply to him. The Government in this particular case did not consider it necessary to proceed against him under those Rules. Instead it resorted to Ext. P-1 contract with him when he entered service in the Civil Supplies Department. It is paragraph 4 of Ext. P-1 which reads thus:

"That the said bounden doth hereby covenant and agree with the party hereto of the second part that, in the event of any loss or damage being caused to the Government by any act, omission, neglect, carelessness, misconduct or dishonesty on the part of the said bounden, he the said bounden shall make good to the Government such loss or damage in full, immediately on receipt of notice in writing from the Government as to the amount of such loss or damage and that on his failure to so pay up the amount, it shall be lawful and competent to the Government to recover same from him as arrears of Public Revenue under the provisions of the Revenue Recovery Act for the time being in force or in any other manner that may commend itself to the Government." that is relied upon by the learned Government Pleader to justify the fixation by the Government of the liability of the petitioner. No doubt that provides for recovery of loss or damages consequent on any act or omission on the part of the petitioner. But there is no indication anywhere in the contract as to how the Government would fix the extent of the liability. In the contract the Government has not been made an arbitrator and no power is conferred on the Government to fix the liability. The liability for damages and the power to fix the extent of the damage are entirely different things. Consequently on the strength of the provisions of the contract alone it Is incompetent for the Government to take a one-sided decision and fix the liability of the petitioner.

4. That no man can be a judge in his own cause is a rule of natural equity which has to be held sacred. In a dispute about a contract a person cannot be both a party and a Judge. If he is a party he cannot sit or act as a Judge and if he does so the whole decision is vitiated. In Frome United Breweries Co. Ltd. v. Keepers of the Peace and Justices for County Borough of Bath 1926 AC 586 Lord Atkinson said:

"Then why is an adjudication in which gentlemen have acted both as judges and accusers at the same time to be upheld? There is a sequence of authority holding that it cannot be, and it suffices to quote a passage from the judgment of Cotton L. J. in the case above named, in which he says ((1889) 43 Ch D 379 ''Of course the rule is very plain, that no man can be plaintiff or prosecutor in any action and at the same time sit in judgment to decide in that particular case, either in his own case, on in any case where he brings forward the accusation or complaint in which the order is

made.'' And yet this is precisely what, in the present case, the three councillors have done."

The old view was that even Acts of the Legislature if they made a man judge in his own cause were void but that has changed. In the 10th Edition of Broom''s Legal Maxims it is stated at page 72 as follows:

"Hobart, C. J., is reported to have said that "even an Act of Parliament made against natural equity, as to make a man a judge in his own cause, is void in itself; for jura naturoe sunt immutabilia and they are leges legum." But although it is contrary to the general rule to make a person judge in his own cause, "the legislature can, and no doubt in a proper case would, depart from that general rule," and an intention to do so being clearly expressed, the Courts give effect to their enactment."

Provisions in legislative enactments to that effect cannot be readily inferred. Unless that is the only possible interpretation such an interpretation should not be made. Bennett, J. said in Wingrove v. Morgan (1934) 1 Ch 423

"The question to be decided may be whether the property of one of the King''s subjects remains his or is vested in the Welsh Commissioners, and the argument is that the effect of the language in Section 11 of the Act is to constitute the Welsh Commissioners the sole judges of that question. Parliament, of course, may have made a party to a dispute judges in their own cause, but it seems to me that one would need very plain language before one could conclude that that was the intention of Parliament, and, in my judgment, that interpretation ought not to be put upon the language which one finds in Section 11 unless that is the only possible interpretation."

If strict Interpretation is necessary in the case of even legislative enactments tending to make parties to disputes Judges in such disputes there are stronger reasons for similar interpretation in the case of contracts with similar provisions and in the present case there is no provision in the contract making the Government Judge in deciding the extent of liability.

5. Assuming that the petitioner has under the contract agreed to the Government deciding the extent of liability even then the decision of the Government is arbitrary. Rice in the Ponnani depot was of three kinds. Palghat milled rice, Andhra milled rice and Burma rice. There can be shrinkage in the stock of each kind of rice and that for several reasons. Some of them have been given in detail in Ext. P-13 representation that the petitioner made to the Government on June 4. 1964. Weather change and unscientific stacking can be cited as two instances. Seasonal changes effect the weight of rice. Rice when dry would not have the same weight as when it is wet. If rice is scientifically stacked shrinkage would be less. In Ext. P-6 remarks of the Depot Officer. Ponnani, sent to the Board of Revenue he specifically said that the shortage was not due to any negligence or mischief on the part of any godown keeper there and that it was due to natural causes. In that he said that if proper attention had

been bestowed on the quality of the rice by the Entomologist at the time of purchase shortage could have been avoided to some extent. In Ext. F-4 report the Entomologist in turn informed the District Collector that shrinkage could happen in several ways and that , authorities in India on rice were agreed that in rice there may be shrinkage to the extent of three per cent. On the basis of the petitioner''s representation the Board of Revenue recommended a particular rate for shrinkage in the case of rice, but confined it to Palghat milled rice and that was accepted by the Government in Ext. P-11 order. It was on tile basis of that order that the liability of the petitioner was reduced to Rupees 2703.26. The fixation in Ext. P-11 of the percentage for shrinkage in the case of rice is arbitrary. Further it is confined to Palghat milled rice although allowance of 3% for shrinkage applies to all kinds of rice in the whole of India. Burma rice stocked in the Ponnani depot, when checked, was found to be far in excess in weight. If the petitioner is to Incur a liability for the shrinkage in Palghat and Andhra milled rice he should get credit for increase in weight of Burma rice. But for increase in weight he is not entitled to get credit. If that be so he cannot incur a liability for shrinkage on account of natural causes also. In Ext. P-9 order of Government fixing the liability of the petitioner while shortage in certain stocks of rice was taken into account credit was not given to him for the excess found in other stocks. The excess found was ordered to be credited to Government. It cannot be that on account of natural causes when weight increases Government can take advantage of it and when it decreases Government can make the godown keepers liable for it.

6. It is seen from Exts. P-20 to P-22 filed along with the reply affidavit that in the case of fixation of liability of certain employees for the shrinkage in the stock of rice in some other depots the Government after fixing the liability in the first instance later on absolved them from liability.

7. For the reasons mentioned above the orders of the Government fixing the liability of the petitioner for the shortage in the stock of rice in the Food Grains Depot, Ponnani, and the proceedings subsequent to that culminating in Ext. P-19 order are quashed as prayed for in this Original Petition. The petitioner is allowed to recover his costs from the respondents.