**(1984) 02 KL CK 0031**

**High Court Of Kerala**

**Case No:** W.A. 729 of 1983

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| State of Kerala | | APPELLANT |
| | Vs | |
| K.G. George and Another | | RESPONDENT |

**Date of Decision:** Feb. 3, 1984

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (1984) KLJ 127

**Hon'ble Judges:** M. Fathima Beevi, J; K.K. Narendran, J

**Bench:** Division Bench

**Advocate:** P.V. Aiyappan, A.G. for State, for the Appellant; T.R. Govinda Warrier, Sebastian Davis and P V. Jyothi Prasad, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Fathima Beevi, J.
The appeal is directed against the judgment in O.P. No. 7200/1983 quashing Ext. P1 order dated 16-8-1983 by the

State Government placing the 1st respondent-petitioner, the Chief Engineer (Arbitration) under suspension, in exercise of the power under Rule 10

of Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. The 1st respondent entered Government service in the Public Works

Department on 4-7-1951 and is to retire on July 1984. He took charge as Chief Engineer (Arbitration) on 4-3-1983. In his capacity as Chief

Engineer (Arbitration), the 1st respondent had to discharge quasi-judicial functions of adjudicating on claims in arbitration cases between the

Government and contractors and to pass awards. The aggrieved party could challenge the award where there is misconduct on the part of the

arbitrator or on the ground that the award has been improperly procured or is otherwise invalid,

2. The 1st respondent in his capacity as Chief Engineer (Arbitration) passed an Award No. 61/82 on 29-4-1983 for Rs. 2,32,523/-. The Law

Officer, P.W.D., who is also an Additional Secretary to Law Department in furnishing his legal opinion on this award by his letter dated 13-7-

1983 stated that the award is liable to be set aside, enumerating the grounds on which the award could be challenged in court. On perusal of the

letter the Secretary to Government, Water and Power Department opined that seldom can an award which is a non-speaking one be successfully

challenged; that the excessive award is not passed on justice but other considerations which could include corrupt motives on the part of the

arbitrator. He therefore suggested by his note dated 588-1983 that the Chief Engineer (Arbitration) may be immediately shifted before further

damages are done and that Vigilance Enquiry may be ordered about the acquisition of assets by the officer also. On 6-8-1983 the Secretary to

Government, P.W.D., agreed to the action suggested. When the matter was placed before the Chief Secretary on 8-8-1983, the Chief Secretary

felt that unless strong action taken as a deterrent, this kind of reckless administration will continue. He recommended that the arbitrator may be

placed under suspension pending detailed investigation and enquiry. The recommendation was accepted and the Government on 16-8-1983

passed the impugned order of suspension pointing out therein that serious official irregularities and grave misconduct on the part of the 1st

respondent had been brought to the notice of the Government, and that the Government considers that there is prima facie case against the officer

which calls for a detailed enquiry into the matter, and the officer be placed under suspension with immediate effect.

3. The 1st respondent challenged the proceedings by filing the original petition on 19-8-1983 urging that the real ground for placing him under

suspension is to remove him from the post of Arbitrator and to bring a person of their choice as his successor, it was also urged that Ext. P1 order

was passed without any application of mind to the relevant facts and that it is vitiated by a failure to observe the principles of natural justice, that

Ext. P1 is an extremely arbitrary and unreasonable action by the Government and is clearly violative of the fundamental rights guaranteed under

Article 14 of the Constitution of India, that the Government is in the position of the active litigant in arbitration proceedings, that the petitioner had

been discharging the functions conscientiously with honesty and integrity and was not amenable to influence, and that there had been no allegation

of any misconduct on his part and the order passed without any positive materials in support of allegations of misconduct is invalid and illegal.

4. The State Government in the counter affidavit contended that almost all the awards passed by respondent were found to be against facts and

law and misconduct was apparent on the face of several of his awards and stated: The respondent was placed under suspension pending enquiry

as it was considered necessary to do so in the interest of an impartial enquiry. His continuance in the post which he held or of any other Chief

Engineer in the Department would enable him to influence the enquiry and tamper with the evidence which may go against him. This was the prime

consideration which compelled the Government to place the respondent under suspension immediately. An effective enquiry into the conduct of the

respondent as Arbitrator could only be conducted after placing the respondent under suspension. To allow him to continue or to shift him to an

equally high and official position in the department would have resulted in vitiating the enquiry as the respondent would have been in a position to

try to influence the enquiry or tamper the material evidence relating to the case. It was pointed out that the suspension of the respondent pending

enquiry is not a punishment of any sort and it was only a basic step which the Government had to take in the interest of justice in the circumstances

of the case.

5. The learned Single Judge perused the file and noticed that the letter dated 13-7-1983 advising the Government on the award was one pointing

out legal misconduct for further action in the matter of arbitration and the legal misconduct alleged against the arbitrator does not mean that he is

alleged to be guilty of a corrupt motive. The learned judge considered the scope of Rule 10 of the Kerala Civil Services (Classification, Control

and Appeal) Rules, in the light of the decisions reported in N. Subramonian v. State of Kerala (1973 KLJ 31), Veeramani v. State of Kerala

(1974 KLT 630), The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, etc. In paragraph 13 of the judgment

the learned judge summarised the findings on review of the facts thus;

13. Here, it is apparent from the Chief Secretary''s note that he was only giving expression to the displeasure felt in respect of the act of the officer

concerned in passing the Award and he thought that the mode of giving such expression should have a deterrent effect on others ''in service. These

are not contemplated and is really a mala fide exercise of power. Mala fide exercise of power does not mean, as has been said by this court a

number times, any dishonest motive. If the power is exercised not in the circumstances which warrant the exercise of power as per the relevant

statute, that might amount to a mala fide exercise of power.....Bona fide cannot simply mean that they are not making a profit out of their offices

or acting in it from private spite, nor is bona fide a short way of saying that the authority has acted within the ambit of its powers and therefore not

contrary to law. It must mean that they are giving their minds to the comprehension and their wills to the discharge of their duty towards the public,

whose money and local business they administer. It might be on account of an absolute ignorance of the scope and ambit of rule 10 that this order

of suspension had been passed and not for merely to spite the petitioner. But all the same it will be a mala fide action.

6. The learned judge after referring to a decision in Ramankutty v. State of Kerala (I.L.R. (1972) 2 Ker. 4) stated thus:

There may be cases where such suspension may be justified also to avoid misuse of the authority of his office, misuse which may result in

obstruction to the proper trial of the charges against him. The situation could be met by the officer being kept under suspension or in some cases

merely by transferring the officer away from the scene, the choice necessarily depending upon the exigencies of the situation. I am just referring to

this only to show that none of these considerations have been kept in mind by the authorities concerned in suspending the petitioner. I am making it

clear that I am not here exonerating the petitioner from charge of misconduct as much. If on the basis of the Vigilance enquiry against him there are

sufficient materials on which he could be placed under suspension, he can be placed under suspension. But the power of suspension should not be

on the basis of the whims and fancies of any officer, however high placed he might be. In this View I allow the Original Petition and direct the

reinstatement of the petitioner forthwith. In the circumstances of the case, I think this is a fit case where the Government should be directed to pay

the costs of the petitioner, including Advocate''s Fee Rs. 500/-

7. The judgment of learned judge was rendered on 13-9-1983. The respondent was thereafter reinstated in service and posted as Chief Engineer

on special duty World Bank Assistance and had joined in the said post on 20-9-1983. The State however being aggrieved by the judgment

quashing Ext. P1 order preferred the appeal on 16-11-1983 and moved a petition in C.M.P. No. 30831/83 dated 17-11-1983 to restore the

suspension order. The C.M.P. was dismissed on 28-11-1983 after hearing both sides.

8. The main ground urged in the appeal by the State is that the learned single judge had exceeded the jurisdiction under Article 226 in interfering

with Ext. P1 order of suspension. The learned Advocate General appearing for the State contended that the suspension order was justified from

the materials available to the Government and the learned judge had gone beyond his jurisdiction in probing into the sufficiency of material

warranting the suspension. According to the learned Advocate General, Ext. P1 order of suspension is a prelude to a detailed enquiry into the

misconduct levelled against the respondent. It is stated that the 1st respondent functioning as arbitrator had been consistently allowing imaginary

claims, ignoring relevant provisions of the agreement between the parties, awarding fantastic amounts in excess of the probable amounts of

contracts and beyond the amounts covered by the contracts and the awards passed by the respondent are all under challenge before appropriate

courts. It is maintained that the power of suspension has been exercised by the Government for a legitimate purpose to achieve the legitimate

object of an impartial enquiry into the grave misconduct and there is no demonstrable ground to infer mala fides in the action intended to promote

public justice and to inspire confidence in the integrity and efficiency of the administration. The Supreme Court in Khem Chand v. Union of India

(1963) S.C. W.R 127) has pointed out that suspension of a Government servant pending an enquiry is a necessary part of the procedure for taking

disciplinary action against him. In Government of India v. Tarak Nath Gosh (1971(1) S.C. Cases 734) the Supreme Court again said that when

serious allegations of misconduct are imputed against a member of a service normally it would not be desirable to allow him to continue in the post

where he was functioning. It was observed therein: ""If the disciplinary authority takes note of such allegations and is of opinion after some

preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, it would not

be improper to remove the officer concerned from the sphere of his activity in as much as it may be necessary to find out facts from people

working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the offices concerned as

well aft to those whose duty it was to make the enquiry to do so while the officer was present at the spot,"" Referring to these decisions it was

pointed out that the language used in Rule 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 is not the same as that

employed in All India Services (Discipline and Appeal) Rules 1955 or Rule 7(1) of the Kerala Police Departmental Enquiry (Punishment and

Appeal) Rules considered in the decisions noticed by the learned judge. It is argued that where a disciplinary proceedings is contemplated against a

Government servant, the appointing authority is empowered under Rule 10 to place him under suspension and this power is absolute and judicial

review is permissible only if the action is shown to be vitiated by mala fides. In this case the allegation of mala fides is vague and not borne out by

records it is said.

9. There is no controversy that Ext. P1 order of suspension was passed by the Government in exercise of the statutory power conferred under

Rule 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. This Rule states that the appointing authority may at any

time place a Government servant under suspension where a disciplinary proceeding against him is contemplated. It is fairly settled that the executive

has no absolute power in administrative matters. The constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure

that each and every authority in the State including the Government acts bona fide and within the limits of its power. The primary purpose of

administrative law is the imposition of the checks on the powers of Government or its officers so that they may not either abuse their powers or go

out of their legal bounds. Article 14 strikes at arbitrariness in State action and requires that the State action must be based on valid and relevant

principles applicable alike to all similarly situated and it must not be guided on extraneous or irrelevant considerations because ah action that is

arbitrary must involve negation of equality. This position appears to be settled by the decisions of Supreme Court in S. Pratap Singh Vs. The State

of Punjab, , E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Ramana

Dayaram Shetty Vs. International Airport Authority of India and Others, AIR India Vs. Nergesh Meerza and Others, and D.S. Nakara and

Others Vs. Union of India (UOI), . It is the exigency of - the conditions of service which requires or calls for an order of suspension and there can

be no difference in regard to this matter as between a member of the Indian Administrative Service or State Service. The Government is entitled to

place an officer under suspension even before definite charges have been communicated, after preliminary investigation has been made into the

conduct of the officer concerned following allegations of corruption or malpractices levelled against him. Rule 10 empowers the appointing

authority to place a member of the service under suspension when disciplinary action is under contemplation. This rule read with rule 15 makes it

clear that disciplinary proceedings is contemplated only when the authority concerned is satisfied that there is prima facie case for taking action. It

is on the basis of complaint received or on consideration of the report of investigation or for other reasons the authority is to satisfy that prima facie

case exists. Therefore either there should be a complaint alleging mis-conduct or report of investigation or other material for exercising the power

of suspension in contemplation of the disciplinary proceedings. As rightly pointed out by the learned judge the only basis for the action against the

1st respondent in this case is the legal opinion furnished by the law officer on the particular award in one case and the inference thereon drawn by

the Secretary to Government, The facts and materials on the file when the impugned order was passed are the only relevant considerations in

judging the necessity of the suspension. The letter of the law officer did not contain imputation of improper motive or misconduct in the sense it is

understood in disciplinary proceedings. No reference is made in the file regarding other awards passed by the respondent nor is there any

allegation of corrupt practices. The inference of improper motive by the Secretary is a mere conjecture and even then the Secretary has only

suggested the shifting of the respondent from the post of Chief Engineer (Arbitration) in the interest of the administration. The Chief Secretary

however thought it fit to place the respondent under suspension as a deterrent step and to order a vigilance enquiry. There can be no doubt that the

proposed action was on extraneous considerations and not as a prelude to any contemplated disciplinary action after preliminary investigation into

the conduct of the officer following allegations of corruption or of malpractice levelled against him. Since the only step taken by the Government

was to order vigilance investigation, in the absence of any serious allegations of misconduct or other materials for prima facie satisfaction of the

authority, the power under Rule 10 could not have been exercised before receipt of the report of the investigation. It is not correct to say that the

Chief Secretary while recommending the action of suspending the 1st respondent had taken into consideration the nature and number of awards

passed by the respondent or the necessity or desirability of placing the respondent under suspension to facilitate an impartial enquiry. The

qualitative and quantitative assessment of the work and conduct of the arbitrator with reference to the other awards appear to have been thought of

only in the course of these proceedings before court. The only consideration that weighed with the Chief Secretary in proposing the suspension

was that the action should be deterrent in administrative matters. As rightly pointed out by the learned judge the stage has not reached for

punishment and the proposed action was on extraneous considerations. The mala fides of the action lies in the absence of valid considerations. The

learned judge has rightly quashed the impugned order of suspension with the reservations for future action, if found necessary. We find no ground

for interference.

The appeal is accordingly dismissed, in the circumstances without costs.