

Biju, P.A. Vs Director, Printing and Stationery and Others

Court: High Court Of Kerala

Date of Decision: March 3, 1989

Acts Referred: Succession Act, 1925 & Section 372, 374

Citation: (1989) 2 KLJ 247

Hon'ble Judges: V. Sivaraman Nair, J

Bench: Single Bench

Advocate: A.A. Abdul Hassan, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

Sivaraman Nair, J.

Petitioner is an unfortunate minor. His mother died. His father who was an Assistant Type Store Keeper, Government

Press, Ernakulam died on 4th July 1982 while in service. The Petitioner is the sole surviving heir of his father. For the arrears of dues under the

Family Benefit Scheme and Gratuity due to the heirs of the deceased employee, the Petitioner filed an application O.P. No. (Succession) 50 of

1983 in the Sub Court, Parur through his legal guardian and next friend seeking the issue of succession certificate under Sections 372 and 374 of

the Indian Succession Act. The schedule of that application contained the following details:

Rs.

(1) Gratuity from the Government Press,

Trivandrum to Achalan .. 5,605.00

(2) Provident Fund from the Government

Press, Trivandrum .. 1,767.00

(3) Annual pension to Achalan from the

Government Press, Trivandrum .. 2,400.00

(4) Family Benefit Scheme from the

Government Press, Trivandrum .. 10,000.00

(5) From Damodara Shenoy, Meera

Bhavan, N. Parur to Achalan by

pronote of Rs. 200 with interest .. 240.00

Total .. 20,012.00

The Principal Sub Judge allowed the application and directed the issue of succession certificate by Ext. P-1 order. The fourth Respondent was the

first counter-Petitioner. Apparently she did not object to the issue of succession certificate in favour of the minor. It may be seen from the schedule

attached to the application that all retirement benefits due in respect of the father of the Petitioner were covered by the certificate. Application must

have been notified as is required by the Indian Succession Act. All parties who were interested should have been notified of impleaded as party

Respondents to that application. Such parties were entitled to contest the claim of the Petitioner as sole heir entitled to succeed and to collect the

amounts due to him. Any aggrieved party could have filed an appeal against Ext. P-1. Counsel for the Petitioner submits that Ext. P-1 has become

final. He further submits that an amount of Rs. 10,000 due under the Family Benefit Fund was paid to the Petitioner through his guardian under Ext.

P-2 order. Thereafter Exts. P-3 and P-4 orders were passed. They were to the effect that the Petitioner would be entitled to receive only 50 per

cent of the Gratuity and Family Pension amounts which were covered by Ext. P-1 succession certificate. The other 50 per cent was sanctioned in

favour of the fourth Respondent. That was on the assumption that the fourth Respondent was one of the two heirs entitled to collect the pensionary

benefits due to the deceased employee. The Petitioner submits that the Respondents could not have granted any of the amounts covered by the

certificate during the pendency of the Original Petition. The third Respondent issued Ext. P-5 memo, to the effect that an amount of Rs. 1,380

would be paid to the Petitioner through his guardian, on production of indemnity bond.

2. This apportionment of the pensionary benefits between the Petitioner and the fourth Respondent was made apparently on the assumption that

the fourth Respondent was the wife and therefore was one of the heirs of deceased Achalan. The Petitioner submits that no such apportionment

could have been ordered in defiance of Ext. P-2 order granting succession certificate in favour of the Petitioner with the fourth Respondent herself

on the party array. The Petitioner therefore seeks the issue of a writ of certiorary to quash Exts. P-3 and P-4 issued in favour of the fourth

Respondent as per P.A. 5/D/1274 and P.A. 5/D/14497 for payment of Family Pension, Gratuity and General Provident Fund equally between the

Petitioner and the fourth Respondent.

3. The third Respondent has filed a counter affidavit. It states that he directed apportionment on the basis of the report of the Tahsildar,

Kanayannur to the effect that the Petitioner minor son and the fourth Respondent, second wife of deceased Sri Achalan were the legal heirs. It is

also stated that the fourth Respondent had lost pensionary benefits from military service consequent on her remarriage to Sri Achalan.

4. The Government Pleader appearing for Respondents 1 to 3 invited my attention to Rule 118 of Part III of the Kerala Service Rules, which

enables the head of the department of the employee, who retired and died thereafter, to conduct an enquiry as to who are eligible to receive

retirement benefits and family pension. Sub-rule (2) provides for an enquiry by the Head of Office/Department and report in the prescribed form

showing the surviving eligible members. The report is to be forwarded to the Pension. Sanctioning Authority. The Government Pleader submits that

it was in pursuance of the provisions contained in Rule 118(2) that the Tahsildar conducted an enquiry and reported that the fourth Respondent

was the widow of the deceased Sri Achalan. Therefore, the Petitioner and the fourth Respondent were treated as the surviving legal heirs entitled

to receive the pensionary benefits due in respect of the deceased employee.

5. What is evident from this case is that there were two proceedings, in both of which, enquiries were conducted as to who were the persons who

should receive the pensionary benefits due in respect of the deceased employee Sri Achalan. One was a judicial enquiry by a competent court of

law under the Indian Succession Act. The Petitioner and the fourth Respondent were both parties in that legal proceedings. It was obligatory that

the applicant must have notified all persons interested in the estate of the deceased. All persons impleaded including the fourth Respondent were

entitled to resist the claim of the Petitioner on the issue of succession certificate as the sole surviving heir of deceased Sri Achalan. It was on a

consideration of the claims and objections that the court passed an order in the nature of Ext. P-1 granting the certificate in respect of amounts

specified in the schedule. The other proceedings was almost ex-parte. The Respondents have no case that Tahsildar issued notice to the Petitioner

when he conducted the enquiry as notified in Rule 118(2) of Part III of the Kerala Service Rules. The rules did not indicate any obligation to give

notice so as to enable persons interested either to assert claims or to file objections. The Tahsildar or the Officer who conducted the enquiry under

Rule 118(2) may choose any manner of enquiry which suits him, since no procedure is prescribed. The Respondents can succeed in their

contention that they acted, properly in apportioning the pensionary benefits due in respect of Sri Achalan, only if I proceed on the assumption that

ex parte enquiry and the resultant report without notice to parties likely to be affected did supersede the judicial determination by a court of law in

a judicial proceedings with the concerned persons on the party array. It is impossible even to countenance such a submission.

6. The Government Pleader submits that it is the duty of the department to ascertain the person who was entitled to receive the amount of

pensionary benefits in view of the positive provisions contained in Rule 118(2). He submits further that the enquiry is confined only to the limited

purpose of ascertaining as to who are entitled to the benefits as the surviving heirs. It is his further submission that in this limited area and for this

limited purpose, the departmental authorities are bound to rely on the report submitted by the authority who is entrusted with the power to enquire

under Rule 118(2), Part III of the Kerala Service Rules.

7. The effect of acceptance of this submission will be disastrous. In spite of any judicial determination, an administrative decision by the Tahsildar

or the Head of the office after an ex parte inquiry alone will be accepted as final for payment of pensionary benefits to the surviving heirs. In other

words, the succession certificate issued after due notice to all parties will be nullified by an ex parte administrative report. If it is a question of

choice between the judicial decision in proceedings initiated under the Indian Succession Act and the administrative determination without notice to

parties which a revenue officer conducted, I have no hesitation to hold that the former has invariably to be respected. The person in whose favour

that judicial decision was rendered and the succession certificate was issued alone is entitled to receive the pensionary benefits, which are

scheduled to the certificate.

8. In the light of the above, I allow this Original Petition. Order of the Respondents directing apportionment of the pensionary benefits between the

Petitioner and the 4th Respondent is set aside. There will be a direction that all amounts covered by Ext. P. 1 order which have not so far been

disbursed will be kept in a nationalised bank in fixed deposit in the name of the Petitioner till such time as he attains majority. The interest will

accumulate till such time as the amount is drawn, after the Petitioner attains majority. There will be no order as to costs.