(2009) 10 MAD CK 0008

Madras High Court

Case No: Writ Petition No''s. 19662 to 19665 of 2009 and M.P. No''s. 1, 1, 1 and 1 of 2009 and 2, 2, 2 and 2 of 2009

M. Selvaraj, R. Vijayan, P. Chellappan and K. Thangadurai	APPELLANT
Vs	
The State of Tamil Nadu	RESPONDENT

Date of Decision: Oct. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 32
- Penal Code, 1860 (IPC) - Section 130, 147, 149, 301, 302
- Protection of Human Rights Act, 1993 - Section 18(V)
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Venkatramani, SC for V. Chockalingam, for the Appellant; K. Rajasekar, GA, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
Heard Mr. K. Venkatramani, learned Senior Counsel leading Mr. V. Chockalingam, counsel appearing for the petitioners

and Mr. K. Rajasekar, learned Government Advocate (Forest), taking notice for respondents and perused the records.

2. The first writ petitioner is the Forest Guard working under the Kulasekaran Range, Kanyakumari District. The second and third writ petitioners

are the Forest Watchers and the fourth writ petitioner is a Forester. All the four writ petitioners challenge the order in G.O. (D) No. 64

Environment & Forest Department, dated 19.03.2008 as well as the charge memo, dated 30.7.2008.

3. The charge memos were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge against the four

petitioners was that they took one watcher by name Rajendran, who was working in Keeriparai Division belonging to the Tamil Nadu Rubber

Corporation, on the night of 24.11.2003 under the leadership of a Forest Ranger of Azhagiyapandiapuram Range by name Sobidaraj and brought

him from his colony. Since he refused to come along with them, they forced him to go with them. The said watchman was found dead on

25.11.2003.

4. The matter was taken up to the National Human Rights Commission (NHRC) at New Delhi by a NGO by name Peoples Watch, Tamil Nadu.

In response to the complaint made by the said NGO, the Commission recorded that nine forest officials were involved in the death of Rajendran.

They were arrested by the CB CID. The Commission invoked its power u/s 18(V) of the Protection of Human Rights Act, 1993. Thereafter, a

notice was issued to the Chief Secretary to the Government of Tamil Nadu u/s 18(c).

5. In the show cause notice issued by NHRC, it was stated that as to why the Commission should not recommend compensation to the next kin of

deceased Rajendran. The Director General of Police, Tamil Nadu and the Senior Superintendent of Police, Kanyakumar District were directed to

report the status of the investigation. The second respondent, DFO, was directed to intimate whether any departmental proceedings were initiated

after the arrest of negligent forest officials.

6. Thereafter, the Superintendent of Police, Kanyakumari District, by his communication, dated 20.2.2008, submitted that the deceased Rajendran

had five daughters and one son. His wife is also surviving. The third daughter of Rajendran one Lavanya was appointed to the post of Watcher at

Arasu Rubber Corporation in Keeriparai Division. His wife and two daughters Kumari Sheeja and Kumari Anitha were being paid monthly

pension. Pursuant to the investigation conducted by the CB CID, a criminal case was registered in connection with the death of Rajendran in Crime

No. 61 of 2003 under Sections 147, 130(b), 341, 342, 364, 333, 328, 302 and 301 r/w 149 IPC against 12 persons. After their arrest, a charge

sheet was filed before the Sessions Judge at Nagercoil.

7. It was also stated that during investigation by the CB CID Crime Branch, Tirunelveli, the petitioners were arrested along with five other officials.

One Forest watcher and Forest Ranger were absconding. They were also placed under suspension by the department. A charge sheet was laid

before the Sessions Court. Basing upon the said report and having found that human rights of deceased Rajendran was violated by the forest

officials including the petitioners, it was recorded that departmental and criminal action were taken against them. The State Government was

directed to pay a sum of Rs. 1 lakh as an interim relief within six weeks along with the proof of payment. When this order was communicated by

the NHRC by its proceedings, dated 22.2.2008, the Government issued G.O.(D) No. 64, Environment and Forests Department, dated

19.3.2008, implementing the order of the NHRC, which was done by way of an interim relief.

8. In the said order, after making payment to the legal representatives of the deceased Rajendran, in paragraph 6 of the order, the Principal Chief

Conservator of Forests was directed to recover the entire compensation from the individuals responsible besides taking disciplinary action as well

as criminal action. Pursuant to the said order, the second respondent issued a charge memo, stating that the petitioners have neglected to discharge

their duties and because of their conduct, there was a loss of Rs. 1 lakh to the State Government. Since the petitioners have gone to the quarters of

deceased Rajendran and subsequently, the said Rajendran died, his family was to be paid compensation of Rs. 1 lakh. Therefore, the petitioners

were responsible for the said incident and must bear the loss sustained by the State.

9. In Annexure III to the charge memo, reference was made to the directive of the National Human Rights Commission, New Delhi, dated

22.2.2008 as well as G.O.(D) No. 64, Environment and Forest Department, dated 19.03.2008. The petitioners were directed to give their

explanation within 15 days'' of the charge memo. The petitioners did not challenge the said charge memo immediately after the issuance of the

same. They have also not disclosed whether they had sent replies pursuant to the charge memos.

10. In the meanwhile, it must be stated that the petitioners were tried before the Sessions Judge, Kanyakumari Division at Nagercoil in S.C. No.

171 of 2005 and they were acquitted on the ground that the prosecution has failed to prove the guilt of the eleven accused including the petitioners

(A-8, A-5, A-4 and A-2) beyond all reasonable doubt. It is not stated whether any appeal has been filed against the said order of acquittal by the

State. In any event, the proceedings, dated 22.2.2008 issued by the NHRC is only an interim order passed by the NHRC, New Delhi and they

were awaiting compliance report from the State Government. The petitioner after one year and two months after the charge memo was given to

them, have filed the present writ petitions.

11. The learned Senior Counsel contended that the charge memo is vague. Since the basis of the charge memo is the Annexure III, in which the

letters of the NHRC, New Delhi and the Government Order in G.O.(D) No. 64, Environment and Forest Department, dated 19.03.2008 were

made as its basis, they have chosen to attack the Government Order. Once the Government Order is successfully assailed, the basis of the charge

memo will disappear. It is a strange contention raised by the learned Senior Counsel. Instead of submitting their explanation and facing the charge

in a regular trial, for unexplained reasons, they have moved this Court. In the guise of attacking the Government''s Order, they are in effect

attacking the NHRC directive, which directed the State Government to pay interim relief to the family of deceased Rajendran. If the petitioners

want to attack the report of the NHRC, which formed basis of the State Government''s Order, even now it is not too late for them to move the

NHRC by getting themselves impleaded and seek for modification of its order.

12. In the present case, u/s 18(c), notice was given to the Chief Secretary of the Government of Tamil Nadu and an interim compensation of Rs. 1

lakh was given. It is the State Government, which after implementing the interim relief as directed by the NHRC, has come forward and issued the

consequential order and also directed the recovery of amount from the concerned individuals. It is not stated as to whether any amount has been

recovered from the petitioners so far even though the order itself is one year and two months old.

13. On the contrary, the second respondent has framed charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules

for fixing appropriate liabilities on the petitioners. It is not open to the petitioners to challenge the said charge memo solely on the ground that they

were not heard by the NHRC. The contention that they were not heard cannot be accepted because of the precise reason that the charge memo

itself was given by the second respondent and the petitioners should explain their conduct which led to the death of deceased Rajendran. The letter

of the NHRC and the State Government''s order were only shown as its basis. It is for the petitioners to explain the legality or enforceability of

such order before departmental authorities. Instead of doing so, they have come forward to challenge the impugned charge memo itself.

14. It is true that they were acquitted by the criminal court in respect of criminal charges by the criminal court, but that does not absolve them from

being dealt with by the department. In the present case, the charge against the petitioners were that they failed to discharge their duties and they

have also violated the rules. It is not clear as to how this would have bearing on the acquittal made by the criminal court.

15. The petitioner placed reliance upon the judgment of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

and G.M. Tank v. State of Gujarat and Anr. reported in JT 2006 (11) SC 36. The learned Counsel for the petitioners contended that once there

was an acquittal, then there cannot be any further proceedings by the department. This argument cannot be countenanced by this Court.

16. The contention that the employer is bound by the acquittal by the Criminal court and they are precluded from conducting any enquiry was

never accepted by the Supreme Court. The Supreme Court in Indian Overseas Bank, Anna Salai and Anr. v. P. Ganesan and Ors. reported in

2008 (1) SCC 650, in paragraphs 23 and 24 observed as follows:

23. ...What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also

required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also

the in disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of

the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent

officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the

departmental proceedings should not have been stayed.

17. The second contention that the charges are vague also cannot be accepted because the charges were based upon a firm order of NHRC

followed by the State Government. This Court is not inclined to quash the charge memo either on the ground that the petitioners were acquitted by

the criminal court or on the ground that the charges were vague. If the petitioners were not heard by NHRC, even now it is not too late for them to

approach the NHRC for appropriate relief.

18. It must be necessary to refer to certain decisions of the Supreme Court regarding the public law tort liability of the State and the power of the

Court to award compensation. They are as follows:

The Supreme Court in its decision reported in National Human Rights Commission Vs. State of Arunachal Pradesh and Another, emphasised the

duty of the State in protecting the life and liberty of human being. The following passage found in paragraph 20 is usefully quoted:

Para 20: We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on

citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or

personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be

he a citizen or otherwise.

19. As to the competency of granting compensation for any human right violation by Courts, the Supreme Court had in more than one occasion

dealt with the said issue. The Supreme Court in its decision reported in National Human Rights Commission Vs. State of Arunachal Pradesh and

Another, held that the Award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a

remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defence of sovereign immunity does

not apply in such a case even though it may be available as a defence in private law in an action based on tort. It is held further that the award of

damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It

is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article 9(5) of the International Covenant on

Civil and Political Rights, 1966 which says, anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to

compensation.

20. The Supreme Court in the decision reported in D.K. Basu v. State of W.B. (supra) held as follows:

Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and

indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a

citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to

which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have

the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive

element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for

the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty-

bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which

is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the

functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula

can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public

law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court

and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by

way of damages in a civil suit.

21. Further, the Supreme Court in its decision reported in People''s Union for Civil Liberties Vs. Union of India and another, held as follows:

It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 Covenant. Indeed, it appears that

at the time of ratification of the said Covenant in 1979, the Government of India had made a specific reservation to the effect that the Indian legal

system does not recognize a right to compensation for victims of unlawful arrest or detention. This reservation has, of course, been held to be of

little relevance now in view of the decision in Nilabati Behera and in D.K. Basu.

22. Once again the question about recovery of money from a guilty Government servant responsible for public tort liability faced by the State came

up for consideration by the Division Bench of this Court presided by A.P. Shah, the Chief Justice (as he then was) vide its judgment in T.

Loganathan v. State Human Rights Commission, Tamil Nadu reported in 2007 (7) MLJ 1067. This Court after referring to various decisions of the

Supreme Court held that there was no illegality in ordering recovery from the salary of the guilty Government servant if the Human Rights

Commission imposes liability on the State.

23. The Supreme Court in very many decisions had forewarned the High Courts in entertaining petitions against charge memo. Some of them may

be quoted usefully. The Supreme Court in its decision in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, dealt with the power of the

Court in dealing with a charge memo at the show cause stage and the following passage found in paragraph 9 will make the position clear:

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a

statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by

showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably

without any authority of law. ''The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once

cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and

only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our

opinion ought not have interfered with the show cause notice.

24. The Supreme Court vide judgment in The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, in para 5 observed as

follows:

5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-

cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the

parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the

authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner

should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause

notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can

be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an

interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of

powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not

accorded to the writ petitioner even at the threshold by the interim protection granted.

25. Further, the Supreme Court in the judgment relating to Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 in paras 13

to 16 held as follows:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive

Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, , The Special Director and Another Vs. Mohd. Ghulam Ghouse and

Another, , State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the

writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does

not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It

is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the

proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A

mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise

adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a

show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly

without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

26. It must be noted that the order of the NHRC is only an interim order. Since it is in the nature of an interim relief and the State which was

vicariously liable was represented before it through its Chief Secretary. The direction to the petitioners'' to compensate the loss is always possible

under the relevant service rules. Even otherwise if they establish in the departmental enquiry that they are innocent, the amounts can always be

refunded to them.

27. In the light of the above, the writ petition stands dismissed. However, there will be no order as to costs. Consequently, the connected

miscellaneous petitions are also dismissed.