

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.348/99

Friday this the 18th day of June,1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

R.Ramachandran Nair I.A.S.(Retd.),
Retired Chief Secretary,
Government of Kerala, residing at
Maidan Villa,Hindu Mission Road,Puthenchanthai,
Thiruvananthapuram.

..Applicant

(By Advocate Mr.Kappillil Anilkumar)

vs.

1. Union of India rep. by the Secretary, Ministry of Home Affairs, New Delhi.
2. State of Kerala rep. by the Chief Secretary, Government of Kerala, Thiruvananthapuram.
3. The Enquiry Commissioner & Special Judge, Vigilance Tribunal, Thiruvananthapuram. ..Respondents.

(By Advocate Mr. C.A.Joy, Govt. Pleader)

Mr.Govindh K.Bharathan, SCGSC (R1)
This Application having been heard on 19.4.99, the Tribunal
on 18.6.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a former member of the Indian Administrative Service, Kerala cadre who retired from service on superannuation after serving as the Chief Secretary of the State of Kerala on 30.4.97 is presently facing a departmental enquiry into the charges contained in the Memorandum of Charges served on him on 27.1.97. The Govt. having decided to conduct an enquiry under the provisions of Rule 8(6)(b) of the All India Services(Discipline and Appeal)Rules, 1969 by the order dated

20.12.97(Annexure A1) appointed Sri P.S.Gopinathan, Enquiry Commissioner and Special Judge, Thiruvananthapuram as Enquiry Authority and Shri K.S.Balasubramonian IPS, Inspector General of police, Vigilance & Anti Corruption Bureau as Presenting Officer to present the case in support of the articles of charges against Shri Ramachandran Nair. The third respondent the Enquiry Commissioner and Special Judge is proceeding with the enquiry, according to the applicant, contrary to the provisions of the All India Services (Discipline & Appeal)Rules by exercising powers of civil court by issuing summons to witnesses, calling for documents and recording the evidence on oath. The applicant objected to this procedure and filed a miscellaneous petition for stay of the proceedings alleging that for want of authorisation under Section 4 of the Departmental Enquiries(Enforcement of Attendance of Witnesses and Production of Documents)Act,1972, the enquiry authority lacked jurisdiction to proceed with the enquiry summoning witnesses and recording evidences on oath. The third respondent vide the impugned order dated 22.2.99(Annexure A2) rejected the objections and dismissed the miscellaneous petition. In the order Annexure A2, the third respondent relied on the Annexure A3 notification S.R.O.No.492/96 and S.R.O.No.493/96 dated 19th June 1996, whereby the 2nd respondent had in purported exercise of powers conferred by sub-section 2 of section 9 of the Kerala Enquiries and Summons Act,1960, Act 24 of 1960 invested the third respondent the powers of a civil court. The applicant alleges that as the proceedings have been initiated under the provisions of the All India Services(Discipline and Appeal)Rules which has been held to

be a complete code in itself by the Apex Court, the second respondent has no power to confer on the third respondent the powers of a civil court to summon and enforce the attendance of witnesses and to record evidence on oath as no such provision exist in the All India Services(Discipline and Appeal)Rules. Therefore the applicant alleges that the impugned order of the third respondent as also the notification issued by the second respondent (Annexure A3) are ultra vires, illegal and unsustainable. It is further alleged that as the All India Services Act and the Rules made thereunder fall under Entries 70 and 94 in the List 1 of 7th Schedule of the Constitution which are within the exclusive legislative domain of the Parliament, the second respondent has no legislative competence to confer upon the third respondent the powers of the civil court and therefore the notification Annexure A3 is liable to be declared unconstitutional and ultra vires to Article 246(1) of the Constitution. With these allegations the applicant seeks to have the impugned orders Annexures A2 and A3 set aside declaring that they are ultra vires the provisions of Article 246(1) of the Constitution to the extent it confers power of civil court to the third respondent Enquiry Authority appointed under the All India Services (Discipline and Appeal)Rules and also for a declaration to 2nd and 3rd respondents to drop all proceedings against the applicant pursuant to Annexures A2 and A3 orders.

2. The second respondent has filed a reply statement. The impugned orders and actions are sought to be justified on the ground that in the absence of a clear provision in the All India Services(Discipline and Appeal)Rules regarding

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the procedure for making available the witnesses for examination and as the Departmental Enquiries (Enforcement and Attendance of Witnesses and Production of Documents)Act,1972 does not apply to enquiries in respect of All India Services officers serving in connection with the affairs of the State Government, invoking the provisions of All India Services (Conditions of Service Residuary Matters)Rules,1960, the same orders relating to summoning and enforcement of witnesses in the enquiries in regard to officers of the State Civil Service, Class I is adopted.

3. The applicant in the rejoinder has stated that conferring the power of civil court on the third respondent by the second respondent issuing Annexure A3 notification amounts to a fraud on power.

4. Sri Kappillil Anil Kumar, learned Advocate of the applicant invited our attention to the decision of a Division Bench of the Kerala High Court in State of Kerala vs. P.J. Alexander,1972 KLT 115(DB), which upheld the decision of the Single Judge in P.J.Alexander vs. State of Kerala and another declaring a notification by which powers of civil court for summoning and examination of witnesses on oath was conferred on the Enquiry Commissioner and Special Judge who was appointed Enquiry Authority to enquire into the charges against the petitioner Sri Alexander who was a member of the Indian Police Service on the ground that the All India Services Act and the Rules made thereunder being legislations made by the Parliament under the exclusive powers of the Parliament, the State Government was incompetent to legislate on those subjects. Learned counsel also referred us to the ruling in The State of Jammu & Kashmir, Appellant vs. M.S.Faroqui and

others, Respondents, AIR 1972 SC 1738, wherein it was held that the Jammu & Kashmir Government Servants Prevention of Corruption (Commission)Act,1962 being repugnant to the All India Services (Discipline and Appeal) Rules, the said Act was inapplicable to the case of the members of the All India Services. Seeking support from the above referred rulings Shri Anil Kumar with considerable tenacity argued that the third respondent committed a serious error of law in holding that it had power to summon and examine witnesses under oath in the enquiry against the applicant under the provisions of All India Services(Discipline & Appeal)Rules. He also argued that the Annexure A3 notification by which the second respondent in exercise of powers conferred by sub-section 2 of section 9 of the Kerala Enquiries and Summonses Act,1960 on the third respondent the powers of civil court while trying suits under the Code of Civil Procedure, was ultra vires to Article 246(1) of the Constitution.

5. We have carefully examined the rulings referred to by the learned counsel. The decision of the Apex Court in State of Jammu & Kashmir vs. M.S.Farooqui, AIR 1972 SC 1738 has absolutely no application to the facts of the case on hand. In the case before the Apex Court, the question was whether it was permissible to initiate action under the Jammu & Kashmir Govt.Servants Prevention of Corruption Act,1962 against the members of the All India Services for imposition of penalties. After discussing the various provisions of the All India Services (Discipline and Appeal)Rules which deals with the method of holding the enquiry, the penalty to be imposed etc. and the provisions of the impugned Act, it was held that by virtue of the fact that the Parliament has made special enactments

governing the disciplinary proceedings against the members of the All India Services, the impugned Act being repugnant thereto was inapplicable to the members of the Service. The issue involved in this case has neither similarity nor comparison to the facts of the case cited. In State of Kerala and another vs. P.J.Alexander, the order impugned was one by which the powers of civil court while trying suits under the Code of Civil Procedure was conferred on Additional Tribunal in exercise of powers conferred by subsection 2 of Section 9 of the Kerala Enquiries and Summonses Act, 1960 in holding the enquiry against Sri P.J.Alexander, a member of the Indian Police Service. The learned Single Judge noted that there was no provision in the All India Services(Discipline and Appeal)Rules to take coercive steps for securing the attendance of witnesses and then considered the validity of the exhibit P2 notification which conferred on the Tribunal the powers of the civil court in that regard while trying a suit. It was held as follows:

"7. Can the absence of provisions in the All India Services (Discipline and Appeal)Rules enabling the inquiring authority to take coercive steps for compelling appearance of witnesses and production of documents be made good by the concerned State Government investing it with such powers? That is precisely what has been done here by Ext.P2-notification. Mr.M.I.Joseph, the learned Government Pleader, submitted that under S.9 of the State Act the Government could by notification invest any officer deputed it to make inquiry into the conduct of any public servant with the powers of a civil court while trying a suit under the Code of Civil Procedure, that that Act was a perfectly valid one, that Ext.P2-notification was one issued in exercise of that provision and that therefore Ext.P-2 had to be taken to be valid. That argument cannot be accepted for reasons to be

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stated presently. Under Ext.P2 power is invested with the second respondent for the purpose of the inquiry into the charges against an officer of the All India Service. All India Services and inquiries connected with members of the same come in entries 70 and 94 in the Union List, List No.1 the VII Schedule in the Constitution. The All India Services Act and the Rules made thereunder are legislations made by Parliament under those entries. Under Article 246(1) of the Constitution Parliament has exclusive power to legislate about subjects covered by entries in List I. As the State is incompetent to legislate on those subjects Ext.P2 is invalid."

In Writ Appeal the Division Bench upheld the conclusion of the Single Judge but without arriving at any definite conclusion as to whether the Tribunal had the power to summon and examine the witnesses on oath without the aid of Ext.P2. The Division Bench observed as follows:

" It is conceded by the Government Pleader (it has to be conceded too) that the All India Services Rules cannot be varied or modified by any State Government; such modification or variation can be effected only by the Central Government in consultation with the State Governments as contemplated by S.3 of the Act. But, the argument of the Government Pleader is that Ex.P2 has not varied or altered any of the provisions of the All India Services Rules, but has only enabled the Tribunal, the second appellant, to function more effectively as contemplated by the All India Services Rules; in other words, the argument is that the Tribunal is merely empowered to function under the All India Services Rules! We must observe that the State Government has no power to empower the Tribunal appointed to function under the Rules; the power

of the State Government is only to appoint a Tribunal; and all the powers the Tribunal derives are from the all India Service Rules. Therefore, we need not consider whether under the Rules the Tribunal has the powers sought to be conferred by Ex.P2 too; if the Tribunal has such powers, he can exercise them; and in that event, Ex.P2 is unnecessary, in any event, Ex.P2 cannot add to the powers of the Tribunal or confer any power on him which he did not have under the All India Services Rules. If the Tribunal has no such powers(it is conceded more to less that it was because the Tribunal had no such powers that Ex.P2 was passed), then certainly the State Government has no power to pass an order like Ex.P2 conferring additional powers on the Tribunal. It may also be noted that Ex.P2 was passed under S.9 of the Kerala Enquiries and Summons Act of 1960 as amended by Amendment Act of 1962, which applied only to inquiries against State Governments and not against All India Service Officers. Therefore, by taking power under the said Act, no power can be conferred on a Tribunal functioning under the All India Services Rules."

As stated supra, the question whether the Tribunal had the power to summon and examine the witnesses on oath was not specifically answered. Further Ex.P2 impugned in that case was set aside as ultra vires and unsustainable because by that order the State Government invested the Tribunal with powers of civil court for the purpose of the enquiry into the charges against an All India Service officer

specifically while the State Government had no legislative competence to do so. Annexure A3 the impugned order in this case is not an order similar to Ex.P2 impugned in P.J.Alexander's case(supra) because by Annexure A3 powers of civil court while trying a suit was conferred on the third respondent not for the purpose of enquiry into the charges against the applicant or any other All India Services Officer unlike Ex.P2 in that case. The orders contained in Annexure A3 confer the power on the third respondent in general and for the purpose of enquiry in disciplinary matters against State Service Officers. So it cannot be said that the orders contained in Annexure A3 suffered from lack of legislative competence.

6. The question here is whether the third respondent can exercise the powers of a civil court while trying a suit in regard to summoning and examination of witnesses under oath in the proceedings being held against the applicant, an ex-member of the Indian Administrative Service under the provisions of All India Services(Discipline and Appeal)Rules. If the action of third respondent in issuing summons to witnesses or the enabling notification for such action is repugnant to the provisions of the All India Services

(Discipline and Appeal)Rules, then it has to be held that the third respondent has no such power. Can it be said merely because there is no express provision in the All India Services (Discipline and Appeal)Rules dealing with securing attendance of the witnesses in support of the charge for examination, the action of the third respondent in proceeding to summon and examine the witnesses on oath is repugnant to the provisions of All India Services(Discipline & Appeal)Rules?. If there had been a prohibition in the All India Services(Discipline and Appeal) Rules against summoning and enforcing the attendance of witnesses then it could be said that the impugned notification Annexure A3 or the action of the third respondent in proceeding to summon and examine the witnesses on oath is repugnant. If witnesses who are not employees of the Government do not oblige to come forward to give evidence on merely being asked by the Presenting Officer or the disciplinary authority, unless their attendance is secured by a process, it would not be practicable to examine them which may result in failure in establishing the charge. Therefore the third respondent in exercising the powers vested in him by the notification Annexure A3 has adopted a method to fill up the void in the Rules to hold the enquiry effectively. By doing so, the applicant would not be put to any prejudice. Further ,the action of the third respondent in adopting the procedure followed in the case of the State Civil Service Officers in the enquiry against the applicant in the absence of a special provision in that regard made in the Rules framed under the All India Services Act, is perfectly valid and justified in view of the provisions contained in Section 2 of the All India Services (Conditions of Service,

Residuary Matters)Rules,1960. The Government of India has promulgated the Departmental Enquiries(Enforcement and Attendance of Witnesses and Production of Documents)Act,1972 providing for enforcement of attendance of witnesses and production of documents in the departmental enquiries. However, this Act does not apply to disciplinary proceedings against the All India Services Officers serving in connection with the affairs of the State Government. A similar enactment has not been promulgated in the case of All India Services Officers serving in connection with the affairs of the State. An indication as to what method can be adopted in such cases is available in Section 2 of the All India Services(Conditions of Service Residuary Matters)Rules,1960, which reads as follows:

"2. Power of Central Government to provide for residuary matters:-

The Central Government may, after consultation with the Governments of the States concerned, make regulations to regulate any matters relating to conditions of service of persons appointed to an All India Service for which there is no provision in the rules made or deemed to have been made under the All India Service Act,1951(61 of 1951), and until such regulations are made, such matters shall be regulated:-

- (a) in the case of persons serving in connection with the affairs of the Union,by the rules, regulations and orders applicable to officers of the Central Services, Class I.
- (b) in the case of persons serving in connection with the affairs of a State by the rules, regulations and orders applicable to

officers of the State Civil Services, Class-I, subject to such exceptions and modifications, as the Central Government may, after consultation with the State Government concerned, by order in writing make:-"

7. It is not in dispute that the third respondent has been conferred with the powers of a civil court while trying suits under the Code of Civil Procedure while functioning as Enquiry Commissioner and Special Judge while dealing with the proceedings against the officers of the State Civil Service. It can be seen from S.R.O.No.494/96 and the explanatory note thereunder that while holding enquiries under the Departmental Enquiries Punishment and Appeal Rules also the powers of civil court can be exercised by the third respondent. In the absence of a detailed provision regarding the summoning and examination of witnesses in the All India Services(Discipline and Appeal)Rules and as the Central Government in consultation with the State Government had not issued any order regulating the matter relating to summoning and enforcing the attendance of witnesses in disciplinary proceedings against the members of the All India Services serving in connection with the affairs of the State Government, the procedure applicable in such matters in the case of officers of the State Civil Service,Class-I can very well be adopted in view of the provision contained in sub-rule (b) of Rule 2 of the All India Services(Conditions of Service - Residuary Matters)Rules,1960.In the conspectus of the facts and circumstances and the position of the rules, we have no hesitation to hold that the third respondent is perfectly

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justified in summoning and enforcing the attendance of witnesses and examining them on oath in the enquiry pending against the applicant under the All India Services(Discipline and Appeal)Rules, taking recourse to the provisions of Rule 2 of the All India Services(Conditions of Service - Residuary Matters)Rules,1960 and adopting the powers conferred on it by Annexure A3 notification, as is applicable in disciplinary proceedings against the State Civil Service Officers, Class-I.

8. In the light of what is discussed above, we do not find any merit in this application and therefore we dismiss the same without any order as to costs.

B.N.Bahadur

B.N.BAHADUR
MEMBER(A)



A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred to in the Order:

1. Annexure A1 True copy of the order dated 20.12.1997 Order No.G.O.No.101407/97/GAD.
2. Annexure A2 True copy of order passed by the 3rd respondent in M.P.No.1/99 in Enquiry Case No.1/98 dt. 22.2.99.
3. Annexure A3 True copy of the Gazette Notification of S.R.O. No.491/96 to S.R.O.No.494/96 dated 19.6.96 in Extra-Ordinary Gazette dt. 21.6.96.

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