

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

M.A. No. 561/2006 in O.A. No. 385/2006  
with  
Original Application No. 385/2006

Thursday, this 6<sup>th</sup> day of July, 2006

**C O R A M :**

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

**1. M.A. No. 561 of 2006**

Dr. K.C. George,  
S/o. Late K.M. Chandy,  
Principal Scientist,  
Central marine Fisheries Research Institute,  
Cochin, Residing at Kizhekkeyil,  
Changampuzha Nagar P.O.,  
South Kalamassery,  
Ernakulam.

... **Applicant.**

(By advocate Mr. T C Govindaswamy)

**versus**

Dr. Mohan Joseph Modayil,  
Director, Central Marine  
Fisheries Research Institute,  
Kochi.

... **Respondent**

(By Advocate Mr. P. Jacob Varghese)

**2. O.A. No. 385 of 2006**

Dr. K.C. George,  
S/o. Late K.M. Chandy,  
Principal Scientist,  
Central marine Fisheries Research Institute,  
Cochin, Residing at Kizhekkeyil,  
Changampuzha Nagar P.O.,  
South Kalamassery,  
Ernakulam.

... **Applicant.**

(By Advocate Mr. Govindaswamy)

**versus**

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1. Indian Council of Agricultural Research,  
Through the Secretary, ICAR,  
Krishi Bhawan, New Delhi – 110 001
2. The Director General,  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi.
3. The Director,  
Central Marine Fisheries Research Institute,  
Kochi.
4. Dr. Mohan Joseph Modayil,  
Director, Central Marine  
Fisheries Research Institute,  
Kochi.
5. Dr. S. Ayyappan,  
Deputy Director General (Fisheries),  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi.
6. The Under Secretary (P).  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi.
7. The Director,  
Indian Veterinary Research Institute,  
Izat Nagar, U.P. : 243 122

... Respondents.

(By Advocate Mr. T.P. Sajan for R-1-3, 6&7 and Mr. P. Jacob Varghese for R-4)

These applications having been heard on 6.7.06, this Tribunal on the same day delivered the following:

O R D E R  
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant had filed OA 385/06 with the following relief(s):-



- (a) Call for the records leading to the issue of Annexure A/1 and A/2 and quash the same and direct the respondents to grant the applicant all consequential benefits as if Annexures A/1 and A/2 had not been issued at all;
- (b) Award costs of and incidental to this application;
- (c) Pass such other orders as may be deemed just and proper in the circumstances of the case.

2. While furnishing the reply, Respondent No. 3 had made certain averments and according to the applicant the same are false to the very knowledge of the deponent and as such, this MA for proceeding against the said respondent under the provisions of Sec. 340 of Cr.P.C. read with the provisions of Sec. 195 thereof has been filed. Reply was called for by the Tribunal from the respondent.

3. At the time of hearing, the counsel for the respondents submitted that the very impugned order was withdrawn and as such no further cause of action survives. In fact, there were certain other OAs also filed by some other applicants and these were disposed of as having become infructuous. However, in this case as the MA has been filed, the OA was not disposed of on the earlier occasion along with other OAs.

4. The counsel for the applicant submitted that the averments made are false and no responsible officer of the status of the respondent would have



avered so. The relevant portion, which according to the applicant, is extracted below:-

Statement in Para 11:

"In the light of the recent out-break of Bird-flu and Mad-cow diseases etc., the urgent need for pathologists at IVRL, is more essential than in the Fisheries Sector at this stage."

Statement in Para 15 :

"With reference to para 4 (6) of the O.A., it is submitted that the services of the applicant who is an expert in the discipline of veterinary Pathology are essentially required at Veterinary Research Institute, Izat Nagar in the light of the outbreak of Bird-Flue and Mad-Cow diseases than the Fisheries Sector in CMFRI, Kochi".

Statement in Para 19:

"It is also made clear that the services of the applicant are essentially and urgently required at IVRI for undertaking important research work, especially in the light of the outbreak of Bird-Flue and Mad-cow problem and also due to the existing vacancies in the discipline of veterinary Pathology at that Institute."

In Annexure MA2 also in paragraph 2 and 4, the following statements have been made.

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Statement in Para 2:

"In the light of the recent outbreak of Bird-Flue and Mad-cow diseases the urgent need for a Pathologist at IVRI is more essential than his services at CMFRI, Kochi."

Statement in Para 4 :

"It is submitted that from the averments of the applicant self it now reveals that he joined other Scientists to file the O.A. 823/2005 challenging the order of extension of tenure of the 4<sup>th</sup> respondent for gaining sympathy in the case of his impending transfer which was being expected by him after the outbreak of Bird-Flu and Mad-cow diseases in the country".

(b) The averments mentioned above would suggest that there was an outbreak of the "Mad-cow diseases" in the country, warranting this applicant's immediate presence for research work at the Indian veterinary Research Institute, Izatnagar, U.P.

5. Respondent's counsel has taken the Court through the provisions of Sec. 22 and 30 of the Act and submitted that the conspicuous omission to refer to Sec. 340 of the Cr.P.C. in the Act would lead to the conclusion that this

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court cannot proceed with any such complaint under Sec. 340 of the Cr.P.C. To substantiate his arguments the counsel for the respondent has referred to Sec 22 in the Debt Recovery Tribunal Act which specifically contains reference to Sec. 340 of the Cr.P.C. and argued that such a provision not being available in the A.T. Act, 1985, the Tribunal may not consider the M.A.

6. I have given my anxious consideration to the entire case. In so far as jurisdiction is concerned, it is to be held that this Tribunal does enjoy the jurisdiction, in view of the explanation to the term "court" in the very Criminal Code, which includes Tribunal. Again, Sec. 30 of the Act also provides for such a jurisdiction. Reference to Sec. 193 IPC without power to proceed with under Sec. 340 of the Cr. P.C. would make the very power to deal with the provisions of Sec. 340 inoperable.

7. As regards the requirement under the provisions of Sec. 340, the same has been crystallized in the decision of the Apex Court in the case of *B.K. Gupta v. Damodar H. Bajaj*, (2001) 9 SCC 742 wherein, the Apex Court has held as under:-

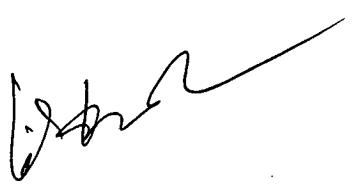
*"3. From the above, it follows that there are two conditions on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in*



*relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. On a perusal of the record we do not find any material on record to show that there was any application of mind by the Court that it was expedient in the interest of justice to make an enquiry and file a complaint against the appellant." (Emphasis supplied)*

8. In the instant case, the very impugned order has been withdrawn and as such nothing survives. The so called objectionable portion in the reply affidavit, as could be seen from the rejoinder filed by the applicant too, is a point in which divergent views could well be taken. It cannot be said that the respondent has given any false affidavit. After all, the respondent, as submitted during the course of arguments, only adopted the parawise comments as given by the I.C.A.R. and as such, the deponent cannot be faulted with in regard to having verified the affidavit, as having been based on the information he had received. In any event, this court, under the facts and circumstances, does not find it expedient in the interest of justice to make an enquiry under the provisions of Sec. 340 of Cr.P.C.

9. In view of the above, the M.A. fails and is therefore, dismissed. The O.A. is also dismissed as having already become infructuous.



K B S RAJAN  
JUDICIAL MEMBER

cvr.