

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
K.A. KITTU AND OTHERS

DATE OF JUDGMENT: 10/11/2000

BENCH:
S.N.Phukan, V.N.Khare

JUDGMENT:

PHUKAN, J.

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In this appeal by special leave, Union of India has assailed the judgment of the Central Administrative Tribunal, Ernakulam Bench passed in Original Application No.956 of 1994.

Briefly stated the facts are as follows.

The respondent was holding the post of Cardamom Settlement Officer, Devicolam, Kerala during the period from 7.12.1982 to 14.7.1985. While working in that capacity he gave sanction to three persons for felling of trees for the purpose of letting in sufficient sun light in their cardamom plantation subject to certain conditions including permissions to be obtained from the Forest Department. There is no dispute that during the period while the respondent was serving in the said capacity no felling of trees took place. After the transfer of the respondent from that post, due to felling of trees there was public out cry and an inquiry was conducted; respondent was put under suspension and thereafter departmental proceeding was drawn up against him on four charges. The Inquiry Officer held that charges No.1 and 2 were partially proved and charges No.3 and 4 were fully proved. The report was accepted and as during the period of inquiry the respondent retired from service the penalty of reduction of 50% of pension was imposed. The application filed by the respondent before the Central Administrative Tribunal was allowed by the impugned judgment and hence the present appeal.

We quote below the four charges and the findings of the Inquiry Officer: 1. That you, Sri K.A. Kittu, IAS, while holding charge of the post of Cardamom Settlement Officer, Devicolam, (1) by proceeding No.A2-588/84 dated 10-10-1984 issued sanction for felling of 660 trees in 26-5-hs. Of Cardamom Estate at Kurisupara in Pallivasal Unreserve, in Sl. Nos. 1393 & 234 of Palliasal village, to Sri Thomas Sebastian, Karippambil, Kottayam for the ostensible purpose of shade regulation in the Cardamom Plantation, treating the said Thomas Sebastian and two others for whom he held power of attorney, as lessees of the land after conferring on them the status of lease

offerees in a contrived manner in collusion with the Special Deputy Tehsildar, Cardamom Settlement, Devicolam (Sri K. Ramakrishnan), acted without jurisdiction and in an extraordinary way, altogether by passing the Assistant Settlement Officer, Kumily, who is the primary statutory authority for lease of Government land for Cardamom cultivation including grant of permission for felling of trees under rules 7 to 9 of the Rules for lease of Government lands for Cardamom Cultivation, 1961.

2. by letter No.A2-588/84 dated 25-9-1984 addressed to the said Sri Thomas Sebastian demanded Cardamom dues, as defaulters, fixing the amount of arrears as Rs.69,154/- for the period from 1954 to 1984, got it remitted, thereby to bring him and the two others he represented, within the definition of lessee under rule 2(e) of the Cardamom Lease Rules and for permitting felling of trees, though no demand had been raised or communicated to the parties previously in Form VI, leave alone issue of formal lease in Form VII prescribed under the Cardamom Lease Rules by the statutory authority, viz. the Assistant Settlement Officer, and this was done when the stay order issued by Government in communication No.12252/E3/80/RD dated 7-3-1980 against regularisation of encroachments on Government Lands was in force.

3. handled your office file No.A2-588/84 right through at your personal level and issued proceedings dated 10-10-1984, 12-12-1984, 15-2-1985, 19-2-1985 and 27-2-1985 regarding felling of trees etc. prescribing conditions which would appear to safeguard the interest of Government, but actually intended to extend to the said Sri Thomas Sebastian undue benefits/wrongful gain by permitting felling of 660 trees, mostly superior species, first identifying the trees and then marking them on the ground for making available to him trees of high value and fixing the value of timber at Rs.31,06,800/-, the lowest rates of the Forest Department viz. the seigniorage rates as well as the minimum rates prescribed under the Kerala Forest Produce (Price Fixation) Act and also in violation of Government orders in G.O.(P) 185/65/RD dated 12-3-65 regarding valuation of trees, the under-valuation being to the extent of about Rs.82 lakhs, excluding the value of an estimated quantity of 5000 tones of fire-wood that would become available on account of felling of trees, the value thereof being Rs.3.5 lakhs even at the seigniorage rate of Rs.70/- per tone.

4. permitted Sri Thomas Sebastian to start felling of trees after realising Rs.3 lakhs as advance and a Security Deposit of Rs.50,000/- whereas according to the Forest Department procedure, felling will be permitted only after remittance of 1/3rd of the estimated value.

Findings of the Inquiry Officer:

My finding with regard to charges (1) and (2) are while we cannot blame him for collection of premium and pattom and for treating Shri Thomas Sebastian and two others as would be lessees and cannot also blame him for the so called contrivance of a status of lease offeree because of the rulings of the various High Court Judgements quoted, nevertheless his action in giving the sanction for shade regulation when he did not have the power, cannot be

regarded as regular and correct. On the contrary, it is without jurisdiction. It is motivated and actuated by ulterior motives. To that extent, the charges are proved. (emphasis supplied)

My findings are that the Member of Service has not safeguarded the interest of the Government and the conditions stipulated and method adopted are all for the benefits of Shri Thomas Sebastian and two others; and there has been gross under-valuation which would have caused substantial and wrongful loss to the Government. He has also failed to apply the rules concerning remittances. In these circumstance, the charged (3) and (4) are fully proved. (emphasis supplied)

As already stated above, the felling of trees took place after the respondent was transferred from the post of Cardamom Settlement Officer on 14th July, 1985. It is interesting to note that the State Government stayed the order of felling of trees on 11th September, 1985 but for reasons best known the stay order was vacated. During the pendency of this appeal, the delinquent officer died and as stated by learned counsel for the respondent all the entitlements of delinquent officer have been paid to his legal representatives.

We have heard Mr. Mukul Rohtagi, learned Additional Solicitor General for the appellant and Mr. K. Sukumaran, learned senior counsel for the respondent.

On behalf of the appellant it has been urged that the Tribunal acted as an Appellate Court which is erroneous in as much as in exercising power of judicial review the Tribunal could not have re-appreciated the evidence on record. It has also been urged that it is not a case of no evidence and therefore the Tribunal ought not to have interfered with the finding of the Inquiry Officer.

In reply the learned senior counsel for the respondent has urged that the Tribunal in the impugned judgment clearly noticed by referring to the decisions of this Court the power of judicial review by the Tribunal. It has also been contended that Tribunal rightly held that the inquiry report was bad in law, in as much as evidence of all the witnesses examined by the delinquent officer was not at all considered by the Tribunal.

On perusal of the judgment we find that Tribunal also held that Inquiry Officer was biased and also there was violation of principle of natural justice.

The Tribunal before proceeding to examine report of the Inquiry Officer rightly took note of the fact that Tribunal cannot review the report of the Inquiry Officer if there are relevant materials on record and the findings of the Inquiry Officer are based on such material facts. We further find from the impugned judgment that the Tribunal mainly considered the contradictory findings of the Inquiry Officer. Therefore, the submission of the learned senior counsel for the appellant has no force.

Regarding charges No.1 and 2 the Inquiry Officer held that respondent could not be blamed for collection of premium and pottom and for treating Thomas Sebastian and two others as would be lessee but found fault in the action of

the delinquent officer in giving sanction as he had no jurisdiction. It was further held that it was motivated and actuated of ulterior motives. According to the Tribunal the above finding regarding motive was based on no evidence and in this connection the Tribunal quoted the following observation of the Inquiry Officer namely Unfortunately, there are no evidences to show that his action can be directly relatable to any material gains. We have perused the report of the Inquiry Officer and we find that Tribunal is right in holding that above finding regarding motive is based on no evidence.

Referring to the finding of the Inquiry Officer that the action of the respondent in entertaining the application and taking action for the purpose of issuing sanction is irregular ab initio, the Tribunal held that the Inquiry Officer did not record any finding that the sanction order was illegal. In another place the Inquiry Officer found that action of the respondent could not be regarded that it was in public interest and was motivated and suspicious. Referring to this finding the Tribunal held that there was no evidence at all regarding suspicion and, therefore, rejected this finding and in our opinion it was rightly done. We may add here that in the subsequent paragraph of the judgment, the Tribunal also pointed that regarding jurisdiction for granting sanction there is no clear finding that it was illegal and motivated.

Second finding of the Inquiry Officer that respondent did not safeguard the interest of the government in as much as conditions stipulated and methods adopted were for the benefits of Shri Thomas Sebastian and two others and that there was under valuation of the trees which would have caused substantial wrongful loss to the government, is based mainly on the ground that the respondent ought to have taken the opinion of an expert. In this regard the Tribunal has rightly pointed out the contradictory finding in the Inquiry Report. At one place it was observed that being a layman without any background in cardamom cultivation respondent ought to have relied upon some expert in the field but at another place in report the Inquiry Officer recorded that respondent had been associated with his work for a long time and naturally he would have known the background and history of cardamom plantation. This finding of the Tribunal is absolutely correct. We may add here that as stated above no felling of trees took place while the respondent was holding the post and the sanction order was also stayed by the State Government. Therefore, there was no actual loss of revenue due to the action of the respondent.

The Tribunal also found fault with the report of the Inquiry Officer as except evidence of one witness the evidence of other two witness of the respondent was not at all considered by the Inquiry Officer.

For the reasons stated above the appeal is without any merit and accordingly it is dismissed. Costs on the parties.