S. GOVINDA MENON

v.

THE UNION OF INDIA & ANR.

February 2, 1967

[K. N. WANCHOO AND V. RAMASWAMI, JJ.]

All India Services (Discipline and Appeal Rules), 1955—*rr.* 4(1), 5(2), 7(1).

Madras Hindu Religious and Charitable Endowments Act XIX of 1951, *ss.* 20, 29, 80, 81, 99, 100(2)(*m*).

Government servant acting in capacity of 'Corporation sole'—Allegations of misconduct in discharge of duties—Whether disciplinary proceedings can be taken against him under r. 4(1)—*Or whether his decisions can only be questioned in appeal or revision—Whether suspension under r.* 7(1) *can be ordered only after framing of charges under r.* 5(2)—*Whether leases for over five years required to be by public auction—Whether Commissioner can himself initiate proposals of leases.*

While the appellant, who was a member of the Indian Administrative Service and the First Member of the Board of Revenue, Kerala State, was holding the post of Commissioner of Hindu Religious and Charitable Endowments, certain complaints were made against him relating to the grant of certain leases. The State Government instituted disciplinary proceedings against him and placed him under suspension under Rule 7 of the All India Services (Discipline and Appeals) Rules, 1955. An Enquiry Officer was thereafter appointed under Rule 5 to investigate the charges. The appellant filed a petition for the grant of a writ of *certiorari* to quash the proceedings initiated against him and for a writ of *mandamus* calling upon the State Government to permit him to function as the First Member of the Board of Revenue. In the meantime, the Enquiry Officer having submitted a report to the Union Government finding the appellant guilty of some of the charges, a show cause notice was issued to him. At this stage the appellant applied for and obtained an amendment of his writ petition and by the amended petition sought a writ of *prohibition* restraining the Union Government from proceeding further upon and for quashing the show cause notice. The writ petition was dismissed by the High Court.

In appeal to this Court, it was contended, *inter alia* for the appellant (i) that in view of s. 80 of Madras Act XIX of 1951 which provides that the Commissioner shall be a Corporation sole, a person acting in the capacity of a Commissioner is not a Government servant and there was therefore no jurisdiction to take disciplinary proceedings against him under Rule 4(1); (ii) that the Commissioner was exercising a quasi-judicial function in sanctioning leases under the Act which were the subject-matter of the complaints against him : his orders could therefore only be questioned in appeal as provided under s. 29(4) of the Act or examined by the Government in revision under s. 99 and not by the executive Government through disciplinary proceedings; (iii) that the main charge against the appellant was not sustainable : there was nothing improper in his having sanctioned leases for over five years without auction or in his having initiated proposals for leases in favour of specified individuals; (iv) that the proceedings under Rule 4(1) were invalid as there was no formal order

A instituting these proceedings; and (v) that the appellant could not be suspended until after charges had been framed against him.

HELD : No case had been made out for the grant of a writ of *prohibition* under Art. 226.

The King v. *North* [1927] 1 K.B. 491; *Regina* v. *Comptroller-General* B *of Patents and Designs* [1953] 2 W.L.R. 760, 765; *Parisienne Basket Shoes proprietary Ltd.* v. *Whyte* 59 C.L.R. 369, referred to.

(i) Even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings under Rule 4(1) provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the C Service. [574 B]

Pearce v. *Foster* 17 Q.B.D. 536, 542; referred to.

There was no force in the contention that the Commissioner has a separate legal personality as corporation sole and is therefore exempt from disciplinary proceedings. [575 F]

D (ii) The allegations against the appellant were to the effect that in exercising his powers as Commissioner, he acted in abuse of his powers and it was in regard to such misconduct that he was being proceeded against. Therefore, although the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act, the Government was not precluded from taking disciplinary action for misconduct if this was called for. [577 H]

E (iii) The contention that the main charge against the appellant was not sustainable must be rejected. The Commissioner has no authority to sanction any leases without auction. Rule 1 requiring public auction framed under s. 100(2)(m) covers all leases and there is no exception in respect of leases exceeding 5 years falling within the scope of s. 29(1). Furthermore, the Commissioner has no power under s. 20 to initiate specific proposals for lease of the trust properties [579 A—C]

F (iv) The contents of the order instituting disciplinary proceedings under Rule 4(1) showed that the Government had accepted the proceedings taken up to then and decided to go forward with the disciplinary proceedings. There was therefore no formal order necessary to initiate disciplinary proceedings under Rule 4(1) of the Rules and the order passed by the State Government must be deemed to be an order under Rule 1 of the Rules initiating disciplinary proceedings. [580 F; 581 E, F]

G (v) It cannot be said that the suspension of the appellant under Rule 7 could only be ordered after charges had been framed against him in accordance with Rule 5(2). The framing of the charges unler Rule 5(2) is necessary to enable the member of the service to meet the case against him—whereas under s. 7(1) the Government may place him under suspension if satisfied that this is necessary having regard to the nature of the charges and the circumstances of the case. The word "charges" in Rule 7(1) should be given a wider meaning as denoting the accusations H or imputations against the member of the Service. [582 D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1366 of 1966.

Appeal from the judgment and order dated January 5, 1966 of the Kerala High Court in Original Petition No. 1 of 1964. The appellant appeared *in person*.

N. N. Bindra and *R. H. Dhebar*, for respondent No. 1.

Sarjoo Prasad, N. N. Venkitachalam, A. G. Pudissery and *M. R. K. Pillai*, for respondent No. 2.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by certificate, against the judgment of the High Court of Kerala dated January 5, 1966 dismissing Original Petition No. 1 of 1964 filed by the appellant.

The appellant, Sri S. Govinda Menon is a member of the Indian Administrative Service. He was the First Member of the Board of Revenue, Kerala State and was holding the post of Commissioner of Hindu Religious and Charitable Endowments. On the basis of certain petitions containing allegations of misconduct against the appellant in the discharge of his duties as Commissioner the Kerala Government instituted certain preliminary enquiries and thereafter started disciplinary proceedings against the appellant and also placed him under suspension under rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, hereinafter called the 'Rules'. A copy of the charges together with a statement of certain allegations was served on the appellant who thereafter filed a written statement of defence. After perusing the written statement the Government passed orders that his explanation was unacceptable and that the charges should be enquired into by an Enquiry Officer to be appointed under rule 5 of the Rules. Accordingly Sri T. N. S. Raghavan a retired I.C.S. Officer was appointed to hold the inquiry. The appellant then filed the present writ petition before the High Court of Kerala praying for grant of a writ of *certiorari* to quash the proceedings initiated against him and for a writ of *mandamus* calling upon respondent No. 2, State of Kerala, to allow him to function as the First Member of the Board of Revenue. As no application for stay was made and as no order of stay was passed by the High Court Sri T. N. S. Raghavan proceeded with the inquiry and submitted his report to the Union Government finding the appellant guilty of charges 1 to 4 and 9. The Union of India, after consideration of the report, issued a 'Show Cause Notice' Ex. P-9. The appellant thereafter filed an application before the High Court for amendment of the writ petition. The prayer in this amended petition was for the issue of a writ of *prohibition* restraining the first respondent—Union of India—from proceeding further in pursuance of the 'Show Cause Notice' and also for quashing the same. The application for amendment was allowed by the High Court. The main contention of the appellant was that the proceedings initiated against him were entirely without jurisdiction as no disciplinary proceedings could be

A taken against him for acts and omissions with regard to his work as Commissioner under the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), hereinafter called the 'Act' and that the orders made by him being of quasi-judicial character can be impugned only in appropriate proceedings taken under that Act. After hearing the arguments B advanced on both sides, Mathew, J. rejected the objections raised by the appellant regarding want of jurisdiction and held that the respondents had power to proceed with the inquiry into the charges. S. Velu Pillai, J. on the other hand, took the view that quasi judicial decisions became final and conclusive if they were not set aside or modified in the manner prescribed by the statute and if the decisions are not so challenged, their correctness or legality must be taken C to be conclusive, and such quasi judicial decisions cannot form the subject-matter of charges in disciplinary proceedings against the appellant. Velu Pillai, J. held that the Union Government had therefore no jurisdiction to proceed with the inquiry on the first part of charge 1, charge 2, the first part of charge 3 and charge 4, but the Union Government had jurisdiction to proceed with the D inquiry with regard to the second part of charge No. 1, the second part of charge No. 3 and charge No. 9. In view of this difference of opinion the matter was placed before Govinda Menon, J. who agreed with the view taken by Mathew, J. and in the result the writ petition of the appellant was dismissed.

It is necessary at this stage to set out the charges levelled against E the appellant. Charges 1 to 4 relate mainly to the conduct of the appellant in sanctioning 30 leases regarding the private forest lands of 5 Devaswoms and charge No. 9 concerns the refusal by the appellant to attend a conference convened by the Chief Secretary to consider certain important matters connected with the national emergency. In 17 of the leases relating to the first charge the period of the lease F is 36 years. In one case the period is 96 years and in the rest of the leases the period of lease is 99 years. The total area covered by all the leases comes to over 50,000 acres. Charges 1 to 4 and 9 read as follows:

> "1. That you, Shri S. Govinda Menon, I.A.S., while employed in the Government Service as member, G Board of Revenue and Commissioner, H. R. & C. E. (Administration) Department from 1-2-1957 to 19-10-1962 issued sanctions granting leases of extensive and valuable forest lands belonging to the Devaswoms under your control as Commissioner such as (1) Pulpally Devaswom, (2) Kallaikulangara Emoor Bhagavathi Temple, (3) Nadivilla H Vallathu Devaswom, (4) Kottiyor Devaswom, (5) Mundayanparamba Devaswom etc., in utter disregard of the provisions in the Madras Hindu Religious and Charitable Endowment Act, 1951 and the rules issued thereunder. In several cases

you had yourself initiated the proposals for leases which should have been made by the trustee and acted in judgment on them by sanctioning the leases. In many cases of the leases aforesaid and otherwise generally in regard to the control and supervision exercised by you over the administration of endowments, your conduct has been such as to render you unfit for the performance of your statutory duties under the Madras Hindu Religious and Charitable Endowments Act or as a responsible Officer of the Government.

2. That you had fixed the premium for lease, the rental and the timber value arbitrarily disregarding whether they were beneficial to the institutions as you were required to do under the Act and you thereby caused wrongful gain to the lessees and wrongful loss to the Devaswoms.

3. That you not only initiated proposals for the leases and sanctioned them yourself, but also took further action for putting the lessees in possession of the lands and to fell the trees thereon for which you had no authority under the Act and the Rules. In particular you attempted to influence the Collector of Kozhikode, the statutory authority for the sanctioning of leases of private forests under the M. P. P. F. Act by causing your Personal Assistant to write to the Personal Assistant to the Collector thereby bringing the weight of your Official position as his official superior in your capacity as 1st Member, Board of Revenue to bear upon him and influence the Collector in the performance of his statutory duty.

4. That you sanctioned the lease of extensive forest lands with valuable tree-growth belonging to various Devaswoms to your relations, neighbours and friends contrary to the provision in Rule 3 of the All India Services (Conduct) Rules 1954, which enjoins every member of the service to maintain absolute integrity in all official matters.

9. That on 29-10-1962 you refused to attend a conference of the Members of the Board of Revenue and the Inspector General of Police which was called together by the Chief Secretary in the Secretariat to discuss important matters connected with the national emergency and was thereby guilty of gross dereliction of duty and of discourtesy to the Chief Secretary."

Section 20 of the Act provides that the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner; and that such superintendence and control shall include the power to pass any orders which may be deemed necessary for the proper administration of

A the endowments. Section 29 of the Act states that any sale, exchange or mortgage and any lease for a term exceeding five years of any immovable property belonging to any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution, and the Commissioner shall, before according sanction, publish particulars of the proposed B transaction, invite objections and consider them. Sub-section (3) provides for communicating a copy of the order granting sanction, to the Government and to the trustee. Sub-section (4) provides for an appeal against the order of the Commissioner to the Government by the trustee or any person having interest. Section 99(1) states:

> "99. (1) The Government may call for and examine C the record of the Commissioner or any Deputy or Assistant Commissioner, of any Area Committee or of any trustee in respect of any proceeding, not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety D of any decision or order passed therein; and, if, in any case, it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:
>
> Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable E opportunity of making his representations."

The jurisdiction for grant of a writ of *prohibition* is primarily supervisory and the object of that writ is to restrain courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or F tribunals of inferior or limited jurisdiction within their bounds. It is well-settled that the writ of *prohibition* lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice (See Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 114). It was held for instance by the Court of Appeal in *The King* v. *North*(1) that as the order of G the judge of the consistory court of July 24, 1925 was made without giving the vicar an opportunity of being heard in his defence, the order was made in violation of the principles of natural justice and was therefore an order made without jurisdiction and the writ of *prohibition* ought to issue. But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well-established H that a writ of *prohibition* cannot be issued to a court or an inferior tribunal for an error of law unless the error makes it go outside its

(1) [1927] 1 K.B. 411.

jurisdiction (See *Regina* v. *Comptroller-General of Patents and Designs*,(1) and *Parisienne Basket Shoes Proprietary Ltd.* v. *Whyte*(2). A clear distinction must therefore be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is *coram non judice* and a writ of *prohibition* will lie to the court or inferior tribunal forbidding it to continue proceedings therein in excess of its jurisdiction.

The first proposition put forward by the appellant is that the Commissioner is a corporation sole and not a servant of the Government and against a person acting in the capacity of a Commissioner the Government have no jurisdiction to take disciplinary proceedings. Reference was made to s. 80 of the Act which states that "the Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name." It was argued that the acts and omissions of the appellant in his capacity as Commissioner cannot be questioned in any disciplinary proceedings as the Commissioner is not a servant of the Government subject to its administrative control. Before examining this proposition it is necessary to consider rule 4 of the Rules which states:

"4. Authority to institute proceedings and to impose penalty.—

(1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in rule 3,—

(a) if such act or omission was committed before his appointment to the service, the Government under whom he is for the time being serving shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 3 as it thinks fit.

(b) if such act or omission was committed after his appointment to the Service, the Government under whom such member was serving at the time of the commission of such act or omission shall alone be competent to institute disciplinary proceedings against him and subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 3 as it thinks fit and the Government under whom he is serving at the time of the institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

(1) [1953] 2 W.L.R. 760, 765. (2) 59 C.L.R. 369.

A (2) The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.

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It is not disputed that the appropriate Government has power to take disciplinary proceedings against the appellant and that he could B be removed from service by an order of the Central Government, but it was contended that I.A.S. Officers are governed by statutory rules, that 'any act or omission' referred to in rule 4(1) relates only to an act or omission of an officer when serving under the Government, and that "serving under the Government" means subject to the administrative control of the Government and that disciplinary C proceedings should be, therefore, on the basis of the relationship of master and servant. It was argued that in exercising statutory powers the Commissioner was not subject to the administrative control of the Government and disciplinary proceedings cannot, therefore, be instituted against the appellant in respect of an act or omission committed by him in the course of his employment as Commissioner. We are unable to accept the proposition conten- D ded for by the appellant as correct. Rule 4(1) does not impose any limitation or qualification as to the nature of the act or omission in respect of which disciplinary proceedings can be instituted. Rule 4(1)(b) merely says that the appropriate Government competent to institute disciplinary proceedings against a member of the Service would be the Government under whom such member was serving E at the time of the commission of such act or omission. It does not say that the act or omission must have been committed in the discharge of his duty or in the course of his employment as a Government servant. It is therefore open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the F Service. It is not disputed that the appellant was, at the time of the alleged misconduct, employed as the First Member of the Board of Revenue and he was at the same time performing the duties of Commissioner under the Act in addition to his duties as the First Member of the Board of Revenue. In our opinion, it is not necessary that a member of the Service should have committed the alleged G act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard H to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his

duties as servant of the Government; The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service. In this context reference may be made to the following observations of Lopes, L. J. in *Pearce* v. *Foster*(1) :

> "If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

It was also contended by the appellant in this connection that as the Commissioner was made a Corporation sole under s. 80 of the Act as a separate and independent personality, he was not subject to the control of the Government and no disciplinary proceedings could be initiated against him. We do not think there is any substance in this argument. It is true that the Commissioner has been made a Corporation sole under s. 80 of the Act which states that the Commissioner shall have perpetual succession and a common seal and may sue and be sued in his corporate name. Section 81(1) of the Act provides for the establishment of a Fund called 'The Madras Hindu Religious and Charitable Endowments Administration Fund' and further states that the Fund shall vest in the Commissioner. It was argued for the appellant that the corporate entity created by s. 80 of the Act has a separate legal personality. But there is a juristic distinction between a Corporation sole and a Corporation aggregate and the Corporation sole is not endowed with a separate legal personality as the Corporation aggregate. As Maitland said:

> "If our corporation sole really were an artificial person created by the policy of man we ought to marvel at its incompetence. Unless custom or statute aids it, it cannot

(1) 17 Q.B.D. 536, 542.

A (so we are told) own a chattel, not even a chattel real. A different and an equally inelegant device was adopted to provide an owning 'subject' for the ornaments of the church and the minister thereof—adopted at the end of the Middle Ages by lawyers who held themselves debarred by the theory of corporations from frankly saying that the body
B of parishioners is a corporation aggregate. And then we are also told that in all probability a corporation sole 'cannot enter into a contract except with statutory authority or as incidental to an interest in land.....
.....Be that as it may, the ecclesiastical corporation sole is no juristic person'; he or it is either natural man or
C juristic abortion." (See 'Selected Essays of Maitland' pp. 100 & 103).

Keeton has also observed as follows :

"It was a device for transmitting real property to a succession of persons without the necessity for periodic conveyances. It was never intended that this device should
D be erected into a psychological person with a developed existence of its own.....In dealing with a corporation sole, the courts have never treated it as a conception similar in essential characteristics to a corporation aggregate. They have restricted its utility to the transmission of real, or exceptionally, by custom, as in
E Byrd v. Wilford, and now by statute, personal property from one holder of an office, lay or ecclesiastical, to his successor".—(See 'Elementary Principles of Jurisprudence' by Keeton, 2nd Edn. pp. 155 & 162)."

We accordingly reject the contention of the appellant that the Commissioner has a separate legal personality as corporation sole
F under s. 80 of the Act and that he is exempt from disciplinary proceedings for any act or omission committed in his capacity as Commissioner. In our opinion, the object of the legislature in enacting ss. 80 and 81 of the Act was to constitute a separate Fund and to provide for the vesting of that Fund in the Commissioner as a corporation sole and thereby avoid the necessity of periodic
G conveyances in the transmission of title to that Fund.

We next proceed to examine the contention of the appellant that the Commissioner was exercising a quasi-judicial function in sanctioning the leases under the Act and his orders cannot therefore be questioned except in accordance with the provisions of the Act. The proposition put forward was that quasi-judicial orders, unless
H vacated under the provisions of the Act are final and binding and cannot be questioned by the executive Government through disciplinary proceedings. It was argued that an appeal is provided under s. 29(4) of the Act against the order of the Commissioner granting

sanction to a lease and that it is open to any party aggrieved to file such an appeal and question the legality or correctness of the order of the Commissioner and that the Government also may in revision under s. 99 of the Act examine the correctness or legality of the order. It was said that so long as these methods were not adopted the Government could not institute disciplinary proceedings and re-examine the legality of the order of the Commissioner granting sanction to the leases.

The first part of charge No. 1 was that the appellant in utter disregard of the provisions of the Act and the Rules made thereunder, passed orders sanctioning the leases in the cases mentioned in the statement of allegations. The relevant portion of the allegation reads as follows:

> "You were the Commissioner H. R. & C. E. (Admn.) Department from 1-2-1957 to 19-10-62. Under section 29 of the Madras Hindu Religious and Charitable Endowments Act of 1951, any exchange, sale or mortgage and any lease for a term exceeding 5 years of any immovable property belonging to or given or endowed for the purpose of any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. Under the proviso to the section, the particulars of the proposed transactions shall be published at least in one daily newspaper inviting objections and suggestions with respect to the proposals and the suggestions and objections, if any, received should be considered by the Commissioner before the sanction is accorded. By the rules made under section 29, clauses (1) and (3) of the Act, notice of the proposals for a lease for a period exceeding five years of immovable property belonging to a religious institution shall contain particulars of the nature of the proposed transaction, the correct description of the properties and information regarding the survey number, extent and boundaries, the probable price or the rental as the case may be. The rules made under section 100(2) of the Act provide that all leases of lands, buildings, sites or other immovable properties and rights belonging to a religious institution shall be made by public auction. Leases otherwise than by public auction should not be resorted to except with the previous sanction of the Deputy Commissioner. It follows from the above that the proposals for leasing out the Devaswom lands have to be initiated by the Trustee or the 'Fit Person' and that such leases have ordinarily to be granted only by auction. In exceptional cases, lands may be leased out by the trustee without auction subject to the previous sanction of the Deputy Commissioner. This provision does

A not, however, authorise the Commissioner, to dispose of lands without auction. His duty is to give notice of the proposal which may be received from the trustee, to call for objections and suggestions and to accord sanction if he is satisfied that the transaction is beneficial to the Devaswom. After the Commissioner accords sanction further steps for
B leasing out the lands have to be taken by the trustee who is the lessor and the proposed lessee. Contrary to the above provisions leases were sanctioned by you in the following cases."

It is apparent that the first part of charge No. 1 read with the relevant allegations is that in utter disregard of the provisions of s. 29 of
C the Act and the Rules and without being satisfied that the leases were beneficial to the Devaswoms the appellant sanctioned them and this action of the appellant discloses misconduct, irregularity and gross recklessness in the discharge of his official duties. The charge is therefore one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of s. 29 and the Rules
D thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi-judicial functions in sanctioning leases under s. 29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi-judicial functions in granting leases under s. 29 of the Act. Even upon that
E assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was *prima facie* material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty. It is true that if the provisions of s. 29 of the Act or the Rules are disregarded the order of the Commissioner is illegal and such an order could be questioned in appeal under s. 29(4) or in revision under s. 99 of the Act. But in the
F present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duties as Commissioner. The appellant was proceeded against because in the discharge of his functions he acted in utter disregard of the provisions of the Act and the Rules. It is the manner in which he discharged
G his functions that is brought up in these proceedings. In other words, the charge and the allegations are to the effect that in exercising his powers as Commissioner the appellant acted in abuse of his power and it was in regard to such misconduct that he is being proceeded against. It is manifest therefore that though the propriety and legality of the sanction to the leases may be questioned
H in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if there is proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to

observe the prescribed conditions which are essential for the exercise of the statutory power. We see no reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was guilty of misconduct or gross negligence. We are accordingly of the opinion that the appellant has been unable to make good his argument on this aspect of the case.

We pass on to consider the next contention of the appellant that the first part of charge No. 1 is not sustainable because the only rule said to have been violated was the rule regarding auction. It was argued that the rule regarding auction did not apply to long-term leases falling within the scope of s. 29(1) of the Act and the first part of charge No. 1 was therefore not sustainable. We are unable to accept this argument as correct. The statement of allegations in respect of charge No. 1 sets out the provisions of s. 29 of the Act, the rules made under cls. (1) & (3) of that section and the rules made under s. 100(2)(m) of the Act and it says that contrary to the above provisions leases were sanctioned. Rule 1 of the Rules framed under s. 100(2)(m) of the Act reads as follows:

> "All leases of lands, buildings, sites and other immovable properties and rights belonging to a religious institution shall be made by public auction held in the places in which the properties are situate or the rights exist. The Deputy Commissioner may if he is satisfied that in any case the holding of an auction at a place other than the one in which the properties proposed to be leased are situated will not be detrimental to securing a proper bid, permit such auction, but no auction shall be held in a village situated in a district other than the one in which the property is situate."

It was argued on behalf of the respondents that all leases had to be made by public auction and the Commissioner had no authority to sanction any leases without auction and that the power to waive the public auction is given to the Deputy Commissioner and not to the Commissioner under rule 9. In this connection reference was made by the appellant to rule 2(2) which provides that auction is to be conducted in the case of a lease for a period of one year or more within one month, and in the case of a lease for a period of less than one year, within 15 days after the date of the trustee's decision regarding the period for which the lease should be given. It was said that it would be impossible to conduct an auction in such a case within one month of the date of the trustee's decision because a minimum period of 30 days is prescribed between the notice and hearing of objections under s. 29. It was said that some more time will necessarily have to be allowed for the trustees to send an

A application after they decide the period of the lease and for the Commissioner to issue the notice himself and to communicate his sanction to the trustees. We do not think there is any substance in this argument because it is open to the trustee to hold the auction in the first place under Rule 1 even in the case of a lease for a period over 5 years and then send the proposal to the Commissioner for B sanction. We are accordingly of the opinion that Rule 1 made under s. 100(2)(m) of the Act providing for auction applies to leases for over 5 years under s. 29 of the Act and the Commissioner had therefore no authority for sanctioning any leases without auction under s. 29(1) of the Act. In other words, Rule 1 requiring public auction framed under s.100(2)(m) covers all leases and there is no C exception in respect of leases exceeding 5 years falling within the scope of s. 29(1) of the Act. We accordingly reject the argument of the appellant on this aspect of the case.

As regards the second part of charge No. 1, it was argued by the appellant that there was no prohibition in the Act for the Commissioner to himself initiate the proposal for leases and therefore the D charge cannot be sustained. The question for consideration is whether the Commissioner could initiate a proposal for lease in favour of a specified individual with all the terms and conditions. It is not disputed by the appellant that the trustee is the proper person to initiate a proposal for lease of the trust properties, but it is argued that under s. 20 of the Act the Commissioner can make E specific proposals for leases and that he can himself sanction them under s. 29. The first part of s. 20 speaks of the general superintendence and control of the Commissioner over the administration of all religious endowments. The section goes on to state that such superintendence and control shall include the power to pass an order which may be necessary to ensure that such endowments are properly administered and their income is really appropriated for F the purpose for which they were founded. In our opinion, the language of this section does not suggest that the Commissioner himself is vested with the power to make specific proposals for leases of trust properties. Under s. 29 of the Act the Commissioner is given a specific power to accord sanction for any alienation and for leases for a term exceeding 5 years. That section implies that G the proposals for leases must originate from the trustees and not from the Commissioner himself and that the only function of the Commissioner is to accord sanction to such proposals. If the language of s. 20 is understood as suggesting that the Commissioner has power to initiate proposals it would mean that the Commissioner himself may sit in judgment over the proposals initiated by him. H It cannot be supposed that the legislature contemplated such a consequence. In this context it is necessary to remember that under the general law the trustee is the person competent to make alienation or grant lease of Devaswom properties. It is true that the

legislature has put a restriction on the power of alienation and the power of granting leases by s. 29 of the Act, but the statutory restriction on the power of the trustee should not be interpreted in such a way as to abrogate all his power in respect of alienation or lease. We are accordingly of the opinion that the Commissioner has no power to initiate specific proposals for lease of the trust properties and the argument of the appellant on this point must be rejected

The third part of charge No. 1 is not a separate charge but could be enquired into along with other parts of charge No. 1. As regards charges 2, 3 and 4 it is not shown on behalf of the appellant that there is any defect of jurisdiction and that the respondents cannot proceed with the inquiry.

The next question to be considered is whether the disciplinary proceedings against the appellant were validly instituted as required by Rule 4(1)(b) of the Rules. It was submitted by the appellant that there was no formal order of the Government for instituting these proceedings. For the respondents it was contended that the question is barred by *res judicata* by reason of the decision of the Kerala High Court in *S. Govinda Menon* v. *State of Kerala*.(1). In that case, the order of suspension was challenged by the appellant by a writ petition in O. P. No. 485 of 1963 which was dismissed by Vaidialingam, J. Against that decision the appellant preferred an appeal which was dismissed by the Division Bench. It was contended by the appellant that the only issue considered in that case was whether the appellant could be suspended before the charges were framed and the rule of *res judicata* was not applicable. We shall assume in favour of the appellant that the question is not barred by *res judicata*. Even so, we are of the opinion that there is no substance in the contention of the appellant that there was no valid institution of the disciplinary proceedings under rule 4(1). A perusal of the order of the Government, Ex.P-1 would itself indicate that disciplinary proceedings had been initiated against the appellant. Exhibit P-1 reads as follows:

> "The Government have received several petitions containing serious allegations of official misconduct against Shri S. Govinda Menon, I.A.S. First Member, Board of Revenue, and formerly Commissioner, Hindu Religious and Charitable Endowments (Administration). Preliminary enquiries caused to be conducted into the allegations have shown *prima facie*, that the officer is guilty of corruption, nepotism and other irregularities of a grave nature. The Kerala High Court had also occasion to comment on the conduct of the officer in their judgment in O. P. 2306/62 delivered on 12th February 1963. The judgment begins with the

(1) [1963] K.L.T. 1162.

A observation that 'this case, if it has served little else, has served to expose a disquieting state of affairs regarding the disposal of valuable forest lands belonging to a religious institution known as the Sree Pulpally Devaswom of which I trust due notice will be taken by the competent authority in the interests of the public administration and the preser-
B vation of our forest wealth no less than in the interests of this particular institution'.

The judgment in the above case and the preliminary report of the X-Branch police have disclosed the following grave charges of serious irregularity and official misconduct on the part of the accused officer.

C

. . . . . .

The detailed enquiry into the charges by the X-Branch is in progress. The evidence in the case has to be collected from a large number of officers who are subordinate to the accused officer in his capacity as First Member of the
D Board of Revenue. In the interest of the proper conduct of the enquiry it is necessary that the officer should not be allowed to continue in that post. Having regard to the nature of the charges against the officer and the circumstances the proper course would be to place him under suspension. Shri S. Govinda Menon I.A.S. First Member Board of Revenue, is therefore placed under suspension
E under Rule 7 of the All India Services (Discipline and Appeal) Rules 1955 till the disciplinary proceedings initiated against him are completed."

A perusal of this document shows that the Government had accepted the proceedings taken in the matter uptil that date and had decided to go forward with the disciplinary proceedings. In
F our opinion, there is no formal order necessary to initiate disciplinary proceedings under Rule 4(1) of the Rules and the order of the State Government under Ex. P-1 must be deemed to be an order under Rule 4(1) of the Rules initiating disciplinary proceedings.

G It was lastly submitted that the order of suspension of the appellant dated March 8, 1963 is not in compliance with Rule 7 of the Rules which states:

"7. *Suspension during disciplinary proceedings* :—
(1) If having regard to the nature of the charges and the circumstances in any case, the Government which
H initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started that Government may—

(a) if the member of the Service is serving under it pass an order placing him under suspension, or

. . . . . ."

It was pointed out that definite charges were framed on June 6, 1963 and the Government had no authority to suspend the appellant before the date of framing charges. Reference was made to Rule 5(2) which states:

"5. (2) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the member of the Service charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case."

It was argued by the appellant that the word "charges" which occurs in Rule 5(2) and Rule 7 should be given the same meaning and no order of suspension could be passed under Rule 7 before the charges are framed under Rule 5(2) against the appellant. We do not think there is any substance in this argument. Rule 5(2) prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. Under rule 5(3) a member of the Service is required to submit a written statement of his defence to the charge or charges. The framing of the charge under Rule 5(2) is necessary to enable the member of Service to meet the case against him. The language of rule 7(1) is however different and that rule provides that the Government may place a member of the Service under suspension "having regard to the nature of the charge/charges and the circumstances in any case" if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in Rule 5(2) and Rule 7 we are of the opinion that the word "charges" in rule 7(1) should be given a wider meaning as denoting the accusations or imputations against the member of the Service. We accordingly reject the argument of the appellant on this aspect of the case.

For the reasons already expressed we hold that the appellant has made out no case for the grant of a writ of *prohibition* under Art. 226 of the Constitution and the majority judgment of the High Court of Kerala dated January 5, 1966 is correct and this appeal must be dismissed. In the circumstances of the case we do not make any order as to costs.

R.K.P.S. *Appeal dismissed.*