

HIGH COURT OF KERALA

Dictation Test for Selection of Confidential Assistant Gr. II (N.C.A. Vacancies) (22.11.2015)

It will be seen from the ingredients of a judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the //(1) record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed // (2) the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and

a writ of certiorari to quash the order of a tribunal or authority. In the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, //(3) but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party //(4) or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.

The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of //(5) certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said

order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would //(6) continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The //(7) question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.

The High Court, as we find, relied on the aforesaid decision to form the foundation that unless a court or a tribunal is made a party, the proceeding is not maintainable. What has been stated in Hari Vishnu

Kamath (AIR 1995 SC 233), //(8) which we have reproduced hereinbefore is that where plain question on issuing directions arises, it is conceivable that there should be in existence a person or authority to whom such directions could be issued. The suggestion that non-existence of a tribunal might operate as a bar to issue such directions is not correct as the true scope of certiorari is that it merely demolishes the offending order and hence, the presence of the offender before the court, though proper is not necessary for the exercise of the jurisdiction or to render its determination effective.

In Udit Narain Singh, //(9) the fulcrum of the controversy was non-impleadment of the persons in whose favour the Board of Revenue had passed a favourable order. There was violation of fundamental principles of natural justice. A party cannot be visited with any kind of adverse order in a proceeding without he being arrayed as a party. As we understand in Hari Vishnu Kamath, the seven Judge Bench opined that for issuance of writ of certiorari, a tribunal, for the purpose of calling of record, is a proper party, and even if the tribunal has ceased to exist, there would be someone in //(10) charge of the tribunal from whom the records can be requisitioned and who is bound in law to send the records.