

IN THE HIGH COURT OF KERALA AT ERNAKULAM



2021/KER/10680

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

OP (KAT) .No.389 OF 2020

AGAINST THE ORDER DATED 12.12.2018 IN TA 6062/2012 OF KERALA  
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/RESPONDENT IN THE T.A:

STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT, REVENUE  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, KERALA  
  
SRI.B.UNNIKRISHNA KAIMAL, GOVT.PLEADER

RESPONDENT/APPLICANT IN THE T.A:

P.RAJAN  
AGED 59 YEARS  
S/O. GOPALAN NAIR, GOVIND, PARIYARAMKUNNU,  
MANATHAWADY POST, WAYANAD, PIN-670 645  
  
R1 BY ADV. SRI.M.SASINDRAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY  
HEARD ON 26.02.2021, ALONG WITH OP(KAT).57/2021, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:



O.P (KAT) No.389 of 2020  
&  
O.P (KAT) No.57 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

OP (KAT) .No.57 OF 2021

AGAINST THE ORDER DATED 12.12.2018 IN TA 6071/2012 OF  
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS IN THE T.A:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM, KERALA
- 2 THE ADDITIONAL SECRETARY TO GOVERNMENT,  
REVENUE DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM, KERALA.  
  
SRI.B.UNNIKRISHNA KAIMAL, GOVT.PLEADER

RESPONDENT/APPLICANT IN THE T.A:

K.M.DIVAKARAN,  
TAHSILDAR (RETD), RESIDING AT SUDINAM HOUSE,  
MUNDERI, KALPETTA, WAYANAD, KERALA-673 121.

R1 BY ADV. SRI.M.SASINDRAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN  
FINALLY HEARD ON 26.02.2021, ALONG WITH OP(KAT).389/2020,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**(CR)**

**ALEXANDER THOMAS & K.BABU, JJ.**

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**O.P (KAT) No.389 of 2020**

*[arising out of the order dated 12.12.2018.  
in T.A No.6062/2012 on the file of the KAT, Tvm. Bench]*  
&

**O.P (KAT) No.57 of 2021**

*[arising out of the order dated 12.12.2018.  
in T.A No.6071/2012 on the file of the KAT, Tvm. Bench]*

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Dated this the 26<sup>th</sup> day of February, 2021

**JUDGMENT**

**ALEXANDER THOMAS, J.**

The prayers in O.P (KAT) No.389/2020 are as follows (See page No.8 of the paper book of that O.P):

- “(i) *To set aside Anx.A3 order of the Kerala Administrative Tribunal Order 12-12-2018 in T.A No.6062/2012.*
- “(ii) *Any other order or direction as this Honourable Court may deem fit and proper in the facts and circumstances of the case.”*

The prayers in Transferred Application, T.A No.6062/2012 on the file of KAT, Thiruvananthapuram Bench are as follows [See page No.25 of the paper book of O.P (KAT) No.389/2020.]:

- “(i) *Issue a writ of certiorari or any other writ order or direction to quash Ext.P6 in so far as it imposes punishment on the*



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*petitioner;*

- (ii) *To declare that the entire proceedings pursuant to Ext.P1 are invalid; since the allegations pertains to the function as a quasi judicial authority.*
- (iii) *To command the 1<sup>st</sup> respondent to disburse the DCRG and other terminal benefits due to the petitioner and re-fix the pension, regularize the period of suspension;*
- (iv) *To issue any other writ order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case."*

2. The prayers in O.P(KAT) No.57/2021 are as follows (See page No.8 of the paper book of that O.P):

- "(i) To set aside Anx.A4 order of the Kerala Administrative Tribunal Order 12-12-2018 in T.A No.6071/2012.*
- (ii) Any other order or direction as this Honourable Court may deem fit and proper in the facts and circumstances of the case."*

The prayers in Transferred Application T.A No.6071/2012 are as follows (See page No.23 of the paper book of O.P(KAT) No.57/2021).

- "(i) Issue a writ of certiorari or any other writ, order or direction to quash Ext.P9 in so far as it imposing punishment on the petitioner.*
- (ii) To issue any other writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case."*

3. Heard Sri.B.Unnikrishna Kaimal, learned Government Pleader appearing for the petitioners (State of Kerala & another) in these O.Ps,/respondent/s in the T.As and Sri.M.Sasindran, learned advocate appearing for the sole respondent in both these O.Ps/sole



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applicant concerned in the respective T.As before the Tribunal.

4. The facts in both these cases are broadly similar in nature and the order impugned in both these cases before the Tribunal is a common Government Order covering these applicants as well as certain other alleged delinquents. However for sake of convenience and easy reference, the case in O.P(KAT) No.389/2020, which arising out of T.A No.6062/2012, could be taken as the lead case.

5. The applicants were holding the rank of Tahsiladar (Land Reforms) and they had also functioned in a statutory quasi judicial capacity as the Land Tribunal at Mananthavady, Wayanad in accordance with the provisions contained in the Kerala Land Reforms Act during the period from 1998 to 2000. Both of them were ordered to be placed under suspension from service sometime in the year 2000 in connection with the allegations regarding the alleged illicit felling of trees in the area concerned. Memos of Charges along with the statement of allegations issued by the Government were served on them in that regard. The allegations are to the effect that, the applicants had issued statutory purchase certificates in respect of certain land which was declared as surplus land, without proper



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verification of the land records and all other documents and it is the admitted case that the issuance of the said statutory purchase certificates was on account of the discharge of their statutory quasi-judicial functions and duties as the Land Tribunal functioning in terms of the provisions contained in Kerala Land Reforms Act. It was thus alleged that the applicants had committed misconduct and dereliction of duty and also failed to maintain absolute integrity and devotion of duty, etc. During the pendency of the abovesaid proceedings both the applicants have retired from service some time in the year 2003. Thereafter, Ext.P1 show cause notice was issued to each of them along with the statement of allegations therein, which appears to be a reiteration of the very same allegations covered by earlier Memo of Charges and directing them to show cause as to why disciplinary action as contemplated under Rule 3(a) Part III KSR should not be taken against them in spite of the retirement from service. The applicants had submitted their respective replies to the same requesting that proceedings may be dropped as they had been discharging their statutory quasi-judicial functions as the Land Tribunal constituted in terms of Kerala Land Reforms Act and one of



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the parties in such *suo motu* cases considered by the Tribunal concerned. Further that there are no allegations that the abovesaid applicants discharged their statutory quasi-judicial duties maliciously or with corrupt motive and that the only allegation being that they have discharged their quasi-judicial functions in a wrong manner. It will not enable the authorities concerned in initiating disciplinary action for improper or wrong exercise of quasi-judicial functions in view of the well settled legal principles in that regard.

6. From the pleadings and materials on record, it appears that the preliminary enquiry was conducted by then Secretary/Principal Secretary to Government in the Revenue Department and the memo of charges and the statement of allegations referred to hereinabove were issued on the basis of said enquiry report. Further the case of the respondents in the O.A is also to the effect that, on account of the directions issued by the Division Bench of this Court in a public interest litigation petition, an enquiry by the CBI was conducted, who recommended the departmental action for major penalty proceedings against the officials concerned.



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7. As far as present post retiral disciplinary action taken on the basis of Rule 3(a) Part III KSR, it appears that the Government had appointed the former Additional Chief Secretary to Government, to conduct enquiry in the said proceedings and the said enquiry officer has stated in his report that the applicants had committed the irregularities as alleged in the show cause notice. It was on the basis of the said report of the said enquiry officer that the Government have issued a notice stating that they had provisionally decided to reduce 1/3<sup>rd</sup> of the monthly pension of each of the applicants and show cause notices were issued to them. Further it is the case of respondents in O.A, that the matter was also referred to Public Service Commission for their considered views as required in Clause (b) of Rule 3(a) Part III KSR and that the Public Service Commission had also apprised that they are agreeable to the provisional decision suggested by the Government. It is on those basis that the impugned G.O(Rt)No.5097/07/RD dated 28-12-2007 [marked as Ext.P6 in the proceedings before the Tribunal in the matter in O.P(KAT)No.389/2020 and as Ext.P9 in the matter in O.P(KAT) No.57/2021] was issued by the competent authority of the State



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Government in the Revenue Department, which is a common order covering the delinquents concerned including the applicants. The competent authority of the State Government as per the abovesaid impugned order dated 28.12.2007 has noted the abovesaid allegations and has also noted the findings made by the enquiry officer referred to herinabove in the said enquiry report as well as the provisional decision of the Government which proposed to reduce 1/3rd of the monthly pension and also taken note of the views of the Public Service Commission and thereafter passed the said order dated 28-12-2007 ordering that 1/3rd of the monthly pension of each of the applicants will stand withheld or reduced as envisaged in Rule 3 Part III KSR. Hence the case of the respondents in the O.A is that the said impugned G.O(Rt)No.5097/07/RD dated 28-12-2007 is the final order passed by the competent authority of the State Government in the Revenue Department finalising the proceedings proposed in terms of the operative portion of Rule 3 Part III KSR.

8. The main grounds urged by both the applicants are to the effect that it is categorically mandated in clause (a) of the proviso to Rule 3 Part III KSR that if such departmental proceedings, was



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instituted while the employee was in service, then though at the discretion of the authority it could be deemed to be a proceedings under Rule 3 after the retirement of the employee, but then such a case shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. In that regard, it is urged that the proposal in Ext.P1 is for withholding or reduction of pension and if that be so, the employee had been in service, what is involved is a major penalty of reduction of pension covered by Clause (ix) of Rule 11 of KCS (CC&A) Rules in which case, it is further mandated in the said Rule 11 thereof that such a major penalty of reduction of pension can be considered for imposition only after conducting a detailed disciplinary/departmental enquiry as envisaged in the mandatory provisions contained in Rule 15 of the KCS (CC&A) Rules, which regulates the scenario of imposition of major penalties.

9. Further it is also pointed out that, even if the proceedings in question is stated to be one covered by Clause (b) of Rule 3 of Part III KSR and even if it is assumed that the factual incidents are not covered by the embargo of four years mentioned therein, still it is



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clearly mandated in Sub Clause (iii) of Clause (d) of the proviso to Rule 3 Part III KSR that in such cases, the procedure applicable to departmental enquiries, in which an order of dismissal from service could be made in relation to the employee should be strictly and meticulously observed. That the impact of both the abovesaid relevant provisions going out from Clause (a) of the proviso to Rule 3 as well as Clause (b)(iii) of proviso to Rule 3 is that, for proposing the action of withholding of pension as envisaged in Rule 3, then the detailed departmental enquiry envisaged in Rule 15 of the KCS (CC&A) Rules is mandatory and obligatory inasmuch as it should be treated at par with a major penalty as envisaged in Rule 11 of KCS (CC&A) Rules. The cardinal argument placed by the respondents herein/original applicants is to the effect that, it is indisputable that such a detailed disciplinary/departmental enquiry as envisaged in Rule 15 of KCS (CC&A) Rules has not been conducted in the present cases. That therefore, the impugned orders passed by the Government ordering the withholding of the pension of each applicants to the extent of 1/3<sup>rd</sup> of their monthly pension, etc. is absolutely illegal or *ultra vires* and is liable for interdiction. Further



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that at this stage, it will be highly improper and unlawful to even re-commence such detailed enquiry at this long distance of time in respect of the events which have taken place sometime in late 90's which is more than about 23 years ago. It will be pertinent to refer to the main ground enumerated by the applicants in both these cases. The present ground is almost identical in both these cases. It will be pertinent to refer to ground Nos.A & B of T.A No.6062/2012 (See page Nos.21 & 22 of the paper book of O.P(KAT) No.389/2020), which read as follows:

*"A. The Ext.P6 order is absolutely illegal and arbitrary. By Ext.P6 order, a punishment of reduction of pension has been awarded. The punishment of reduction of pension is a major penalty as it is included as Rule 11(ix). Rule 15 of the Kerala Civil Service (CC&A) Rules says that no order imposing on a government servant any of the penalties specified in items (v) to (ix) of Rule 11(1) shall be passed except after enquiry held in the manner provided therein. The sub Rule 2 to 8 elaborates the procedure for conducting enquiry. Sub rules it says thus:*

*"The Disciplinary Authority if it is not the Inquiring Authority may nominate any person to present the case in support of the charges before the Inquiring Authority. The Government servant may present his case with the assistance of any other Government servant (or a Government Servant retired from the service under the Kerala State who is not a legal practitioner) approved by the Inquiring Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Inquiring Authority having regard to the circumstances of the case, so permits.*

*The Inquiring Authority shall, in the course of the Inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government*



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*servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to have such witnesses, as may be produced, examined in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witnesses on the ground that his evidence is not relevant or material it shall record its reasons in writing.*

*It is clear from the above provisions that presenting officer should present the case of the employer before the enquiring authority on behalf of the Government or the Department and that the Government servants shall be entitled to cross examine the witnesses examined in support of the charges and to give evidence in person and to have such witnesses examined in his defence. None of these procedures have been complied with by the enquiry officer and there is absolutely no evidence before the enquiring Authority since no witnesses were present before the Enquiry Authority to prove the case of the prosecution. In short no enquiry as contemplated in Rule 15 has been conducted at all and the report and the order based on such report are unsustainable in the eye of law and liable to be interfered with by this Hon'ble Court.*

*B. It is well settled in that even in the case of awarding of minor penalty, conducting of enquiry is necessary. In the case on hand what has been awarded is major penalty and inspite of that no enquiry was conducted. The Enquiry Officer has called the petitioner to his office and compelled to give a statement, which is not at all permitted to be done by an Enquiry Officer. The petitioner is delinquent officer and the charges are to be proved by the department through the presenting Officer before the enquiry authority. The Enquiry Authority should be unbiased and impartial and in the case on hand, the enquiry officer has taken the role of the presenting officer and hence the enquiry officer was biased. Hence the entire proceedings are liable to be interfered with."*

The same ground urged in the first Transferred Application is also urged in Ground A & Ground B of the latter Transferred Application, which is the subject matter of the latter O.P.

10. To the abovesaid specific contentions raised by these applicants, it will be relevant to note that the stand of the petitioners



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herein/respondents therein as contained in para No.10 of Anx.2 Reply Statement dated 18-05-2018 filed by the respondents in T.A No.6062/2012 (see page No.148 of the paper book of the O.P(KAT) No389/2020, which reads as follows:

*“It is a fact that disciplinary proceedings against the applicant were initiated and concluded under Rule 3 of Part III of KSR. To initiate and conclude action under Rule 3 Part III KSR, a formal enquiry was envisaged under Rule 15 of Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 need not be resorted to. However, in order to meet the ends of justice and the principles of natural justice an enquiry was conducted in this matter by the Additional Chief Secretary and all the reasonable opportunities were given to the applicant to defend his case. The provisions of Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 are not binding to the legal proceedings initiated under Rule 3 of Part III KSR. It may also be noted that a discreet enquiry by the CBI was also conducted before initiating action against the applicant.”*

So also it will be pertinent to refer to the stand of the respondents in the other T.A as contained in para No.9 as well as para No.13 of Anx.A2 reply statement dated 23-07-2018 filed by the respondents in T.A No.6071/2012 (See pages 75, 77-78 of the paper book of O.P(KAT) No.57/2021), which read as follows:

*“9. The Government of Kerala as per G.O.(RO)No.5167/05/RD dated 27.08.2005 appointed Sri John Mathai, Additional chief Secretary as Enquiry Officer to conduct a detailed enquiry. It may be noted that the action against the applicant was not as per the provisions of KCS(CCEA)Rules, but as per the provisions of Rule 3(a) of Part III of Kerala Service Rules which does not stipulate a formal enquiry. But when the Written Statement of Defence was submitted by the applicant fully justifying his acts and discarding the allegations against him an enquiry was ordered to ensure natural justice before taking final decision. It may also be noted that the whole process took*



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place after a detailed enquiry by the CBI. The enquiry report prepared by Sri.John Mathai, Additional chief Secretary said that the applicant issued a possession certificate falsely stating that the aforesaid area was covered by Cardamom Registration and that it was not a surplus land. The enquiry report also says that the applicant issued sketch to the Forest Ranger Officer, demarcating the boundaries of the land held by 9 groups of persons knowing that the demarcation was made not on the basis of the village office records but on the basis of the documents produced by the party, with a view to facilitate the issue of NOC by the Forest Department and pattayam by the Special Tahsildar (LR).

10. xxx xxx xxx

11. xxx xxx xxx

12. xxx xxx xxx

13. The disciplinary proceedings against the applicant were initiated and concluded under Rule 3 of Part III of KSR. To initiate and conclude action under Rule 3 Part III KSR, a formal enquiry as envisaged under Rule 15 of Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 need not be resorted to. However, in order to meet the ends of justice and the principles of natural justice an enquiry was conducted in this matter by the Additional Chief Secretary and all the reasonable opportunities were given to the applicant to defend his case. The provisions of Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 are not binding to the legal proceedings initiated under Rule 3 of Part III KSR. It may also be noted that a discreet enquiry by the CBI was also conducted before initiating action against the applicant on considering the enquiry report it was ascertained that his service under Government was also found not wholly satisfactory. The reduction of pension ie. the penalty No. iv of Rule II (i) of the Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 was imposed on the applicant after due process of law. Hence the applicant's contention that imposing of major penalty without conducting formal enquiry is unsustainable in the eye of law is baseless. The enquiry report says that the applicant issued a possession certificate falsely stating that the aforesaid area was covered by Cardamom Registration and that it was not a surplus land. The enquiry report also says that the applicant issued sketch to the Forest Ranger Officer, demarcating the boundaries of the land held by 9 groups of persons knowing that the demarcation was made not on the basis of the village office records but on the basis of the documents produced by the party, with a view to facilitate the issue of NOC by the Forest Department and pattayam by the Special Tahsildar (LR).”



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11. Thus it can be seen from a mere reading of the pleadings of the respondents in the O.A in the respective reply statements that they have clearly admitted in black and white terms that the detailed disciplinary enquiry in terms of Rule 15 of KCS (CC&A) Rules has not been followed in the instant case. Whereas, the specific stand taken by the respondents in the O.A is that such a detailed disciplinary enquiry in terms of Rule 15 KCS (CC&A) Rules is not required or mandatory in terms of the provisions contained in Rule 3 Part III KSR and that the enquiry envisaged in Rule 3 Part III KSR is only a summary enquiry and not the one as per Rule 15 of KCS (CC&A) Rules. It is also relevant to note that the stand of the respondents in the O.A is also to the effect that Rule 15 of KCS (CC&A) Rules may apply only in case of in-service employees and that such a mandatory requirement of Rule 15 detailed disciplinary enquiry is not applicable in the case of post retiral action envisaged in terms of Rule 3 Part III KSR and that presumably thereby indicating the stand of respondent is that only a summary enquiry is required.

12. The Tribunal after noting the admitted facts that the detailed enquiry in terms of Rule 15 of KCS (CC&A) Rules has not



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been conducted in the instant case, overruled the abovesaid contentions of the respondents in the O.A and has held in categorical terms that for finalising action by way of withholding of pension as envisaged in Rule 3 Part III KSR, conduct of the detailed disciplinary enquiry as envisaged in Rule 15 of KSC (CC&A) Rules is mandatory and obligatory. That since the impugned proceedings have been finalised without conducting such mandatory detailed departmental/disciplinary enquiry as mandated in Rule 15 of KCS (CC&A) Rules read with Rule 3 Part III KSR, the proceedings as per the impugned order issued by the Government as referred to hereinabove at Exts.P6 & P9 respectively will stand quashed and set aside. It is this decision of the Tribunal that is under challenge in these O.Ps.

13. Now it will be pertinent to refer to some of the provisions contained in the KCS (CC&A) Rules, more particularly, Rule 11, Rule 15 & Rule 16 thereof (hereinafter referred as CC&A Rules). Rule 11 of the CC&A Rules deals with nature of penalties. Rule 16(1) of CC&A Rules stipulates that, no order imposing any of the penalties specified in items (i) to (iv) of Rule 11(1) of the CC&A Rules shall be passed



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except in accordance with the procedure mentioned therein. The said procedure is not a detailed procedure. The caption of Rule 16 itself manifestly makes it clear that, the said procedure is for imposing minor penalties. Hence items (i) to (iv) of Rule 11 (1) of CC&A Rules are broadly classified as minor penalties. Rule 15(1) mandates that no order imposing on a Government servant any of the penalties specified in items (v) to (ix) of Rule 11(1) shall be passed except after an inquiry held as far as may be, in the manner thereafter provided. A perusal of the other provision of Rule 15(2) make it clear that, the said procedure envisaged therein is a detailed procedure. The caption of Rule 15 itself makes it clear that the said procedure is one for imposing major penalties. Hence the said penalties covered therein are broadly classified as major penalties. Items (i) to (iv) of Rule 11 thereof deals with penalties of censure, fine, withholding of increments or promotion temporarily for a specified period, and recovery from the pay of the whole or part of any pecuniary loss caused to a State Government respectively. Items (v) to (ix) of Rule 11(1) deals with the penalties of reduction to a lower rank in the seniority etc, withholding of increment with cumulative



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effect [which is added therein as item V(a)], compulsory retirement, removal from service, dismissal from service and reduction of pension respectively.

14. The relevant portion of Rule 3 Part III KSR including its proviso reads as follows (the explanation thereunder, Notes 1 to 3 thereunder and Rulings Nos.1, 2 & 3 thereunder are omitted as those provisions may not be very relevant for the present purpose):

***“Rule 3.** The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement:*

*Provided that-*

*(a) such departmental proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service;*

*(b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his re-employment,-*

*(i) shall not be instituted save with the sanction of the Government;*

*(ii) shall not be in respect of any event which took place more than four years before such institution; and*

*(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal*



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*from service could be made in relation to the employee during his service;*

*[(c) no such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment, shall be instituted save with the sanction of the Government, in respect of cause of action which arose or an event which took place more than four years before such institution; and*

*(d) the Public Service Commission shall be consulted before final orders are passed.”*

15. A reading of operative portion of Rule 3 Part III KSR would make it clear that, the Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, etc. We are not much concerned with the judicial proceedings referred to in that Rule, in the facts and circumstances of the case. Clause (a) of the proviso to Rule 3 would further stipulate that, such departmental proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the



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final retirement of the employee, be deemed to be a proceeding under the abovesaid Rule 3 and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. Further Clause (b) of the proviso stipulates that, such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his re-employment, then certain other conditions are also to be satisfied namely that (i) the same shall not be instituted save with the sanction of the Government, (ii) shall not be in respect of any event which took place more than four years before such institution; and (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service, etc.

16. In the instant case, the case of the respondents in the O.A appears to be that memo of charges and Articles of charges and statement of allegations were duly served against the applicants before they had retired from service. Further it broadly appears that



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the case of the respondents is that, the said disciplinary proceedings initiated on the basis of memo of charges issued against the applicants before the retirement could not be finalised and completed before their retirement, etc. Therefore broadly it appears that the case of the respondents in O.A is to the effect that, the said disciplinary proceedings which has already commenced with the issue of memo of charges prior to the retirement of the applicants have now been continued in terms of specific provisions contained in the operative portion of Rule 3 Part III KSR. Moreover, the said stand of the Government is also broadly indicated by alleging in Ext.P1 show cause notice that it is one issued under Rule 3(a) of Part III KSR presumably thereby meaning that it is one issued in terms of Rule 3 as well as clause (a) of the proviso thereto. If that be so, then the mandate of clause (a) of the proviso has to be meticulously complied with and obeyed by the Governmental authorities concerned. Clause (a) of the proviso to Rule 3 clearly mandates in no uncertain terms that such departmental proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the



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employee, be deemed to be a proceeding under Rule 3 and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. If that be so, if the proposed action of the Government for withholding or withdrawing of pension is the same as reduction of pension as envisaged in item (ix) of Rule 11 of KCS (CC&A) Rules.

17. Rule 15 (1) of CC&A Rules would mandate in no uncertain terms that for imposing any of the major penalties envisaged therein including item (ix) of Rule 11 (1) of the CC&A Rules viz, reduction of pension can be considered only after strictly and meticulously observing the requirements of detailed disciplinary enquiry as envisaged in various Sub rules of Rule 15 of KCS (CC&A) Rules. Since the pleadings and materials on record are not very clear, even if it is assumed for a moment that the proposed action was not of resurrecting the earlier memo of charges but afresh action after retirement of the petitioner, then the proceedings could be in terms of clause (b) of proviso to Rule 3, in which case also even if it is assumed that Sub Clauses (i) & (ii) of Clause (b) of the proviso Rule 3 are observed, for argument sake, still the Government will have to fully



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comply the mandate of sub clause (iii) of Clause (b) of proviso to Rule 3 of Part III KSR. The mandate of Clause (b) (iii) for the proviso to Rule 3 is that, such proceedings shall be conducted by such authority and in such place as the Government may direct in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service. As mentioned herein above, the penalty of dismissal from service is covered in item No.(viii) of Rule 11(1) and going by the mandate contained in Rule 15 of CC&A Rules, such a penalty of dismissal from service covered by clause (viii) of Rule 11 (1) of CC&A Rules can be considered for imposition only after strictly observing the requirements of the detailed enquiry as envisaged in various sub rules of Rule 15 of CC&A Rules. In other words, such a detailed disciplinary enquiry in terms of Rule 15 of KCS (CC&A) Rules is mandatory and obligatory, irrespective as to whether the case is covered either by clause (a) of the proviso to Rule 3 or Clause (b) of the proviso to Rule 3 part III KSR.

18. The rigorous detailed provisions for conducting of such detailed enquiry are laid down with precision, which are evident by a



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mere reading of the various sub rules of Rule 15 of KCS (CC&A) Rules. Hence, it is manifestly clear from a mere reading of the various provisions contained in Rule 15 of KCS (CC&A) Rules that the enquiry of procedure to be conducted therein is not a summary procedure or a mere formality and it has to observe the rigour of a detailed enquiry and the prosecution case being presented by the presenting officer and the alleged delinquent is given the right of entitlement to cross examine the witnesses, etc. The applicants have clearly pleaded that no such procedure has been followed in the instant case and that such a detailed enquiry was not so conducted, in terms of Rule 15 and that not even the documents, which are allegedly marked in the so called enquiry, were not in the presence of the delinquents and not in accordance with the procedure contained in Rule 15 of the CCA Rules.

19. We need not dwell into those details for the simple fact that the respondents in the O.A have clearly and categorically admitted in the pleadings in the reply statements filed before the Tribunal that such detailed enquiry procedure, in terms of Rule 15 of the KCS (CC&A) Rules has not been observed in the instant case.



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Whereas the clear case of the respondents is that such a detailed enquiry is not warranted in terms of Rule 15 of the KCS (CC&A) Rules, while finalizing the proceedings in terms of Rule 3 proviso to clause (a) of Part-III KSR. The Tribunal has overruled the said contention of the respondents.

20. The respondents herein/original applicants have relied on various materials and documents as produced before the Tribunal as well as before this Court, to advance their contentions that the proposed action is bereft of any merit and that even otherwise no guilt can be fastened on the applicants and that the proposed adverse action is without any factual foundation, etc. Some of the documents relied on by the applicant in the first case are produced as Annexure-A1(b), Annexure-MA 1 to Annexure-MA 20, etc. in T.A No.6062/2012. Whereas, the applicant in T.A No.6071/2012 has produced documents as in Annexures-A10, A10(a), A11, A11(a), A12, A13, A14, A15, A16, etc. There is no necessity for us to assess the rival contentions in respect of those matters, as we are only now concerned with the issues decided by the Tribunal.



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21. It has to be borne in mind that it is an elementary principle in public law that when law requires that a particular thing should be done in a particular manner, then the same should be done necessarily in that manner alone or not at all. This proposition has been laid down in the decision in **Taylor v. Taylor** {(1875) 1 Ch.D 426} and the same has been followed in a series of rulings of the Apex Court and various High Courts including this Court.

22. Further, this Rule is also an elementary Rule of public law in the United States of America, as can be seen from the decision of the U.S Supreme Court rendered by Mr.Justice Frankfurter in the celebrated case in **Viteralli v. Saton** {359 U.S 535 = Law Ed (second series 1012)}, wherein it has been held as follows :

“An executive agency must be rigorously held by the standards by which it professes its action to be judged . . . . Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed . . . . This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. **He that takes the procedural sword shall perish with the sword**”

(emphasis supplied)

23. The abovesaid principle laid down by Justice Frankfurter in **Viteralli v. Saton** {359 U.S 535} has been relied on by the Apex



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Court in decisions as in **R.D.Shetty v. International Airport Authority** {(1979) 3 SCC 489}, as can be seen from a reading of para No.10 thereof, which reads as follows :

*“.....It is a well settled Rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This Rule was enunciated by Mr.Justice Frankfurter in in **Viteralli v. Saton** where the learned Judge said:*

XXX XXX XXX  
XXX XXX XXX

*This Court accepted the Rule as valid and applicable in India in **A.S.Ahluwalia v. Punjab** and in subsequent decision given in **Sukhdev v. Bhagatram**, Mathew, J. quoted the above-referred observations of Mr.Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr.Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's “Administrative Law”, 4<sup>th</sup> edition. There is no reason why we should hesitate to adopt this rule as a part of out continually expanding administrative law. ....”*

24. Further, it is also now well settled that though right to property is no longer a fundamental right included in part-III of the



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Constitution of India, the said right is constitutionally protected and guaranteed, as a constitutional right in terms of Article 300A of the Constitution of India. Article 300A of the Constitution of India stipulates that no person shall be deprived of the right to property, save by authority of law.

25. In this regard, it has to be borne in mind that pension is no longer a bounty granted by the employer, but is a property of the pensioner. So pension, which is the right to property of the pensioner, can be deprived only in accordance with a procedure, which is established by law and which is just, fair and reasonable. If the abovesaid contention of the State that the requirement to conduct detailed enquiry in terms of Rule 15 of the CCA Rules is not mandatory while taking and finalizing action in terms of Rule 3 Proviso (a) of Part-III KSR is accepted, then the same would amount to blatant violation of the abovesaid elementary legal principles of public law, inasmuch as the mandatory requirement of clause (a) or clause (b) of the Proviso to Rule 3 to conduct a detailed enquiry, as envisaged in Rule 15 of the CCA Rules in the matter of imposition of major penalty, will have to be dispensed with. Further, such a



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procedure if permitted, would amount to deprivation of pension which is a right to property of the pensioner in a manner, which is in blatant violation of procedure mandated in Rule 3 of Part-III KSR read with Rule 15 of the CCA Rules and such violation of the procedure will also amount to deprivation of the right to pension in a manner, which is not only against the statutory procedure, would also amount to depriving the right to property in a manner, which is not just, fair and reasonable.

26. For these reasons, we are of the considered view that the abovesaid plea of the State that for finalizing action under proviso (a) of Rule 3 Part-III KSR, the mandatory requirement of detailed enquiry, in terms of Rule 15 of the CCA Rules is not necessary, etc., is only to be rejected.

27. After hearing both sides, we have no doubt in our minds that without meticulously observing the detailed disciplinary enquiry proceedings in terms of Rule 15 of KCS (CC&A) Rules, there is no question of imposing an order of withholding or withdrawing of pension, as envisaged in the operative portion of Rule 3 Part-III KSR by invoking clause (a) of Proviso to Rule 3 Part-III KSR or clause (b)



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of Proviso to Rule 3 Part-III KSR. The Rule making authority has clearly indicated in no uncertain terms that if the disciplinary proceedings in question had already been instituted while the employee was in service, then clause (a) of the Proviso to Rule 3 would apply, in which case, the meticulous procedure for imposition of the penalty of reduction of pension, should be strictly observed, inasmuch as clause (a) of the Proviso clearly mandates that such proceedings then shall be concluded by the authority, by which it was summoned in the same manner, as if the employee had continued in service. The impact of clause (b) of the Proviso to Rule 3 is also to the same effect as far as the obligation to conduct the detailed disciplinary enquiry in terms of Rule 15 of the KCS (CC&A) Rules concerned. Since it is the admitted case of the respondents in the O.A/petitioner herein that no such detailed disciplinary enquiry was conducted, the decision of the Tribunal that the impugned order at Exts.P-6 & P-9 respectively in these cases would require no interdiction at the hands of this Court in exercise of the extraordinary, discretionary and constitutional remedy in terms of Articles 226 & 227 of the Constitution of India. As already indicated



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as above, the stand of the respondents in the O.A that no such detailed disciplinary enquiry proceedings in terms of Rule 15 of CCA Rules is required in case of finalisation of action in terms of Rule 3 Proviso to Clause (a) thereto is untenable and unsustainable in law and stands overruled, as rightly done so by the Tribunal. In other words, the impugned verdicts of the Tribunal in these cases are not liable for interdiction at the hands of this Court.

28. A reading of the impugned final order rendered by the Tribunal in the above Transferred Applications would make it clear that in para No.15 thereof, the Tribunal after quashing the impugned proceedings has also ordered that the applicants are entitled to get their period of service as regularized and the pensionary benefits properly fixed and get the same released at the earliest, etc. and that the competent authority of the Government in the Revenue Department has directed to issue necessary orders in that regard, within three months, etc. The said three months period given in the final order dated 12.12.2018, has expired a long ago. The present O.Ps (KAT) filed before this Court on 30.10.2020 & 17.02.2021 respectively.

29. Having regard to the long delay in compliance of the abovesaid directions issued by the Tribunal, it is ordered that the



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petitioners herein will ensure that the abovesaid directions of the Tribunal are complied with, without any further delay, at any rate, within six weeks from the date of receipt of certified copy of this judgment.

With these observations and directions, the above Original Petitions will stand dismissed.

**Sd/-**

**ALEXANDER THOMAS, JUDGE**

**Sd/-**

**K.BABU, JUDGE**

KAS/vgd



**APPENDIX OF OP (KAT) 389/2020**

**PETITIONER'S/S EXHIBITS:**

- ANNEXURE-A1 TRUE COPY OF THE MEMORANDUM OF TRANSFERRED APPLICATION( W.P.C NO.10359/2008) ALONG WITH EXHIBITS
- EXHIBIT-P1 A TRUE COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS
- EXHIBIT P2 A TRUE COPY OF THE REPLY TO CHARGES SUBMITTED BY THE PETITIONER DATED 19.05.2004
- EXHIBIT P3 A TRUE COPY OF THE SHOW CAUSE NOTICE ON PUNISHMENT DATED 16.05.2006
- EXHIBIT P4 A TRUE COPY OF THE RELEVANT EXTRACT OF THE ENQUIRY REPORT
- EXHIBIT P5 A TRUE COPY OF THE REPLY DATED 17.06.2006 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT
- EXHIBIT P6 A TRUE COPY OF THE ORDER DATED 28.12.2007 ISSUED BY THE GOVERNMENT IMPOSING PUNISHMENT OR REDUCTION OF 1/3RD OF MONTHLY PENSION PERMANENTLY
- ANNEXURE A1 (A) TRUE COPY INTERIM STAY ALONG WITH DOCUMENTS (EXTS P7 AND P8) WITH PETITION
- EXHIBIT-P7 A TRUE COPY OF THE ORDER NO. FB(A) 5-22882/2004 DATED 12.03.2008
- EXHIBIT P8 A TRUE COPY OF THE INTERIM STAY ORDER DATED 10.04.2008 IN W.P.C NO.12448
- ANNEXURE-A1 (B) TRUE COPY OF THE MISCELLANEOUS APPLICATION FOR PRODUCING THE DOCUMENTS ALONG WITH THE DOCUMENTS PRODUCED BY THE APPLICANT
- ANNEXURE MA1 THE TRUE COPY OF APPLICATION FILED BY SAIDU AND DAVIS DATED 20.07.1998 FOR PURCHASE CERTIFICATE BEFORE LAND TRIBUNAL, MANANTHAVADY
- ANNEXURE MA2 THE TRUE COPY OF THE FORWARDING NOTE DATED 29.07.1998 OF THE SPECIAL TAHSILDAR (LAND REFORMS) MANATHAVADY
- ANNEXURE MA2 (A) THE LEGIBLE COPY OF MA2



ANNEXURE MA3	THE TRUE COPY OF THE REPORT DATED 09.12.98 OF THE SPECIAL REVENUE INSPECTOR
ANNEXURE MA4	THE TRUE COPY OF THE REPORT OF VILLAGE OFFICER, PERIYA DATED 20.10.98
ANNEXURE MA4 (A)	THE LEGIBLE COPY OF MA4
ANNEXURE MA5	THE TRUE COPY OF THE PROFORMA REPORT OF THE SPECIAL REVENUE INSPECTOR (LAND REFORMS) ,MANATHAVADY
ANNEXURE MA6	THE TRUE COPY OF ORDER DATED 24.06.1999 IN S.M.C.326/98 OF LAND TRIBUNAL, MANATHAVADY DATED 24.06.1999
ANNEXURE MA7	THE TRUE COPY OF PURCHASE CERTIFICATE NO.278/1999 ISSUED TO SAIDU AND DAVIS BY LAND TRIBUNAL, MANATHAVADY DATED 24.06.1999
ANNEXURE MA8	THE TRUE COPY OF THE SALE DEED NO.174/92 EXECUTED BY THE SUB JUDGE, SULTHAN BATHERY DATED 22.01.1992
ANNEXURE MA9	THE TRUE COPY OF TALUK LAND BOARD ORDER NO. TLB(K) 489/73 DATED 26.12.1984
ANNEXURE MA10	THE TRUE COPY OF THE CERTIFICATE OF THE THAHSILDAR MANTHAVADY DATED 03.02.1990
ANNEXURE MA11	THE TRTRUE COPY OF THE REPORT OF VILLAGE OFFICER, PERIYA DATED 02.02.1990
ANNEXURE MA12	THE TRUE COPY OF THE POSSESSION CERTIFICATE DTED 28.06.95 ISSUED FROM THE VILLAGE OFFICE, PERIYA
ANNEXURE MA13	THE TRUE COPY OF THE TAX RECEIPT DATED DATED 28.06.1995
ANNEXURE MA14	THE TRUE COPY OF THE TAX RECEIPT DATED 15.03.1995
ANNEXURE MA15	THE TRUE COPY OF THE PROCEEDINGS DATED 26.11.1977 OF THE DISTRICT COLLECTOR
ANNEXURE MA16	THE TRUE COPY OF THE COUNTER AFFIDAVIT DATED 12.05.1980 FILE DON BEHALF OF THE RESPONDENTS IN OP NO.401/1979
ANNEXURE MA17	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT FOREST OFFICER TELLICHERY DATED 17.01.1979



- ANNEXURE MA18**                    **THE TRUE COPY OF THE COMMUNICATION DATED 14.10.85 OF THE THAHSILDAR, MANANTHAVADY TO THE ASSISTANT COLLECTOR, MANATHAVADY**
- ANNEXURE MA19**                    **THE TRUE COPY OF THE CERTIFICATE DATED 23.03.1999 ISSUED BY THE DIVISIONAL FOREST OFFICER, NORTH WAYANAD DIVISION, MANANTHVADY**
- ANNEXURE MA20**                    **THE TRUE COPY OF THE ORDER OF THE LAND TRIBUNAL, MANATHVADY IN SMC NO.158/96 DATED 27.06.1997**
- ANNEXURE A2**                        **TRUE COPY OF REPLY STATEMENT**
- ANNEXURE A3**                        **TRUE COPY OF ORDER DATED 12.12.2018 IN TA 6062/2012**



**APPENDIX OF OP (KAT) 57/2021**

**PETITIONER'S/S EXHIBITS:**

- ANNEXURE A1 TRUE COPY OF THE TRANSFERRED APPLICATION  
ALONG WITH EXHIBITS.
- EXHIBIT P1 A TRUE COPY OF ORDER OF SUSPENSION DATED  
24.5.2000
- EXHIBIT P2 A TRUE COPY OF THE MEMO OF CHARGES ISSUED  
BY THE DISTRICT COLLECTOR DATED 30.6.2000  
ALONG WITH STATEMENT OF ALLEGATIONS
- EXHIBIT P3 A TRUE COPY OF THE REPLY TO THE MEMO DATED  
8.8.2000
- EXHIBIT P4 A TRUE COPY OF THE SHOW CAUSE NOTICE WITH  
STATEMENT OF ALLEGATIONS
- EXHIBIT P5 A TRUE COPY OF THE REPLY TO THE CHARGES  
DATED 14.5.2004
- EXHIBIT P6 A TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
16.5.2006
- EXHIBIT P7 THE RELEVANT EXTRACTS FROM THE ENQUIRY  
REPORT SUBMITTED BY THE ENQUIRY OFFICER
- EXHIBIT P8 A TRUE COPY OF THE REPLY DATED 19.6.2005  
SUBMITTED BY THE PETITIONER TO THE  
GOVERNMENT
- EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 18.12.2007  
IMPOSING PUNISHMENT ON THE PETITIONER
- ANNEXURE A2 TRUE COPY OF THE REPLY STATEMENT
- ANNEXURE A3 THE REJOINDER FILED BY THE APPLICANT TO THE  
REPLY STATEMENT IN TA
- ANNEXURE A10 TRUE COPY OF APPLICATION FOR POSSESSION  
CERTIFICATE SUBMITTED BY K K SAYID AND M  
DAVIS DATED 21.1.1999
- ANNEXURE A10 (A) THE TRUE LEGIBLE COPY OF ANNEXURE A10
- ANNEXURE A11 TRUE COPY OF REPORT OF VILLAGE OFFICE,  
PERIYA DATED 27.01.99 DATED ALONG WITH THE  
REPORT OF THE SPECIAL DUTY THAHSILDAR,  
FOREST (SDT(F) DATED 18.2.1999



- ANNEXURE A11 (A) THE TRUE LEGIBLE COPY OF ANNEXURE A11
- ANNEXURE A12 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DIVISIONAL FOREST OFFICER, NORTH WAYANAD DIVISION, MANATHAVADY DATED 23.3.1999
- ANNEXURE A13 THE TRUE COPY OF SALE DEED NO 174/92 EXECUTED BY THE SUB JUDGE, SULATHAN BATHERY DATED 22.1.1992
- ANNEXURE A14 THE TRUE COPY OF JUDGMENT IN CC 61/03 DATED 30.11.2009 OF THE JUDICIAL 1ST CLASS MAGISTRATE, MANATHAVADY.
- ANNEXURE A15 THE TRUE COPY OF THE PROCEEDINGS OF ASSISTANT COLLECTOR, MANATHAVADY DATED 24.2.87
- ANNEXURE A16 THE TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR AND DISTRICT ELECTION OFFICER, WYANADU DATED 31.3.1998
- ANNEXURE A4 TRUE COPY OF THE ORDER DATED 12.12.2018 IN TA 6071/2012