



WEB COPY



W.P.No.12564 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No. 12564 of 2024
and
W.M.P.No. 13715 of 2024

Mahendran

.... Petitioner

Vs

1. Tamil Nadu State Information Commission
Rep by its Registrar,
No.19, Government Frarm Village,
Panept, Nandanam,
Chennai- 600 035.

2. A.Dharmalingam
Commercial Tax Officer (Retd),
4/84, K.K.Nagar,
Idanganasalai- Village & Post,
Sangagiri Taluk,
Salem District- 637 502.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus Calling for records of the impugned order dated 31.01.2024 passed in Case No. NC 1466/ C/ 2023 (SA 16320 / C/ 2022) by the 1st respondent and quash the same.

For Petitioner

: Mr. K.R.Arun Shabari

For R1

: Mr. C.Vigneswaran

Standing Counsel

For R2

: Mr.K.G.Sekar

ORDER



W.P.No.12564 of 2024

This Writ Petition has been filed challenging the order passed by the first respondent dated 31.01.2024, thereby directed the first respondent to take appropriate disciplinary proceedings as against the petitioner and also compensation of Rs.10,000/- payable to the second respondent for non-compliance of the order passed by the first respondent.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner was working as Assistant Commissioner, Commercial Tax. He was also acting as the Public Information Officer under the Right to Information Act, 2005 (hereinafter referred to as “RTI Act”). While being so, the second respondent sought for information under the RTI Act, by an application dated 06.07.2022, about the names, addresses and registration numbers of the entities with GST registration certificate, engaged in the business of manufacture and sale of granite stones, granite slabs, M.Sand and fencing stone, whose registration were cancelled in the past five years. The said application was rejected by an order dated 28.07.2022, it was informed that 588 GST registrations were



W.P.No.12564 of 2024

cancelled by the Department and 211 GST registrations were cancelled upon receipt of application in total 799 Nos.

4. Aggrieved by the same, the second respondent filed an appeal before the first Appellate Authority and the same was dismissed. Once again, aggrieved by the same, the second respondent filed an appeal before the first respondent on 13.09.2022. After issuance of notice, the first respondent passed an order, by an order dated 14.08.2023, thereby directed the petitioner to furnish the information sought for by the second respondent, failing which, the petitioner will be imposed compensation of Rs.25,000/- as contemplated under Section 19(8)(b) of the RTI Act. On receipt of the said order, by a letter dated 09.10.2023, it was provided that the entities with GST registration certificate engaged in the business of manufacture and sale of granite stones, granite slabs, M-sand and fencing stone, whose registration were cancelled in the past five years. Thereby, the petitioner had complied with the order passed by the first respondent. However, the second respondent once again filed an application before the first respondent alleging that the information sought for by the petitioner was not provided as directed by the first respondent. On receipt of the same, the first respondent issued a show



W.P.No.12564 of 2024

cause notice to the petitioner dated 02.11.2023. On receipt of the same, by his letter dated 31.01.2024, the petitioner sought for time to submit his explanation due to administrative work. However, on the same day, the first respondent passed an order impugned in this writ petition, thereby directed the Disciplinary Authority to initiate the disciplinary proceedings as against the petitioner for non-compliance of the order passed by the first respondent and also directed to pay compensation of Rs.10,000/- within a period of thirty days in favour of the second respondent.

5. The learned counsel appearing for the petitioner would submit that originally the second respondent sought for information only in respect of the cancelled entities with GST registration certificate, engaged in the business of manufacture and sale of granite stones, granite slabs, M-sand and fencing stone. While rejecting the claim made by the second respondent, the petitioner enclosed the list of entities whose GST registration certificate were cancelled in total number of 799. It includes other entities who were engaged in other business.

6. Whereas, the second respondent sought for information only with regard to entities relating to granite industries. Therefore, as



W.P.No.12564 of 2024

directed by the first respondent, the petitioner had given information with regard to the industries whose GST registration certificate was cancelled in respect of granite business alone. Therefore, the direction issued by the first respondent was duly complied with. He further submitted that on receipt of the show cause notice, the petitioner sought for time to submit his explanation due to internal audit. However, it was not considered and the first respondent, without giving sufficient opportunity to the petitioner, passed an order. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.9095 of 2012*** in the case of ***Manohar Vs. State of Maharashtra and Ors.***

7. The learned Standing Counsel appearing for the first respondent would submit that the petitioner was given sufficient opportunity and the order has been passed. Therefore, it is not violation of principles of natural justice. The information sought for by the second respondent was directed to be furnished within a period of 30 days. However, the petitioner failed to comply the same. Therefore, there is no infirmity or illegality in the order passed by the first respondent.

8. A perusal of the records reveals that admittedly, the second respondent sought for information which is as follows :



W.P.No.12564 of 2024

“1. இச்சரகத்தில் கடந்த 5 ஆண்டுகளில் கிராணைட்கல், கிராணைட் ஸ்லஸ், ஆ.சாண்டு வேலிக்கல் ஆகியவை உற்பத்தி மற்றும் விற்பனை செய்ய GST பதிவுச் சான்று பெற்றுள்ள வணிகர்களின் பெயர் விலை பதிவு எண். ஆகியவற்றிற்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன். (01.07.2017 முதல் 30.06.2022 வரை)

2. மேற்கண்டுள்ள பதிவு பெற்ற வணிகர்களில் கடந்த 5 ஆண்டுகளில் வணிகம் நிறுத்தம் மற்றும் இரத்து செய்யப்பட்ட இனங்களுக்கு பட்டியலுக்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

3. கடந்த 5 ஆண்டுகளின் மேற்குறித்த வகைபாடுகள் தொடர்பானவர்கள் E-way bill வாயிலாக நமுனா சமர்பித்துள்ளவர்களின் எண்ணிக்கை விபரத்திற்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

4. காசோலையுடன் நமுனா சமர்பித்துள்ளவர்களின் மேற்கண்ட வணிக பொருள் மற்றும் 5 ஆண்டுகளுக்கு தகவலின் எண்ணிக்கையிலான விபரத்திற்கு தகவல் அனுப்பிட கேட்டுக் கொள்கிறேன்.



W.P.No.12564 of 2024

5. இ.பைலிங் முறையில் நமுனா தாக்கல் செய்யப்படாத வணிகர்களின் விபரத்திற்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

6. பதிவுச் சான்று வழங்கும் போது ஒரே க.எண் கொண்ட விலாசத்தில் வழங்கப்பட்டுள்ள விபரத்திற்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

7. E-way மூலம் தொகை பதிவு செய்யப்பட்டு அத்தொகையானது மாதாந்திர ஒத்திசைவு பணியில் வரப்பெறாத தொகை விபரங்களுக்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

8. கடந்த 5 ஆண்டுகளில் பதிவு சான்று பெற்றுக் கொண்டு இரண்டு மூன்று மாதங்கள் மட்டுமே நமுனா சமர்ப்பித்துவிட்டு அதற்கு மேல் சமர்ப்பிக்காத கிரானைட் வணிகர்களின் விபரத்திற்கு தகவல் அனுப்பி வைக்குமாறு கேட்டுக் கொள்கிறேன்.

9. துணை ஆணையர் (நுண்ணறிவு) சேலம் இணை ஆணையர் (அ) சேலம் அலுவலகத்தில் சுற்றும் இரு அலுவலர்களால் குற்றங்கள் கண்டுபிடிக்க இனங்கள் ஆன்லைன் மற்றும்



மொபைல் பதிவு செய்துள்ள கேஸ்களின்
எண்ணிக்கை தகவல் அனுப்பி வைக்குமாறு
கேட்டுக் கொள்கிறேன்.”

9. Thus, it is clear that the second respondent sought for information only with regard to granite industries. While rejecting the application submitted by the second respondent, the petitioner also furnished the information about the cancelled GST registration as 588 and cancelled the dealer application about 211, in total 799 industries were cancelled by department GST registration as well dealer application. Thereafter, on the appeal, the first respondent directed the petitioner to furnish all the information as sought for by the second respondent. In view of the said order, the petitioner had furnished the information about the cancellation of GST registration as well as the dealer application in respect of granite industries in total 246 industries. However, the second respondent discussed all the information which was originally given by the petitioner dated 28.07.2022 and filed application before the first respondent to take appropriate action for non-compliance of the order passed by the first respondent dated 14.08.2023. That apart, on receipt of the show cause notice issued by the first respondent, by his communication dated 30.01.2024, the petitioner sought for further time



W.P.No.12564 of 2024

to submit his explanation. It was received by the office of the first respondent on 02.11.2023. Whereas, the first respondent passed an order on 31.01.2024, thereby directed to take disciplinary proceedings as against the petitioner and also imposed compensation of Rs.10,000/- payable by the petitioner in favour of the second respondent herein. The petitioner sought for time on the ground that there was an audit in his office and therefore, the petitioner could not appear before the first respondent and submit his explanation. Therefore, the petitioner was not given sufficient opportunity before passing the order dated 31.01.2024.

10. In this regard, the learned counsel for the petitioner relied upon the Judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No.9095 of 2012 dated 13.12.2012, in which, the Hon'ble Supreme Court of India held as follows :

25. Vide letter dated 12th February, 2008, the Appellant was informed by the Excise Department, Nanded, when he was posted at Akola that hearing was fixed for 29th February, 2008. He submitted a request for adjournment which, admittedly, was received and placed before the office of the State Information Commission. In addition thereto, another officer of the Department had



WEB COPY



W.P.No.12564 of 2024

appeared, intimated the State Information Commission and requested for adjournment, which was declined. It was not that the Appellant had been avoiding appearance before the State Information Commission. It was the first date of hearing and in the letter dated 25th February, 2008, he had given a reasonable cause for his absence before the Commission on 25th February, 2008. However, on 26th February, 2008, the impugned order was passed. The Appellant was entitled to a hearing before an order could be passed against him under the provisions of Section 20(2) of the Act. He was granted no such hearing. The State Information Commission not only recommended but directed initiation of departmental proceedings against the Appellant and even asked for the compliance report. If such a harsh order was to be passed against the Appellant, the least that was expected of the Commission was to grant him a hearing/reasonable opportunity to put forward his case. We are of the considered view that the State Information Commission should have granted an adjournment and heard the Appellant before passing an order Section under 20(2) of the Act. On that ground itself, the impugned order is liable to be set aside. It may be usefully noticed at this stage that the Appellant had a genuine case to explain before the State Information



Commission and to establish that his case did not call for any action within the provisions of Section 20(2). Now, we would deal with the other contention on behalf of the Appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a Central Information Commission or the State Information Commission:

(a) at the time of deciding any complaint or appeal;

(b) if it is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified Under Sub-section (1) of Section 7 (i.e. 30 days);

(c) malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or

(d) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;

(e) then it shall recommend for disciplinary action against the stated persons under the relevant service rules.



WEB COPY



W.P.No.12564 of 2024

26. *From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The opinion formed has to have basis or reasons and must be relatable to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the Section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of Section 20(2). The section deals with two different proceedings. Firstly, the appeal or complaint filled before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very*



W.P.No.12564 of 2024

purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If such be the decision, the question of recommending disciplinary action Under Section 20(2) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated Under Section 20(2) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of default mentioned in the provisions of Section 20(2). The case of default must strictly fall within the specified grounds of the provisions of Section 20(2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.”

11. The above Judgment is squarely applicable to the case of on hand, since the petitioner was not even given sufficient opportunity of hearing before passing order on 31.01.2024 under Section 20(2) of the



W.P.No.12564 of 2024

RTI Act. On receipt of the letter from the petitioner, the first respondent should have granted further time to appear and submit his explanation by. As stated supra, the petitioner already furnished all the information as sought for by the second respondent.

12. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the order passed by the first respondent dated 31.01.2024, is hereby quashed.

13. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

08.08.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
Lpp

To

The Registrar,
Tamil Nadu State Information Commission
No.19, Government Farm Village,
Pannept, Nandanam, Chennai- 600 035.



WEB COPY



W.P.No.12564 of 2024

G.K.ILANTHIRAIYAN, J.

Lpp

W.P.No.12564 of 2024

08.08.2024