

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.9690 of 2014

S.Vairamani

.. Petitioner

vs

1. The Inspector
Office of the Director of Vigilance and
Anti Corruption,
No.27, P.S.Kumarasamai Raja Salai,
R.A.Puram, Chennai - 28.
2. The Director General of Police,
Police Head Quarters
Dr.Radhakrishnan Salai,
Mylapore, Chennai -4.
3. The Director General of Police (Vigilance)
M/s.Tamil Nadu Generation and Distribution
Corporation,
No.144, Anna Salai,
Chennai - 2.

.. Respondents

Prayer:- This Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the respondents to register the petitioner's complaint dated 13.01.2007.

For Petitioner : Mr.C.Sivakumar

For respondents

R1 & R2 : Mr.V.Arul

Government Advocate (Crl. Side)

R3 : Mr.V.Viswanathan

Standing Counsel for TNEB

ORDER

The petitioner has come forward with this petition seeking for direction, directing the respondents to register a case on the basis of the complaint given by him on 13.01.2007.

2.The case of the petitioner is as follows:

(a) The petitioner while working as Assistant Engineer at Mettur Work Shop, Mettur Dam, Salem District lodged various complaints before the first respondent on 21.08.2006, 30.08.2006, 15.09.2006, 09.10.2006 and on 13.01.2007 respectively by stating that some of the officials of North Chennai Thermal Power Station (NCTPS) and contractors had committed serial of illegality on the external coal handling systems. The first respondent and Vigilance Commissioner-I, Secretariat, Chennai have issued the order in Govt.Lr.(MS) No.114/B2/2006 Energy Dept. dated 17.11.2006 after conducting proper inquiry and on that basis, order was passed on 18.06.2007 in DE 185/2006/EB/CC-V by holding that the allegations are proved and recommended that departmental action to be initiated against the erring officials and contractors.

(b) Further, since the third respondent and Chief Audit Officer of TNEB Department have not taken any action, the petitioner announced the lawful Dharna to initiate the criminal action against the erring officials and contractors. In view of that, the Principal Secretary to TNEB (Now TANGEDCO) announced through News Paper that necessary criminal action would be initiated against those erring officials and contractors and requested not to proceed with the Dharna. Hence, the petitioner has given up the Dharna. The Principal Secretary and Chairman had appointed the Accounts Member as Inquiry Officer. The Inquiry officer, in his report, dated 30.03.2009 observed the finding that the allegation against the erring officials and contractors are proved. On the basis of the final report, final orders were issued by Chairman cum Managing Director, TANGEDCO vide CMD TANGEDCO Proceedings No.98 and 99 dated 30.04.2012 confirmed the findings in the report of the Inquiry Officer by stating that the Chief Engineer Mr.S.Arounassalame, has violated the tender regulations in awarding the tender to M/s.Chennai Radha Engineering Pvt. Ltd. and thereby caused loss to the Board.

(c) The petitioner further submits that though in his complaint dated 13.01.2007 he has made allegation against one Mr.Meenakshi Sundaram, who had amassed wealth, which is disproportionate to his known source of income, and he had exhibited the documents to show that the said Mr.Meenakshi Sundaram having disproportionate assets, the Inspector of Police, Vigilance and Anti Corruption has filed his report dated 01.12.2006 stating that the allegation against Mr.Meenakshi Sundaram was not substantiated. But the Vigilance Officer attached with TNEB had filed his report dated 19.07.2002 for the same issue by stating that the allegations against the said Mr.Meenakshi Sundaram was proved. The petitioner received the above said report through Right to Information Act on 11.11.2013. Even though the first respondent aware of the said allegation and corruptions done by the above said Officers and Contractors, the complaint was not registered so far to that effect. Hence, the above Criminal Original Petition has been filed.

3. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

4. The learned counsel appearing for the petitioner would submit that the petitioner herein was working as Assistant Engineer in TNEB and he gave a complaint against Mr. Meenakshi Sundaram and Mr. Arounassalame before the office of Contractors and Vigilance and Anti Corruption for taking necessary action against them who have committed violation of tender rules and amassed wealth disproportionate to their known source of income. He would submit that in the counter filed by the first respondent, in paragraph No.3 itself it is proved that the said Mr. S. Arounassalame has amassed disproportionate assets, but even then they have not registered the case. He would further submit that it is true that he has filed a writ petition only for direction to direct the CBI to enquire the matter but the same was dismissed. Hence, he pray for direction, directing the respondents to register the case based on his complaint dated 13.01.2007.

5. Resisting the same, the learned Government Advocate (Crl. Side) appearing for the first respondent would submit that as soon as they received the complaint, preliminary enquiry was conducted. The petitioner was examined as witness on 26.12.2006 and his statement was recorded. Detailed enquiry was also conducted and on that basis, it was recommended to take departmental action against Mr. S. Arounassalame. Disciplinary proceedings has been initiated against him and he was punished. Likewise in respect of Mr. Meenakshi Sundaram also, after conducting both Preliminary enquiry and Final enquiry, it was recommended for departmental action and on that basis, disciplinary proceedings has been initiated against him. He was also imposed punishment of reduction of pension. As per Rule 87 of Manual of the Directorate of Vigilance and Anti-Corruption, there is no need to register a case since already on the basis of the complaint given by the petitioner, proper enquiry been conducted and hence, no prima facie case has been made out. Hence, he prayed for dismissal of the petition.

6. The learned counsel appearing for the third respondent would submit that there is no necessity for registering a case for violation of rules and only Departmental Action is necessitated. Further, he submits that Departmental Action has been taken. He would further submit that since the petitioner has sought for direction to register a case by the first respondent, the third respondent has nothing to do with this petition. However, he prayed for dismissal of the petition.

7. Considered the rival submissions made and perused the typed set of papers.

8. According to the learned counsel appearing for the first respondent that petitioner while he was working as Assistant Engineer in TNEB under both the counterparts, namely, Mr. Arounassalame and Mr. Meenakshi Sundaram, he was suspended. So, he has taken vengeance and given series of complaints.

9. Now, this Court has to consider whether the complaint given by the petitioner has been properly enquired by the first respondent.

10. According to Rule 14 of Manual of the Directorate of Vigilance and Anti-Corruption, on receipt of the complaint, the first respondent has conducted enquiry, admittedly the petitioner was also examined by Vigilance and Anti-Corruption on 26.12.2006 and after collecting the documents only, they conducted final enquiry and then recommended for taking disciplinary action against both the persons, namely, Mr. Arounassalame and Mr. Meenakshi Sundaram. On that basis, disciplinary proceedings were initiated against the said persons and one charge against each of them has been proved. Further, final order has been passed and it was ordered to cut in pension at the rate of Rs.1,000/- per month for a period of one year as a measure of penalty for the charge held as proved to Mr. Arounassalame and Rs.1,000/- per month for a period of two years to Mr. Meenakshi Sundaram. Subsequently, it was reduced to Rs.100/- per month for a period of one year to Mr. Meenakshi Sundaram. So, the Department has taken action as per Rule 87 of Manual of the Directorate of Vigilance and Anti-Corruption.

11. It is appropriate to incorporate Rule 14 and 87 of Manual of the Directorate of Vigilance and Anti-Corruption, which reads as follows:

14. Nature of Enquiries/Investigations

The Directorate of Vigilance and Anti Corruption undertakes enquiries/investigations into complaints/information about specific acts of bribery or corruption and allied malpractices in the exercise of official authority by Public Servants under the control of the State Government and also employees of the Public Undertakings, Corporations set up by the State Government. Usually, the first enquiry into a complaint/information is in the nature of a Preliminary Enquiry. If the Preliminary Enquiry discloses material which merits an open probe, a Detailed Enquiry is taken up. If the material thrown up in a Preliminary Enquiry or a Detailed Enquiry makes out a prima facie case for a criminal prosecution, a Regular Case is registered under Section 154 of the Code of Criminal Procedure, 1973, and investigation taken up in terms of relevant provisions of the Code of Criminal Procedure 1973.

When specific information is received that a particular Public Servant is demanding money for discharge of his official duty in a specified instances, a "Trap" is also attempted.

87. Recommendations for Enquiry by Tribunal for Disciplinary Proceedings or for Departmental Action - Criteria

(1) In Detailed Enquiries and Regular Cases or Trap Cases where enquiry by Tribunal for Disciplinary Proceedings or Departmental Action, is preferred to prosecution, recommendations are made in the Final Reports either for enquiry by the Tribunal for Disciplinary Proceedings or for Departmental Action, depending on the nature of the allegations held substantiated or the quality of evidence that have come forth. In making the recommendation as to the forum to which the case is to be referred, the criteria will be as follows:-

- | | | |
|--|---|----------------|
| (i) Cases involving corruption | - | Enquiry by the |
| Tribunal for | | Disciplinary |
| Proceedings | | |
| (ii) Cases involving possession | - | -do- |
| of disproportionate assets | | |
| (iii) Cases involving misappropriation | - | -do- |
| of Government funds through | | |
| forgery or falsification of | | |
| accounts indicating lack of | | |
| integrity on the part of the | | |
| Accused Officers | | |
| (iv) Cases involving huge loss of | - | -do- |
| Government funds and | | |
| resultant pecuniary advantage | | |
| to Private Individuals. | | |
| (v) Cases where there is a gross | - | -do- |
| neglect on the part of AOs, | | |
| deviation from norms and | | |
| procedures, resulting in | | |
| pecuniary gain to Private | | |
| Individuals and leading to an | | |
| inference that corrupt intention | | |
| has come into play. | | |

(vi)Cases involving violation of
conduct rules - Departmental Action

(vii)Cases involving flouting of
Government Orders/norms/
procedures, etc. - -do-

(2) While making their recommendations in accordance with the above criteria, brief reasons for such a recommendation should be incorporated in the Final Reports, by the Investigating Officers.

12.In such circumstances, I am of the view that the first respondent after receipt of the complaint, has followed the Rules of Manual of the Directorate of Vigilance and Anti-Corruption and on that basis, action has been taken. Hence, nothing survives in the complaint given by the petitioner. Furthermore, it is pertinent to note that due to long pending enmity between the petitioner and the said persons, namely, Arounassalame and Meenakshi Sundaram, this complaint has been given. Hence, I do not find any merits in this petition and the petition deserves to be dismissed.

12.The Criminal Original Petition is dismissed accordingly.

cse

-s/d-
Assistant Registrar(CS-II)
Dt:13/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Inspector
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Anti Corruption,
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M/s.Tamil Nadu Generation and Distribution
Corporation,
No.144, Anna Salai,
Chennai - 2.

4. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.C.Sivakumar, Advocate SR 6236

+ 1 cc to Public Prosecutor, SR 6190

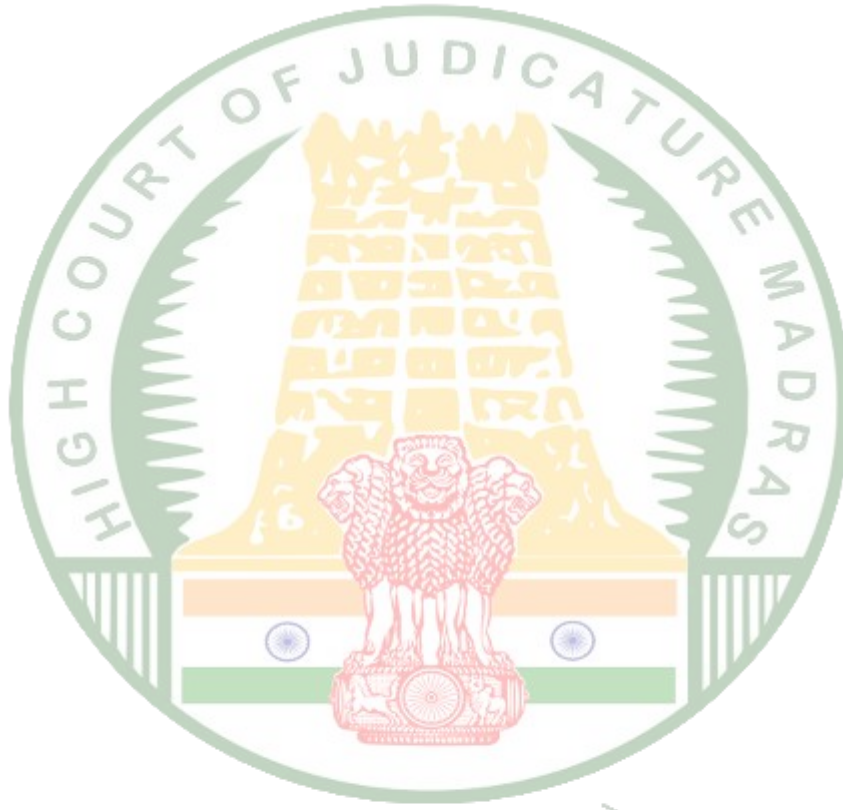
+ 1 cc to Mr.V.Viswanathan SR 5803

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