IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 1.4.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.5719 of 2014

M.Gopalakrishnan ... Petitioner

versus

The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai 600 009. ... Respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the proceedings of the respondent in letter.No.5701/H2/2012-8 dated 18.5.2012 and quash the same.

For petitioner Mr.G.Sankaran

For respondent Mr.M.S.Ramesh, Additional Government Pleader

O R D E R

Introductory :-

The petitioner functioned as Special Officer of Tamil Nadu Secretariat Typist and Steno Typist Cooperative Housing Society for the period from 25 May 2001 to 30 July 2002. The respondent after a period of ten years, issued a charge memo to the petitioner on 18 May 2012, alleging that he connived with the former President of the society for allotment of plots to outsiders, ignoring the fact that allotment was made by the then president during his tenure and only after the expiry of his tenure, the petitioner took charge as Special Officer.

Brief facts :-

2. The petitioner was initially appointed as Junior Inspector of Cooperative Societies. He was later promoted to the post of Cooperative Sub Registrar. While he was working as Circle Cooperative Sub Registrar (Housing), the Government superseded the elected Board of managements of cooperative societies. The Government issued orders

in G.O.Ms.No.205 Cooperation, Food and Consumer Protection Department, dated 25 May 2001, authorizing the Registrar of Cooperative Societies to appoint Special Officer to manage primary cooperative societies. The petitioner was appointed as a special officer of Tamil Nadu Secretariat Typist and Steno Typist Cooperative Society. The petitioner functioned as Special Officer of the said society in addition to his work as Circle Cooperative Sub Registrar (Housing), covering 15 cooperative housing societies.

3. The then president Thiru.S.Sundar has allotted housing plots to non-members by creating false records. Allotments were made prior to assumption of charge by the petitioner. The petitioner appears to have executed 28 documents after satisfying that allottees have paid full cost pursuant to the order of allotments and related agreements.

4. The Vigilance and Anti Corruption Unit registered a case against Mr.Sundar and others. The petitioner is not an accused.

5. The respondent, pursuant to the report submitted by the Vigilance and Anti Corruption unit, initiated disciplinary proceedings against the petitioner by issuing a charge memo dated 18 May 2012. The charge memo is challenged primarily on the ground that he was not responsible for allotment of plots and as such, it was not correct to allege that he connived with the former president for allotment of plots to outsiders, in violation of the bye-laws of the society.

6. The respondent filed a counter affidavit justifying the disciplinary proceedings. According to the respondent, pursuant to the complaint preferred by the members of cooperative society, Vigilance and Anti Corruption Department conducted enquiry. It was found that S.Sundar, the then president, manipulated records and sold plots to private parties. Vigilance and Anti Corruption Unit registered a case against Sundar under the provisions of Prevention of Corruption Act. The Directorate of Vigilance and Anti Corruption recommended action to be taken against the petitioner and other special officers. According to the respondent, the petitioner would be given a fair opportunity to substantiate his contentions before the Enquiry Officer.

Submissions :-

7. The learned counsel for the petitioner contended that even as per the admitted case, the petitioner assumed charge as special officer only on 25 May 2001. The entire incident took place prior to his appointment as Special Officer. The petitioner was expected to sign the sale deed after verifying payment made by the allottees. The petitioner, having found that the allottees have paid the entire cost, registered the documents. Since the petitioner was not in office when the allotments were made, no charge would lie against

him. The learned counsel further contended that the petitioner was cited only as a witness in the criminal case registered against Thiru.Sundar by Vigilance and Anti Corruption and as such, he is not liable to be proceeded departmentally.

8. The learned Additional Government Pleader justified the impugned proceedings. According to the learned Additional Government Pleader, the petitioner has registered 28 documents after assuming charge as Special Officer. It was only under such circumstances, Disciplinary Authority alleged that the petitioner colluded with the then president. The learned Additional Government Pleader further submitted that Writ Petition is not maintainable against charge memo.

Analysis :-

9. It is the admitted case of both the parties that allotments in question took place prior to the assumption of office by the petitioner. The petitioner was appointed as Special officer on 25 May 2001. It is also a matter of record that the elected body presided over by Thiru.Sundar was in office for the period from 1 October 1997 to 24 May 2001. Thiru.Sundar, former president, appears to have made several allotments and amassed wealth. The typed set of papers produced by the respondent contain the report submitted by Vigilance and Anti Corruption unit. There is no reference any where in the report that the petitioner colluded with Thiru.Sundar and allotted plots to outsiders by manipulation of records. The report says that the petitioner registered 28 documents after assuming office as Special Officer.

10. The charge memo proceeds as if the petitioner connived with Thiru.Sundar, former president, for allotment of plots to outsiders. Even as per the records produced by the respondent, allotment was made only by Thiru.Sundar. The petitioner was no where in the picture. The petitioner assumed office only after the supercession of the elected body. The respondent has no case that during the term of the petitioner as special officer allotments were made. Such being the factual position, the respondent was not correct in issuing charge memo to the petitioner alleging that he connived with the former President for allotment of plots.

11. The next question is whether by registering sale deeds, pursuant to the allotments made by the society, the petitioner committed a misconduct.

12. The petitioner in his capacity as the special officer, was expected to verify as to whether the allottees have paid full cost to the society. In case the allottees appear with allotment orders and receipts to show that they have paid the entire cost, necessarily the Special Officer should execute the documents. He has no other choice. The liability of Board of Directors and officials who were in charge

during the time of allotment would be different. The petitioner being the officer in charge of the society appointed subsequent to the supercession of elected Board, is not expected to verify each and every allotment made by the elected Board earlier, unless there is a complaint. The petitioner verified the agreements and receipts for payment of money and thereafter, registered the documents. Such being the factual position, it cannot be said that the petitioner colluded with the former president and made fraudulent allotments.

13. The petitioner was not associated with the society during the time of allotment. The petitioner assumed office only in 2001. The charge memo was issued after a period of 10 years. It would not be possible for a delinquent to face the enquiry proceedings after such long delay. In fact, disciplinary proceedings have commenced only against officials like the petitioner pursuant to the recommendation made by the Vigilance and Anti Corruption unit. In case, the petitioner was involved in an act of fraudulent transaction, he should have been made an accused. Even according to the Vigilance and Anti Corruption Unit, the petitioner has not played any role in allotting plots. It was the handwork of Thiru.Sundar, the then President. The petitioner is only a witness in the criminal proceedings initiated against Thiru.Sundar.

14. The learned Additional Government Pleader submitted that the respondent is yet to collect materials to substantiate the charges framed against the petitioner and as such, the Writ Petition is premature.

15. While considering charge memo, normally the Courts should not make an attempt to analyse the materials for arriving at a particular conclusion. It is so because the Disciplinary Authority is yet to collect materials to prove the charges. The onus is on the Disciplinary Authority to produce materials to substantiate the charges. It would not be possible for the Disciplinary Authority to produce such materials during the initial stage when charge memo is challenged.

16. However, that would not be the case in which a full fledged enquiry was conducted by the Vigilance and Anti Corruption Department.

17. In the subject case, departmental enquiry was initiated on the basis of the recommendation made by the Vigilance and Anti Corruption unit. Since the materials collected by Vigilance and Anti Corruption unit is before this Court, it is open to the Court to look into the report for the purpose of arriving at a satisfaction as to whether there is any material to connect the delinquent with the misconduct.

18. The Government without assessing independently whether there was any misconduct, simply accepted the recommendation made by Vigilance and Anti Corruption unit. The report submitted by the police does not contain anything to show that the petitioner was instrumental in allotting plots fraudulently. The only adverse comment is his act of registration of 28 plots in favour of the allottees. Since the petitioner was bound to register the sale deeds in favour of the allottees who have paid the full cost pursuant to the allotment orders and related agreements executed with the society before his assumption of office, it cannot be said he has committed act of misconduct. This aspect was not considered by the Government before issuing charge memo. The petitioner is therefore correct in his submission that even if enquiry is conducted, no further material could be unearthed in view of the full-fledged enquiry conducted by the Vigilance and Anti Corruption unit.

19. This is not like any other disciplinary proceedings initiated independently by the Disciplinary Authority. Here is a case wherein the Director of Vigilance and Anti Corruption conducted a detailed enquiry and found no incriminating materials against the petitioner. In case there were materials against the petitioner, nothing prevented the Vigilance and Anti Corruption Unit from including him as an accused. The Directorate of Vigilance and Anti Corruption simply stated that action should be taken against the petitioner and few others. The report submitted by Vigilance and Anti Corruption unit is part of the record. In view of the report submitted by the Vigilance and Anti Corruption, it cannot be said that the petitioner connived with the then president and caused loss to the society. I am therefore of the view that the petitioner must succeed.

20. The impugned order charge memo dated 18 May 2012 is quashed.

21. In the upshot, I allow the Writ Petition. No costs. Consequently, M.P.No.2 of 2014 is closed.

-s/d-
Assistant Registrar(CO)
Dt:6/4/2015

True Copy

Sub-Assistant Registrar

To

The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai 600 009.

+ 1 cc to M/s.G.Sankaran, Advocate SR 18683

+ 1 cc to the Government Pleader, High Court, Madras SR 18735

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