

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.8711/2012

R.Radhakrishnan

..

Petitioner

Versus

1. The Secretary to Government
Commercial Taxes and Registration
[M2] Department, Fort St. George,
Chennai-9.
2. The Inspector General of Registration,
Santhome High Road, Chennai 600 028.
3. The Additional Registrar of Chits
Tamil Nadu, Santhome High Road,
Chennai 600 028.

Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the impugned orders issued vide Na.No.44881/S2/2009 dated 09.10.2009 issued by the Inspector General of Registration, the 2nd respondent herein, Order No.44881/S2/2009 dated 27.07.2011 issued by the Additional Registrar of Chits, Chennai-28 the 3rd respondent herein and G.O.[D] No.003 dated 02.01.2012 issued by the Secretary to Government, Commercial Taxes and Registration [M2] Department the 1st respondent herein and to quash the same and to direct the respondents 1 to 4 to restore the license granted to the petitioner vide license No.A/604/19999/VPM.

For Petitioner : M/s.S.S.Jothivani

For Respondents: Mr.S.Gunasekaran, GA

ORDER

The petitioner challenges the orders passed by the respondents 1 to 3 dated 07.10.2009 ; 27.07.2011 and 02.01.2012 respectively by which the petitioner's Document Writer License was cancelled.

2. The petitioner is a Licensed Document Writer, having been granted license during 1999 under the provisions of the Tamil Nadu Document Writers License Rules, 1982, and the said license was valid up to the year 2013. By the proceedings of the 2nd respondent herein, dated 09.10.2009, the petitioner's Document Writer License was temporarily suspended stating that he was found standing outside the Sub Registrar Office and was in possession of cash. When the Vigilance and Anti Corruption officials arrived at the scene, they appeared to have taken him inside the Sub Registrar Office and recorded his statement, pursuant to which an order was passed on 09.10.2009 temporarily cancelling the petitioner's license. The petitioner submitted his representation on 17.12.2009 to revoke such order. Subsequently, a show cause notice was issued on 29.04.2011 calling upon the petitioner to explain as to why his license should not be cancelled permanently under Rule 16[3] of the Rules. This allegation contained in the show cause notice is also the same as that of the reason assigned in the order dated 09.10.2009, temporarily cancelling the petitioner's license.

3. The petitioner submitted his objections stating that he was standing in the vicinity of the Sub Registrar's office and he has not abetted any official by paying any bribe and the petitioner was having the said money for the medical treatment of his father. However, without conducting an enquiry on the same, the petitioner's license was cancelled by the 3rd respondent vide his order dated 27.07.2011. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent/the Appellate Authority and the 1st respondent, by order dated 02.01.2012, confirmed the cancellation of the petitioner's license. Challenging the above order, the petitioner has filed the present writ petition with the above said prayer.

4. Learned counsel for the petitioner would submit that the impugned order has been passed without conducting any enquiry and it is contrary to the procedure laid down under the Rules and it is the outcome of total non-application of mind and in violation of principles of natural justice. Further, it is submitted that the statement obtained from the petitioner by the Vigilance and Anti-Corruption officials u/s.161 Cr.P.C. is under threat and coercion and the petitioner was not granted an opportunity to rebut the statement. It is submitted that the persons who are alleged to have been given money and whose statements have been recorded were not called for, for the cross-examination by the petitioner nor the copies of those statements were furnished to the petitioner. Further, no action has been taken against the officials of the Sub Registrar Office or the Sub Registrar himself. Therefore, it is submitted that the impugned order is wholly unsustainable. It is also submitted that in the counter affidavit, the respondent has admitted in paragraph 6 that the petitioner was standing in the vicinity of the Sub Registrar Office, Vikaravandi, when the officials of the Vigilance and Anti

Corruption Department visited the said office. Therefore, it is submitted by the learned counsel that as per the admission of the counter affidavit, the petitioner was not inside the Sub Registrar Office and therefore, there was no cause to suspend the petitioner's license.

5. Per contra, the learned Government Advocate, by referring to the counter affidavit, submitted that the Document Writers Rules do not contemplate for conducting any enquiry and the order has been passed based on the statement recorded from the petitioner u/s.161 Cr.P.C., and the officials of the Vigilance and Anti Corruption Department found that the petitioner was standing near the Sub Registrar Office with the money and the petitioner was demanding such excess amount by stating that the same has to be given to the Office Assistants and other officials as bribe.

6. Heard Ms.S.S.Jothivani, learned counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Government Advocate appearing for the respondents and perused the materials available on record.

7. In terms of Rule 16 of the Rules, there is power for the authority to suspend or cancel the licenses. In the instant case, sub-rule 3 of Rule 16 has been invoked. By virtue of the said rules, the Licensing Authority has powers to revoke or cancel the license of the Document Writers for misconduct or unsatisfactory work or for any disqualification prescribed in Rule 5 or for breach of condition of license after affording an opportunity to him to show cause as to the action proposed to be taken against him and the Inspector General of Registration shall also have the same powers as that of the Licensing Authority. In the instant case, the allegation against the petitioner is that he was standing in the vicinity of the Sub Registrar Office and it appears that two persons have given statement stating that the petitioner has been collecting excess amount from them by stating that the same has to be given to the officials of the Sub Registrar office. Those two persons, who have said to have given statements against the petitioner, have not been called for, for cross-examination by the petitioner.

8. That apart, when the petitioner was not found inside the Sub Registrar office, but was found only in the vicinity of the office, it is not known as to how the respondents has connected the petitioner with the allegation that he abetted the officials in collecting the money. The charge of abetment should be clearly proved by proper evidence. The respondents in their counter has stated that the petitioner has violated the license condition No.9, viz., that the licensee shall not abet or participate in any illegal transaction or dealing with the staff attached to the Registration office. If there is any such allegation, then there should be an evidence to that effect. However, there is no such evidence

forthcoming or placed before the Court nor mentioned in the counter affidavit. That apart, before passing an order of cancellation, no enquiry was conducted by the Licensing Authority. Rule 16[3] prescribes an opportunity to show cause against the proposed action to be taken. In the show cause notice, the petitioner has disputed the correctness of the statement recorded from him. Then the petitioner should have been granted an opportunity of personal hearing of rebutting the statement which is put against him or to produce evidence on his side, so that the statement is far from truth. Merely because the rules does not provide for such an opportunity, in the light of the dispute which has been raised by the petitioner in the explanation, there was a necessity to conduct an enquiry. Therefore, the order cancelling the petitioner's license without conducting enquiry is illegal and is in violation of principles of natural justice. That apart, the appellate authority also has not adverted to all these legal issues in a proper perspective and has mechanically confirmed the order dated 09.10.2009. This Court is of the view that the impugned order dated 27.07.2011 confirming the order dated 09.10.2009 is not sustainable in law as the same has been passed in violation of principles of natural justice and without proper application of mind.

9. Accordingly, the writ petition is allowed and the impugned orders passed by the respondents 2, 3 and 1, by their proceedings dated 09.10.2009 ; 27.07.2011 and 02.01.2012 respectively are set aside. No costs. However, the petitioner shall not be entitled for any retrospective renewal and his license shall be renewed only from the date of his order.

AP

-s/d-
Assistant Registrar()
Dt:16/2/2015

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government
Commercial Taxes and Registration
[M2] Department, Fort St. George,
Chennai-9.

2.The Inspector General of Registration,
Santhome High Road, Chennai 600 028.

3.The Additional Registrar of Chits
Tamil Nadu, Santhome High Road,

Chennai 600 028.

+ 1 cc to the Government Pleader SR 7297

+ 1 cc to M/s.S.S.Jothivani, Advocate SR 7171

pa(co)
prk24/2

WP.No.8711/2012



WEB COPY