IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2017

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THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**
AND
THE HONOURABLE Mr. JUSTICE **P.VELMURUGAN**

W.A.No.1011 of 2016 &
C.M.P.Nos.13194 & 13195 of 2016

1.The Inspector General,
Registration Department,
Mylapore, Chennai-600 028.

2.The Secretary,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort St.Goerge, Chennai-600 003. .. Appellants

Vs.

S.Chakravarthy .. Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 03.11.2011 made in W.P.No.11416 of 2009, on the file of this Court.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader

For Respondent : Mr.G.Ashokpathy
For M/s.Pass Associates

JUDGMENT

[Order of the Court was made by P.VELMURUGAN, J.]

This Writ Appeal, at the instance of the State, is against the order passed by the learned Single Judge in allowing the Writ Petition in W.P.No.11416 of 2009, dated 03.11.2011, filed by the respondent, being the writ petitioner, challenging the orders of cancellation of his license issued under the provisions of the Tamil Nadu Document Writer's License Rules, 1982.

2. Facts culled out in brief for the disposal of the writ appeal are as follows:-

On 16.11.2006, a surprise check was conducted by the Officer of the Vigilance Department in the office of Sub Registrar, Pallikondan, Vellore District, where, the writ petitioner / respondent was functioning as a Document Writer, and a sum of Rs.6,300/- found in his possession was recovered. Based on such recovery, a show-cause notice was issued by the first appellant, for which, explanation was given by the respondent. However, without properly considering his explanation and without even conducting any enquiry, the first appellant / Licensing Authority passed a non-speaking order, cancelling his license. Though an appeal was preferred by the respondent before the second appellant / Appellate Authority, the same was rejected, confirming the order passed by the

Licensing Authority. A non-speaking order was passed by the Licensing Authority, without assigning any valid reason. On the same day during the surprise check, they have inspected the place of two other document writers and found some cash and it was recovered. The aggrieved parties have also filed the Writ Petitions. Since the issue pertaining to the three writ petitioners being one and the same, the learned Single Judge, by a common order, quashed the impugned orders passed by the appellate authority on the ground that there was no proper enquiry conducted by the first appellant / Licensing Authority pursuant to the explanation submitted by the writ petitioners. It was observed that the show-cause notice was vague and charge against the respondent was not specific.

3. Aggrieved against the order passed in W.P.No.11416 of 2009, the State has preferred the present Writ Appeal.

4. The learned Special Government Pleader appearing for the appellants would submit that Rule 16(3) of the Tamil Nadu Document Writers License Rules, 1982 provides for giving an opportunity to show-cause against the action proposed to be taken against the licensee and does not provide for conducting any enquiry. Further, she would submit that the cash kept by the respondent was not duly accounted for in the register maintained by him as required under condition B of the license. The explanation of the respondent was not supported

by any documents and hence, the explanation was found unacceptable. The order passed by the learned Single Judge being not based on facts, the same is liable to be set-aside.

5. The learned counsel for the respondent would submit that though the respondent admitted that the Vigilance Officer recovered cash from him, the explanation offered by the respondent has not been considered either by the Licensing Authority or the Appellate Authority. Further, the appellants have not given any opportunity to the respondent to prove his innocence. The Licensing Authority and the Appellate Authority passed orders in an arbitrary manner and without following any procedure. The learned Single Judge, after considering all the aspects, rightly quashed the order passed by the appellants and hence, the learned counsel prays for dismissal of Writ appeal.

6. Heard the rival submissions and perused the materials placed on record.

7. It is an admitted fact that on 16.11.2006, the Officers of the Vigilance Department conducted a surprise check in the office of the Sub Registrar, Pallikondan, Vellore District. During the course of such check, a sum of Rs.6,300/- was recovered from the respondent. Based on such recovery, the first

appellant issued a show-cause notice, calling upon the respondent to show-cause as to why his Document Writers License should not be permanently cancelled under Rule 16(3) of the Rules. According to the respondent, the cash was retained by him for a specific purpose viz., cash given to him by one Mr.C.Venkatesan, for purchase of stamp papers. The first appellant, by a common order dated 05.09.2008, held that the explanation submitted by the respondent and others are either convincing or credible since the document writer did not follow the condition (b) of Tamil Nadu Document Writers License Rules, 1982.

8. According to the respondent, the cash was retained by him for the purpose of purchase of stamp papers and the same has been given by one Mr.C.Venkatesh to him. The first appellant / Licensing Authority and second appellant / Appellate Authority were not satisfied with the explanation given by the respondent. The learned Single Judge has found that the show-cause notice does not indicate as to how the condition No.b of the licence conditions is attracted or violated in the case on hand. On a perusal of the order, it is clear that the Licensing Authority passed a single line cryptic order and rejected the respondent's reply to the show cause notice. The appellate authority in a single paragraph, rejected all the appeals stating that the appellants before him have not proved the stand taken by them in the Appeals.

9. Though the contention of the respondent is that the cash was retained by him for the purpose of purchase of stamp papers and the same has been given by one Mr.C.Venkatesh to him, but on perusal of the records, it is clear that he has not produced any relevant documentary proof and further, he has also not made such details in the Register. The order passed by the learned Single Judge is perfect because the Licensing Authority and Appellate Authority passed a non-speaking order. However, surprise check by Vigilance Department is admitted and recovery of amount is also admitted and for the excess amount recovered from the respondent and to prove the *bona fide* claim, there was no records. Even, in the explanation, the respondent admitted that during the check, he was having excess cash of a sum of Rs.6,300/-. The failure to pass a speaking order by the Licensing Authority and the Appellate Authority would not come to the rescue of the respondent, on account of his failure to account for the cash.

10. On a perusal of the records, it is seen that this Court while ordering notice of motion granted interim stay for a limited period on 02.07.2009. It is submitted by the learned counsel for the respondent that by virtue of the said interim order, the respondent is continuing to function as Document Writer.

11. Therefore, considering the nature of allegations and entire background facts, we are of the view that interest of justice would be subserved by treating the period of suspension as a punishment.

12. The writ appeal is partly allowed by modifying the punishment imposed on the respondent to the effect that the period from 2009 to till today will be treated as punishment. There shall be a direction to the appellants to renew the Document Writers License of the respondent with effect from 1st December 2017.

13. In the result, the Writ Appeal is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(K.K.S., J.) **(P.V., J.)**

17.11.2017

Index : Yes / No
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