



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2016

CORAM :

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD)No.20820 of 2016

I.Manivarnaperumal

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Block Development Officer,
Valliyoar Panchayat Union,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorari by calling for entire records pertaining to the proceedings in Na.Ka.No. Nga12/36619/2016 dated 22.09.2016 issued by the 1st Respondent and quash the same.

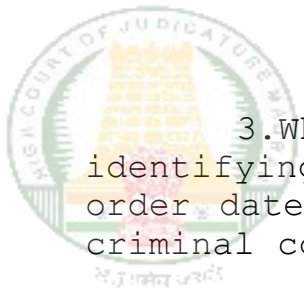
For Petitioner	: Mr.R.Anand
For Respondents	: Mr.M.Murugan Government Advocate

O R D E R

Challenging the impugned proceedings issued by the District Collector, Tirunelveli District, the first respondent herein, dated 22.09.2016, this writ petition has been filed.

2.The petitioner is the elected Panchayat President of Levinchipuram Panchayat. The said Panchayat is situated within the short distance of Koodankulam Atomic Power Plant. The Central Government used to implement various beneficial schemes through the said Panchayat for which the petitioner/President is entrusted with the task of giving effect to those projects, for the benefit of the village people. One such scheme was introduced, providing free houses to the village people and for the purpose of finding out the beneficiaries according to the norms prescribed, the petitioner was expected to cull out a list of eligible persons and that has to be forwarded to the second respondent who is the

<https://hcservicescourts.gov.in/hcservices/> recommending and finalising the eligible persons.



3. When the petitioner was engaged in the official duty of identifying the beneficiaries, the first respondent has passed an order dated 22.09.2016 directing the second respondent to give a criminal complaint against the petitioner herein.

4. The learned Government Advocate appearing for the respondents would submit that according to the direction issued by the first respondent, the second respondent has preferred the complaint against the petitioner and that has been registered in Crime No.192 of 2016 by Palavoor Police Station, Tirunelveli for the offence punishable under Sections 409, 468 and 420 IPC. The objection raised by the learned Government Advocate is that the recommendation given by the first respondent has been implemented by registering the FIR. As the order has already been implemented, it cannot be challenged by way of filing this writ petition. Therefore, this writ petition has become infructuous.

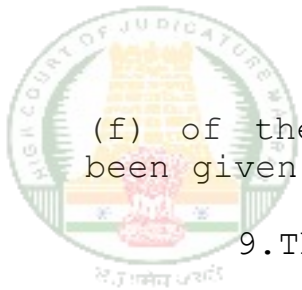
5. The learned counsel appearing for the petitioner would submit that the order passed by the first respondent is without affording an opportunity of hearing to the petitioner which cannot be sustained and therefore, on the ground of violation of principles of natural justice, the impugned order is liable to be set aside.

6. The specific contention put forth by the learned counsel for the petitioner is that if an opportunity of hearing had been given, the petitioner would have been in a position to explain the charges and the first respondent would have been in a position to accept his explanation; it is the strong case of the petitioner that in such a case, the recommendation for registration of the criminal case would not have been made out at all.

7. When the Court asked the learned counsel for the petitioner to disclose the explanations that might have been given to the charges levelled against the petitioner, the learned counsel for the petitioner was able to expound the kind of explanations that would have been given by the petitioner before the first respondent. For instance, charge No.1 is that the petitioner herein has issued receipt for a sum of Rs.3,500/- in favour of V.V.Minerals for the purpose of operating electric motor and this receipt has been issued without any authorization. The explanation to charge No.1 is that the petitioner gave permission to operate electricity motor with the capacity of 350 HP (for which Rs.3,500/- was collected) and later on, on coming to know that it is only the District Collector who can grant such permission, which is subject to the capacity of the motor, the petitioner cancelled the permission granted and the amount was credited with the bankers on 16.09.2016.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Similarly, explanation has been given in respect of the charges 2 and 3 also, in paragraph - 4 of the affidavit and ground



(f) of the affidavit. The fact remains that no opportunity has been given to the petitioner to defend his case effectively.

9. The enquiry is challenged on the following grounds:

(a) No show cause notice was issued. Thus, the petitioner is deprived of the opportunity of hearing.

(b) The list of documents based on which, the enquiry will be conducted was not furnished to the petitioner. Thus the effective opportunity of representing the case was not given.

(c) The first respondent has played dual role i.e., as the prosecuting officer as well as the enquiry officer, which itself is illegal.

10. Under such circumstances, the order passed by the first respondent, without affording an opportunity of hearing to the petitioner, is set aside. However, the matter is remitted back to the first respondent with a liberty to issue show cause notice to the petitioner and after getting explanation, to peruse the same and if the explanation is not acceptable, then proceed with necessary charge memo and for consequential enquiry, if need be. All the consequential action taken including registration of FIR based upon the impugned order dated 22.09.2016 stand set aside.

11. The writ petition is allowed with the above observations and directions. No costs. Consequently WMP(MD) Nos. 14870 and 14871 of 2016 are closed.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Block Development Officer,
Valliyoor Panchayat Union,
Tirunelveli District.

+1CC to M/S.R.Anand, Advocate, SR.No. 67660

+1CC to the Special Government Pleader, SR.No. 67457.

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