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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2017

DELIVERED ON: 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A. (MD) No.173 of 2016
and
C.M.P. (MD) .No.882 of 2016

The Commissioner,
Madurai City Municipal Corporation,
Madurai - 625 002.

.. Appellant/ Respondent

Vs.

P.Murugan

.. Respondent/ Petitioner

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 29.10.2015, made in W.P.(MD). No.11791 of 2013 by a learned Single Judge of this Court.

Prayer in WP(MD). 11791/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, in the nature of writ calling for the records relating to the impugned charge memo issued by the respondent vide Mathil/18164/2009 (Manil) dated 12.04.2013 and quash the same as illegal and pass such further or other orders.

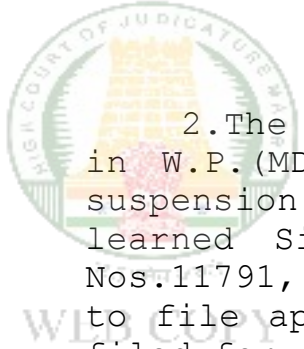
For appellant : Mr.G.R.Swaminathan

For respondent : Mr.P.Wilson,
Senior counsel
for Mr.C.Arul Vadivel @ Sekar

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

This appeal has been filed by the Commissioner of Madurai City Municipal Corporation as against the order passed by a learned Single Judge in W.P.(MD).No.11791 of 2013, whereby and whereunder the learned Single has quashed the charge memo issued by the appellant herein.



2.The respondent herein has filed another two writ petitions in W.P.(MD).Nos.6796 and 9257 of 2013 challenging two separate suspension orders issued by the appellant herein. Though the learned Single Judge has passed a common order in W.P.(MD).Nos.11791, 9257 and 6796 of 2013, the appellant herein has chosen to file appeal only against W.P.(MD).No.11791 of 2013, which was filed for quashing the charge memo.

3.0. The case of the respondent / writ petitioner is that he joined service as Town Planning Building Inspector in Madurai Municipal Corporation on 23.12.1978. He was, thereafter, promoted to various posts upto the cadre of Assistant Executive Engineer (Planning). He was also in-charge of the post of Executive Engineer (Planning) from 07.12.2005 to 03.08.2011. While so, the Secretary for Municipal Administration and Water Supply Department transferred the respondent on deputation / foreign service to Coimbatore Municipal Corporation as Assistant Executive Engineer (Planning) on 31.10.2011. The said order was passed without getting any consent from the respondent. The said order was issued only after the respondent filed a writ petition in W.P.(MD).No.8960 of 2011 before this Court challenging the appointment order of one M.Rakkappan from Thoothukudi City Municipal Corporation as Executive Engineer (Planning), in Madurai Municipal Corporation on 08.08.2011.

3.1. Since the said deputation order was issued with *mala fide* intention to curtail the promotion of the respondent as Executive Engineer (Planning) in Madurai City Municipal Corporation, the respondent has filed a writ petition in W.P.(MD).No.13231 of 2011 on 18.11.2011 before this Court. After hearing both sides, the learned Single Judge has granted an interim order of status quo on 30.11.2011. At the time of filing of the writ petition, the deputation order was not served on the respondent and he was not relieved from the Madurai Municipal Corporation. He was also on medical leave from 21.09.2011. After completion of medical leave, he joined duty on 01.02.2012. The appellant has, by order dated 01.02.2012, permitted the respondent to join duty subject to the final result of W.P.(MD).No.13231 of 2011. While so, on 14.02.2012, the appellant cancelled his earlier order dated 01.02.2012 without assigning any reason. Challenging the said cancellation order, the respondent has filed a writ petition in W.P.(MD).No.1773 of 2012. A learned Single Judge of this Court has granted an order of interim stay of the said order on 16.02.2012. In spite of the interim order, the appellant did not allow the respondent to join duty.

3.2. In the meantime, the above two main writ petitions were taken up for final hearing and reserved for orders by a learned Single Judge of this Court. Since the Commissioner of Municipal Administration advised him to withdraw the writ petitions by giving assurance that he would allow him to continue his service in Madurai Municipal Corporation, he has withdrawn both the writ



petitions on 14.12.2012. Then, he requested the appellant, vide his letter dated 19.12.2012, to permit him to continue in Madurai City Municipal Corporation. Pursuant to that request, the Commissioner of Municipal Administration, vide his letter dated 27.12.2012, recommended his request to the Government to permit him to continue in the vacant post of Assistant Executive Engineer (Planning) at Municipal Corporation, considering the date of his superannuation i.e., on 31.05.2013.

3.3. While so, the appellant, vide proceedings dated 12.04.2013, placed the respondent under suspension stating that a complaint against him is under investigation. Hence, challenging the said suspension order, he has filed a writ petition in W.P. (MD).No.6796 of 2013. A learned Single Judge of this Court has also granted interim stay of the said order on 23.04.2013. In the meanwhile, he has attained the age of superannuation and requested the appellant to permit him to retire from service on 31.05.2013. But, the appellant, vide order dated 31.05.2013, issued another suspension order with the same allegation, mentioning the earlier suspension order dated 12.04.2013. By the said impugned order, he was also not permitted to retire from service on 31.05.2013. Hence, the respondent has filed another writ petition in W.P.(MD). No.9257 of 2013. Subsequently, with the *mala fide* intention, the appellant issued impugned charge memo. Challenging the said charge memo, he has filed the writ petition in W.P.(MD).No.11791 of 2013.

4. The learned Single Judge, after hearing both sides, has quashed the suspension orders and also charge memos stating that the charges are vague and the same was invented / fabricated belatedly. Aggrieved over the order passed by the learned Single Judge quashing the charge memo, the appellant has come up with the present writ appeal.

5. The learned counsel appearing for the appellant submitted that the respondent was an Assistant Executive Engineer in Town Planning Section of Madurai Corporation and was holding the post of Town Planning Officer (in-charge). During his tenure, the respondent indulged in various irregularities in granting planning approval to various buildings and also failed to collect Infrastructure and Amenities charges as per the Government orders. The charge memo contains seven charges of various natures. The first charge is with regard to non collection of Infrastructure and Amenities charges, which has caused huge loss to the Government. But, the learned Single Judge has quashed the said charge on a reasoning that the appellant herein himself had written a letter dated 26.07.2010 to the Director of Municipal Administration stating that G.O.Ms.No.191, dated 01.04.2007, Services Department No. 104 services dated 08.04.2008 and G.O.Ms.No.161 dated 09.09.2009, which are relating to collection of I & A charges, were not received by the Corporation and hence, the respondent was not

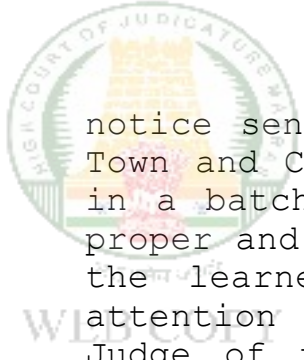


responsible for non collection of I & A charges. Assailing the said reasoning of the learned Single Judge, the learned counsel for the appellant submitted that the respondent had received a communication from the District Collector, Madurai, in Na.Ka.No.1593/2008ma.Thi. dated 26.06.2009 with regard to the collection of I & A charges on 06.07.2009. On 09.01.2010 also he had received a letter No.2/UD4-1/2010-1 issued by the Additional Secretary to Government, Housing and Urban Development Department to the Commissioner, Madurai Corporation regarding non collection of I & A charges on 21.01.2010. Therefore, the respondent cannot plead ignorance with regard to the duty and statutory mandate to collect I & A charges from the applicants seeking building permit. Thus, this aspect was not properly considered by the learned Single Judge.

6. The learned counsel for the appellant further submitted that the third charge is that the respondent has violated all norms of Tamil Nadu Town and Country Planning Act, 1971 and the Rules in granting approval to the identified 35 buildings. But, the learned Single Judge has erroneously come to the conclusion that the building plan approval was given properly by the competent authority and therefore, the same is valid in law. The learned counsel appearing for the appellant has also by inviting the attention of this Court to all the other charges, submitted that all the charges require detailed enquiry and hence, the order passed by the learned Single Judge quashing the charge memo issued by the appellant is liable to be set aside.

7. Countering the submission made by the learned counsel for the appellant, the learned counsel appearing for the respondent made a detailed argument denying all the submissions of the learned counsel appearing for the appellant. He would submit that the learned Single Judge has assigned valid reasons for quashing the charges. The first charge is that the respondent has failed to collect the I & A charges in the year 2005-2009. In fact, the Commissioner of Corporation has sent a letter dated 26.07.2010 to the Director of Municipal Administration stating that G.O.Ms.No.191, dated 01.04.2007, G.O.Ms.No.84, dated 08.04.2008 and G.O.Ms.No.161 dated 09.09.2009, which are related to the collection of I & A charges, were not received by the Corporation and the same would show that the Corporation itself was not aware of the collection of I & A charges. When that be so, no one could be responsible for non collection of I & A charges. Considering this aspect only, the learned Single Judge has correctly come to the conclusion that the said charge is liable to be quashed.

8. The learned counsel for the respondent further submitted <https://hcservices.ecourts.gov.in/hcservices/> the charge No.3 is concerned, the appellant knew very well that the buildings have been granted approval duly in accordance with the rules. The appellant also knew that the



notice sent by the local planning authority under the Tamil Nadu Town and Country Planning Act, were already quashed by this Court in a batch of writ petitions holding that the plan approval was proper and in accordance with the existing rules. In this regard, the learned counsel for the respondent has also invited the attention of this Court to the order passed by a learned Single Judge of this Court in W.P.(MD).Nos.11295 of 2012, etc. batch, dated 02.11.2012. The appellant herein was also a party in the said writ petitions. Knowing fully well that the approval granted was valid, the said charge was issued which would show that the charge memo was issued with *mala fide* intention. The learned counsel for the respondent has also by inviting the attention of this Court to the other charges and submitted that all the other charges are vague and there is no definite charge and the learned Single Judge has rightly quashed the same.

9. The learned counsel for the respondent has also by inviting the attention of this Court to the judgment of the Hon'ble Supreme Court in **Anil Gilurker Vs. Bilaspur Kshetria Gramin Bank and another**, reported in (2012) 1 MLJ 978 (SC) submitted that the charges should be specific and definite and giving details of the incident which formed the basis of the charges and no enquiry can be sustained on the vague charges. He has also by relying upon the judgment in **V.S.Ramanarayanan Vs. the Food Corporation of India**, reported in (TNLJ) 1985 Wr.L.R. 522 and another judgment in **G.Andavan Vs. Government of Tamil Nadu and another**, reported in (2010) 2 MLJ 1007 submitted that the inordinate and unexpected delay vitiates the impugned charge memo.

10. The learned counsel for the respondent further submitted that only after the respondent filed a writ petition in W.P.(MD). No.8960 of 2011 before this Court challenging the appointment order of one M.Rakkappan from Thoothukudi City Municipal Corporation as Executive Engineer (Planning), in Madurai Municipal Corporation on 08.08.2011, the appellant has issued suspension order against the respondent and in order to justify the same, the appellant has subsequently, issued charge memo with fabricated charges. Though the impugned charge memo was dated 12.04.2013, it was sent to the respondent only on 19.06.2013 through registered post. The first suspension order dated 12.04.2013 was served on the respondent only on 17.04.2013. However, there is no reference about the impugned charge memo in the 1st suspension order dated 12.04.2013 as well as in the 2nd suspension order dated 31.05.2013. Hence, it is very clear that the impugned charge memo has been prepared subsequently only for the purpose of justifying the suspension orders. Considering these aspects only, the learned Single Judge has set aside the impugned suspension orders and also the charge memo. There is no need to interfere with the order passed by the learned Single judge. Thus, he prayed to dismiss the present writ appeal.



11. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

12. A perusal of the judgment of the learned Single Judge would show that the impugned orders have been quashed on the ground of *mala fide* intention, the charges are vague and the charges are invented / fabricated to justify the two earlier suspension orders. According to the learned counsel for the appellant, the said findings of the learned Single Judge are not correct.

13. According to the respondent, only after he filed a writ petition in W.P.(MD).No.8960 of 2011 before this Court challenging the appointment order of one M.Rakkappan from Thoothukudi City Municipal Corporation as Executive Engineer (Planning), in Madurai Municipal Corporation on 08.08.2011, the Secretary for Municipal Administration and Water Supply Department has transferred him on deputation / foreign service to Coimbatore Municipal Corporation as Assistant Executive Engineer (Planning), vide order dated 31.10.2011. As against that transfer order, the respondent has filed a writ petition before this Court in W.P.(MD).No.13231 of 2011, in which this Court has granted an interim order of *status quo*. On 01.02.2012, the appellant permitted the respondent to join duty. However, on 14.02.2012 without assigning any reason, the appellant has cancelled the earlier order permitting the respondent to join duty. Challenging the said cancellation order, the respondent has filed a writ petition in W.P.(MD).No.1773 of 2012, in which this Court has, vide order dated 06.02.2012, granted interim order of stay. In spite of the production of the said order, the appellant has not permitted him to join duty. Hence, he has sent a contempt notice to the appellant through his counsel on 14.06.2012. After receipt of the same, according to the respondent, he withdrew the writ petition based on the assurance of the appellant that he would allow him to continue his service and as such, he recommended the case of the respondent to the Government.

14. While the respondent was awaiting the result of consideration of his request, the appellant has issued a suspension order dated 12.04.2013 stating that a complaint is under investigation against the respondent without even any reference about the complaint. The respondent has challenged the same before this Court in W.P.(MD).No.6796 of 2013 and this Court granted interim stay of the said order. In order to vacate the said interim order, the appellant has filed a vacate stay petition, in which also the appellant does not say anything about the allegation against the respondent or as to whether the charge memo has been served to the respondent. While so, on attaining the age of superannuation, the respondent was again suspended and

https://hcservices.prcourtsofmadurai.org/

15. He has retired from service on 31.05.2013. Challenging the said order, he has filed W.P.(MD).No.9257 of 2013. Though the impugned charge memo is alleged to have been issued on



12.04.2013, the same has been served to the respondent only on 19.06.2013, for which no explanation has been given by the appellant. According to the respondent, if the charge memo has been prepared as early as on 12.04.2013, the same would have been served to the respondent along with the first suspension order i.e., on 17.04.2013 or at least, even before the issuance of the second suspension order, which would clearly show that the charge memo has been prepared with *mala fide* intention subsequently for the purpose of justifying the suspension orders. This Court finds some force in the said argument and the same lead this Court to go into the aspect of charges, on which this Court would not generally interfere at the threshold.

15. The charges framed against the respondent reads as follows;

"Charge No.I : Negligence of Duty causing Heavy Financial Loss in your capacity as E.E.Planning in-charge:

You have failed to collect I & A charges incurring heavy losses to the Government to the tune of Rs.15,36,48,840/- (Rupees fifteen crores thirty six lakhs forty eight thousand eight hundred forty only as presented in the table..... Apart from the heavy loss due to non collection the Government is also forced to face the loss of interest for his amount. Non collection incurring heavy loss is a grave charge amounting to gross negligence of duty leading to heavy financial loss.

Charge No.II : Dereliction of Duty:

You have utterly failed to give proper communication to your subordinates in sanctioning the plan papers under your control leading to gross violations.

Charge No.III : Gross violation of procedure:

Despite the fact that there is a protocol to keep a check on violation of procedure, you have violated all norms of Tamil Nadu Town Country Planning Act, 1971 and rules in granting approval to the identified 35 building presenting in Annexure II.

Charge No.IV : Usurping of Power:

Misinterpreting Roc.No.59/93 (1) MP3 to suit yourself you have assumed the power of Member Secretary LPA illegally and signed approval for the following identified 11 plan approvals. Hence, you have committed the grave charge of usurping power causing lot of nuisance to the concerned departments, the corporation as well as the public.

**Charge No.V : Insubordinations :**

You have assumed higher powers without appropriate orders and hence have committed the grave offence of insubordination. Again you have assumed the power of the Member Secretary, LPA, which does not come under the purview of the Corporation at all as it is the prerogative of the District Collector. Hence, your assuming this power and signing under the seal of Member Secretary LPA amounts to gross insubordination.

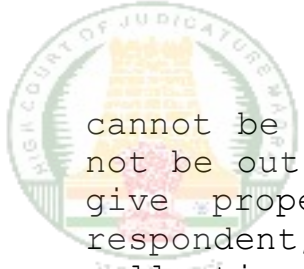
Charge VI : Misusing official power for personal ends:

As per Government Order 164 MAWS Department 1506/94 para 6 any building built over 1 km from Meenakshi Amman Temple surpassing 15 meter should be sent to Government for approval. You have passed a resolution before the Corporation Council to delete the clause to suit your personal ends. The Corporation is delegated power to grant permission for 1000 Sq. ft. for commercial buildings and 2000 sq. ft. for domestic buildings. You are charged to have misused your official position to suit your personal ends.

Charge VII : Tarnishing the name of the Corporation:

Your attitude and behaviour has caused a misunderstanding between the Corporation and higher bodies. It has led to a lot of misunderstanding. Hence, it has amounted to a grave charge of tarnishing the very name of the Corporation."

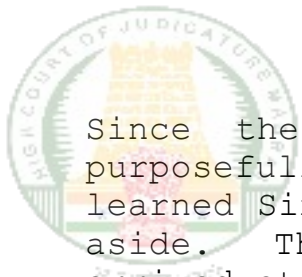
16.A bare perusal of the above charges makes it clear that in most of the charges during the period in which such violation / negligence alleged to have been committed by the respondent has not been mentioned. Except the charge Nos.1 and 3, other charges are vague in nature. So far as the first charge is concerned, it is submitted that the appellant himself had already written a letter, dated 26.07.2010, to the Director of Municipal Administration stating that G.O.Ms.No.191, dated 01.04.2007, G.O.Ms.No.84, dated 08.04.2008 and G.O.Ms.No.161 dated 09.09.2009, issued in respect of collection of Infrastructure and Amenity charges were not received by him. According to the appellant, no one can plead ignorance of law. Of-course, it is true. But, in the instant case, the appellant himself had sent a letter dated 26.07.2010 to the Director of Municipal Administration that the appellant Corporation has not received relevant G.Os. relating to the collection of I & A charges. When that being the position, the respondent being a subordinate officer to the Commissioner



cannot be charged with the negligence of duty. Further, it would not be out of place to mention that unless and until the appellant give proper communication to the subordinates, including the respondent, the subordinates cannot be found fault with for non collection of the I & A charges. Hence, based on the said letter, no one could be made responsible for non-collection of Infrastructure and Amenity charges.

17. So far as the third charge is concerned, it is alleged that "despite the fact that there is a protocol to keep a check on violation of procedure, you have violated all norms of Tamil Nadu Town Country Planning Act, 1971 and rules in granting approval to the identified 35 building presenting in Annexure II". It is seen that most of the building owners stated in Annexure II have already approached this Court in a batch of writ petitions before this Court and this Court has held that the building permissions granted to the writ petitioners therein are valid, based on the submission of the appellant that all the building permission granted to the writ petitioners therein were issued in accordance with Acts and Building Rules and on delegation of power. Having taken such stand before this Court, now he cannot act against the same. If at all there was any violation committed by any official, he ought to have brought to the notice of the Court by taking action against the erring officials. It would further fortify the *mala fide* intention and arbitrariness on the part of the appellant. Considering the said aspect only, the learned Single Judge has come to the conclusion that the said charges cannot be sustained.

18. So far as the other charges are concerned, they are vague. As per the dictum laid down by the Hon'ble Supreme Court in **Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Banck and another**, reported in (2012) 1 MLJ 978 (SC), the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. The grounds on which the appellant has proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending against an indefinite charges. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.



Since the charges are vague in nature and they have been purposefully invented only to justify the suspension orders, the learned Single Judge has held that the charge memo is liable to be aside. This Court does not find any infirmity in the decision arrived at by the learned Single Judge.

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19. Lastly, the learned counsel for the respondent submitted that the charge memo has been issued under Rule 8(2) of the Madurai Corporation Services (Discipline and Appeal) Rules, 1975 and the respondent being a Class II Officer, the major punishment, that is punishment under Rule 8(2), can be issued only by the Government and not the appellant herein. We have also found force in the said submission. Hence, we are of the opinion that the respondent has no jurisdiction to issue the charge memo. The learned Single Judge has also rightly quashed the impugned charge memo on the ground of jurisdiction. We do not find any infirmity in the order passed by the learned Single Judge.

20. Thus, viewing from any angle, the charge memo, which has been issued on the verge of retirement of the respondent, has no legs to stand and the learned Single Judge has also rightly quashed the same. We do not find any infirmity or illegality in the order passed by the learned Single Judge.

21. In the result, this writ appeal is liable to be dismissed and accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

+1 CC to Mr.C.Arul Vadivel @ Sekar, Advocate, SR No. 51144

+1 CC to Mr.R.MURALI, Advocate, SR No. 51296

GCG

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Judgment made in

Writ Appeal (MD) No.173 of 2016

10.04.2017