HON'BLE SRI JUSTICE SURESH KUMAR KAIT
And
HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.35593 of 2014

ORDER : (Oral) (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioners have assailed the order dated 11th July 2014, passed by the A.P.Administrative Tribunal, Hyderabad, in O.A.No.3650 of 2014, whereby, the said O.A. filed by respondent No.1 herein has been allowed.

2. It is stated in this writ petition that the Anti-Corruption Bureau (ACB) had conducted a surprise check on the office of Mandapeta Municipality, East Godavari District on 30th November 2005 and found that the officials of said Municipality had withdrawn Government funds as advances towards execution of certain works of Municipality and they have not been accounted for. Accordingly, a case has been registered by ACB against respondent No.1 vide Crime No.15/RCO-RJY/2005 under Section 13(2) r/w. 13(1)(c) & (d) of Prevention of Corruption Act, 1988 on 26.12.2005 and investigated into. On examination of the report of ACB, prosecution was sanctioned against respondent No.1 vide G.O.Ms.No.518, MA & UD Department, dated 12.09.2009. Based on the ACB report dated 20.01.2009, the Government, vide G.O.Rt.No.1072, MA & UD (Vig.II.2) Department, dated 30.07.2009, issued charge memo to respondent No.1, among ten other responsible officials, for committing grave misconduct while he was working as Municipal

Commissioner, Mandapeta Municipality from 27.06.2000 to 24.11.2001. Charges were framed against respondent No.1 including serious allegations of irregularities and misappropriation of NSDP and Janmabhoomi funds involving financial irregularities in Mandapeta Municipality.

3. Consequently, respondent No.1 submitted his written statement of defence on 1st July 2010, withholding the right of further defence with reference to the other documents as and when supplied. The Government, after obtaining advice of advisory authority, decided to appoint Enquiry Officer/Presenting Officer. Accordingly, vide Memo dated 26.04.2011, the Commissioner and Director of Municipal Administration was requested to furnish the names. Accordingly, the Commissioner and Director of Municipal Administration, A.P., Hyderabad, vide his Letter dated 02.07.2011, furnished the names for appointing as Enquiry Officer.

4. Thereafter, the Government, in exercise of powers conferred under Sub-rules (2) & (5)(c) of Rule 20 of A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, vide G.O.Rt.No.951, MA & UD (Vig.I) Department, dated 03.08.2011, appointed Sri M.Rajeswara Rao, Additional Commissioner, GHMC, Hyderabad as Enquiry Officer to enquire into the charges framed against respondent No.1 along with 10 other charged officers. Similarly, vide G.O.Rt.No.950, dated 03.08.2011, Sri Ch.Ramachandra Rao, Deputy Superintendent of Police, ACB,

Rajahmundry was appointed as Presenting Officer. Later, vide G.O.Rt.No.1196, dated 19.09.2011, Sri D.V.Nageswara Rao, Deputy Superintendent of Police, ACB, Rajahmundry was appointed as Presenting Officer in the place of Sri Ch.Ramachandra Rao. The Enquiry Officer, through letter dated 31.07.2013, furnished the enquiry report consisting of three pages by stating that the charges against the 11 charged officers are based on the audit reports for the years from 1999-2000 to 2003-04 and relate to surrender leave, pay fixation, commuted leave, regularization of suspension period, non-production of records/vouchers/M-Books including those relating to works, change of zone in levy of property tax, expenditure incurred for school anniversary etc. It was further stated that there were nearly 74,449 audit objections pending against various Urban Local Bodies of the State and if charges were to be framed based on the audit reports, all the officers of the Municipal Administration Department would become liable for disciplinary action. Further, the enquiry officer has stated that there is a set procedure prescribed by the Government under the A.P. State Audit Rules, 2000, issued in G.O.Ms.No.130, Finance and Planning (FW-Admn.I) Department, dated 08.09.2000, for settlement of audit objections and any deviation there-from may lead to legal complications besides causing agony and heart burn to the officers concerned. The Inquiring Authority has also stated that due to non-submission/non-availability of the records to him and non-availability of audit reports with the Municipal Commissioner, Mandapeta for about a Decade, prompt action was taken by the Municipal Commissioner, for getting dropped about 19 audit objections valued at Rs.14,58,635/-.

5. As stated in the writ petition, after careful examination of the matter, Government observed that the enquiry officer has not conducted the enquiry as per A.P.Civil Services (CC&A) Rules, 1991 and also as per the Enquiry Officer Manual. Hence, it has been decided to initiate disciplinary action against the enquiry officer Sri R.Rajeswara Rao, Additional Commissioner (Retd.), GHMC, Hyderabad, for his lapses in conducting enquiry against respondent No.1 and others. Accordingly, vide Government Memo dated 28.05.2014, the Commissioner and Director, Municipal Administration, Hyderabad was requested to furnish draft articles of charges against the enquiry officer.

6. Learned counsel appearing on behalf of petitioners submits that the enquiry officer has not conducted the enquiry as per A.P.Civil Services (CC&A) Rules, 1991 and not issued any notices to the 11 charged officers involved in this case, including respondent No.1, and no date is fixed for presentation of case by the Presenting officer, who belongs to ACB. The enquiry officer was appointed in August, 2011 and he simply submitted his report to the Government in July, 2013, without following the procedure as per A.P.Civil Services (CC&A) Rules, 1991.

7. Learned counsel further submits that as per sub-rule (1) of Rule 21 of A.P. Civil Services (CC&A) Rules, 1991, the disciplinary authority, if it is not itself the inquiry authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall, thereupon, proceed to hold further inquiry according to the provisions of Rule 20 as far as may be.

8. It is not in dispute that departmental enquiry was initiated against respondent No.1 vide G.O.Rt.No.1072, dated 30.07.2009 under Rule 20 of A.P. Civil Services (CC&A) Rules, 1991 by framing articles of charge relating to allegations pertaining to audit during the period from 27.06.2000 to 24.11.2001. The learned Tribunal, on perusal of record, found that one Sri M.Rajeswara Rao, the then Additional Commissioner (Legal), GHMC, was appointed as enquiry authority to conduct enquiry against respondent No.1 and other officers, vide G.O.Rt.No.950, dated 03.08.2011. The enquiry officer submitted his report to the Government on 31.07.2013 with the following findings :

> *"In the light of the above submission, and non-submission/non-availability of the records to me and non-availability of the audit reports with the Municipal Commissioner, Mandapeta for about a decade and the prompt action taken by the Municipal Commissioner for getting dropped about 19 audit objections valued at Rs.14,58,635/-, it is suggested that Government may reconsider the case and issue appropriate instructions to the Municipal Commissioner to settle the audit objections within a set of time and take further necessary action as per A.P. State*

and Audit Rules, 2000 issued in G.O.Ms.No.130, dated 08.09.2000."

9. We note that the Government, without taking action as per the above enquiry report, again appointed one Sri A.Srivastava, IPS (Retd.), Commissioner of Inquiries, as inquiry authority to conduct re-enquiry vide G.O.Rt.No.602, dated 28.05.2014, as per sub-rule (2) of Rule 20 of A.P.Civil Services (CC&A) Rules, 1991, but the same is not permissible as per sub-rule (2) of Rule 21 of the A.P.Civil Services (CC&A) Rules, 1991, as there is no provision according to Rule 21 of said Rules to order for re-enquiry, except further enquiry, if there are any omissions in the report of the enquiry authority.

10. As argued by the learned counsel for petitioners that on 03.07.2014 i.e. much before the order of the Tribunal, dated 11.07.2014, amendment has been made to G.O.Rt.No.602, dated 28.05.2014 by way of G.O.Rt.No.632, whereby, it is stated that Government, after examining the enquiry report and by obtaining advice of advisory authority, observed that the enquiry officer has not conducted the enquiry as per the instructions issued in A.P. Civil Services (CC&A) Rules, 1991 and also as per the Enquiry Officer Manual, and hence, decided to remit the case to the inquiring authority for further inquiry and report. It is further stated that since Sri M.Rajeswara Rao, Additional Commissioner, GHMC, Hyderabad has been retired from service, Government in exercise of powers conferred by sub-rule (1) of Rule 21 of A.P.Civil Services (CC&A)

Rules, 1991, appoint Sri A.Srivastava, IPS (Retd.), Commissioner of Inquiries as inquiring authority to conduct further enquiry into the charges framed against Sri P.Subrahmaneswara Rao, former A.E., and 10 others on allegations of irregularities and misappropriation of NSDP and Janmabhoomi funds in Mandapeta Municipality, East Godavari District.

11. It is not in dispute that G.O.Rt.No.632, dated 03.07.2014 was neither brought to the notice of the Tribunal nor it was argued that the earlier G.O.Rt.No.602, dated 28.05.2014 was further amended by G.O.Rt.No.632, dated 03.07.2014. Moreover, on this issue, the petitioners herein have not filed their counter affidavit before the Tribunal.

12. Accordingly, we have no hesitation to say that the impugned orders are issued contrary to the provisions of sub-rules (4) and (2) of Rules 20 and 21 of A.P.Civil Services (CC&A) Rules, 1991. In addition to above, there is delay of 9 years in issuing the charge memo with regard to the allegations pertaining to the period from 27.06.2000 to 24.11.2001.

13. Keeping in view the facts recorded above and the delay in issuing charge memo, and as the impugned order is issued contrary to the provisions of sub-rules (4) and (2) of Rules 20 and 21 of A.P.Civil Services (CC&A) Rules, 1991, we find no illegality or perversity in the order passed by the Tribunal. Hence, we confirm the same.

14. Finding no merit in the instant writ petition, the same is accordingly dismissed. No order as to costs.

15. In view of dismissal of the instant writ petition, we hereby direct the petitioners to implement the impugned order of the Tribunal within Six weeks from the date of receipt of this order.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

DR. SHAMEEM AKTHER, J

19th July 2017

ajr