

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 6.3.2018	Delivered on 24.4.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1218 OF 2017

C.Lawrence
versus

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 3.

2.The Principal Chief Engineer,
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 3.

3.The Superintendent Engineer (Mechanical)
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 3.

.... Appellant/Petitioner

.... Respondents/Respondents

Appeal filed against the order passed by this Court dated
7.8.2017 in W.P.No.15204 of 2017.

PRAYER IN WP.15204 OF 2017:

Petition Under Article 226 of the Constitution of India
praying to issue a writ of certiorafified mandamus calling for
the records relating to the proceedings pursuant to the charge
Memorandum under Sec.10 (b) of the Chennai Corporation Services
(Classification, Control and Appeal) Rules, 1970 in GD. Na.Ka.
No.E 13 / 16396 /2017 dated 28.05.2017 issued by the 1st
respondent herein, and quash the same and consequently direct
the 1st respondent herein to forthwith fix the pay Scale for the
petitioner in the promoted post of Executive Engineer with
effect from 14.07.2014 and pay the Petitioner all the arrears
payable to him from the said date

For appellant : Mr.AR.L.Sundaresan, Senior Counsel,
for Ms.AL.Gandhimathi

For Respondents : Mr.V.C.Selvasekaran

J U D G M E N T

K.K.SASIDHARAN, J.

The appellant filed a Writ Petition challenging the charge memo primarily on the ground that in the earlier round of litigation initiated by him against the Commissioner, Corporation of Chennai, the High Court imposed cost on the Local Authority for its non compliance of the direction and that was the reason for initiating another disciplinary proceedings. The Writ Petition was dismissed. The said order is under challenge in this appeal.

The facts:-

2. The respondents initiated disciplinary proceedings against the appellant alleging three charges, relating to a tender finalized for removal of garbage and debris from the streets and dump it in Kodungayur Dumping Yard. The respondents alleged that the appellant, who was a party to the tender process, failed to scrutinize the tenders and with a view to award the tender to M/s.Rani Logistics Movers, failed to report the fact that the party submitted two tenders in the name of two firms, and got the work awarded without competition. It was alleged that the address and phone numbers given in both the tenders were the same and in spite of such knowledge, contract was given to the very same party by making it appear as if there were two competitive bids. The appellant without even giving explanation to the charge memo, filed the Writ Petition. The learned Single Judge found that there were no materials to substantiate the contention regarding mala fides and that officers against malafides alleged were not made parties in their personal capacity. The Writ Petition was therefore dismissed.

Submissions:-

3. The learned Senior counsel for the appellant contended that the appellant was not a party to the decision regarding awarding the contract to the successful bidder. It was a decision taken by the higher authorities. The earlier proceedings initiated by the appellant against the respondents made the Corporation to issue the present charge memo and it was an act of victimization.

4. The learned counsel for the Corporation justified the charge memo on the ground that the appellant was involved in the process leading to the award of contract without competition.

Discussion:-

5. The charge memo issued to the appellant contains three charges in connection with the award of contract to M/s.Rani Logistics Movers, on the basis of the bids submitted by the said bidder in the name of two firms, both under the same management.

6. Since the appellant took up a contention that he was not involved in the process of awarding contract, we have summoned the original records.

7. The original file clearly indicates that the appellant was also involved in the process of awarding contract, along with other officials. The appellant was not singled out for facing the disciplinary proceedings. The respondent initiated proceedings against all the concerned officials, including the appellant.

8. The appellant has made an attempt to make it appear as if only on account of the earlier proceedings in which the High Court imposed cost, the Corporation once again proceeded against him by issuing the present charge memo. There is no merit in the contention taken by the appellant with respect to mala fides. The respondent has implemented the earlier direction given by this Court by giving promotion to the appellant. The fact that the Corporation was before the High Court earlier at the instance of the appellant, it cannot be said that all subsequent proceedings should be quashed, even if there are materials.

9. The respondent has not decided the misconduct by issuing the charge memo. The appellant is yet to submit his explanation. The appellant cannot be heard to say that the respondent would not look into the explanation before taking further action.

10. The Commissioner is not an employee of the Chennai Corporation. He is an officer of Indian Administrative Service, presently posted as the Commissioner of Greater Chennai Corporation. The Commissioner has no personal or service interest against the employees. The charge memo is issued only on a prima facie view that the appellant was involved in a misconduct. It would still be possible to take a decision not to proceed with the disciplinary proceedings taking into account the explanation.

11. The Hon'ble Supreme Court in Shri Anant R.Kulkarni vs. Y.P.Education Society & Ors. (2013(6) SCC 515) observed that Courts must refrain from interfering with the charge memo.

The Supreme Court said :-

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court.

....

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration.

12. The respondent has not passed any adverse order against the respondent by issuing the charge memo. The charge memo is preliminary in nature. The question of proceeding with the disciplinary proceedings would arise only after rejecting the explanation. The grounds raised by the appellant are not sufficient to quash the charge memo.

13. The intra court appeal is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 3.

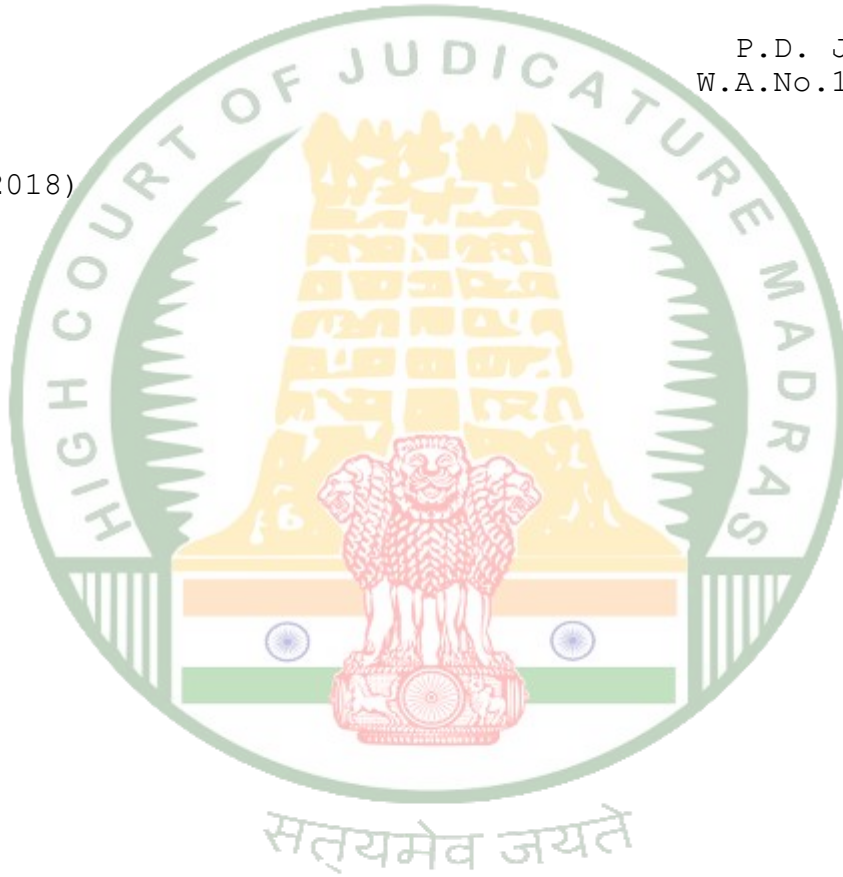
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3.The Superintendent Engineer (Mechanical)
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 3.

+1cc to Mr.AL.GANTHIMATHI, Advocate, S.R.No. 30552

P.D. Judgment in
W.A.No.1218 OF 2017

SJ(CO)
TR(04/05/2018)



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