

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 23-11-2018

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13727 of 2004
And
W.M.P.Nos.16125 of 2004 and 25423 of 2017

P.Ramalingam

.. Petitioner

..Vs..

1.The District Collector,
District Collector's Office,
Salem,
Salem District.

2.The Deputy Director,
(Geology and Mining),
Salem,
Salem District.

3.The Tahsildar,
Mettur,
Salem District.

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent dated 12.7.1999 in his proceedings in R.O.C. 2392/Mines-A/ and quash the same.

For Petitioner : Mr.J.Ramakrishnan

For Respondents : Mr.Akil Akbar Ali,
Government Advocate.

O R D E R

The order of the first respondent, imposing penalty in proceedings dated 12.7.1999, is sought to be quashed in the present writ petition.

2. The writ petitioner states that he is an Agriculturist by profession and the family members are depending upon the income derived from the agricultural work. Surprisingly, a copy of the impugned order dated 12.7.1999 was served to the writ petitioner on 6.4.2004 through subordinate officials, directing the writ petitioner to pay the fine amount of Rs.83,275/- for the alleged commission of offence punishable

under Section 23-A of the Mines and Minerals (Development and Regulation) Act, 1957.

3. The impugned order states that the writ petitioner had illegally quarried the mines in Survey No.264/1A and S.No.281/4 of Viruthasampatty Village, Mettur Taluk, Salem District. Further, it is contended that the writ petitioner appeared for an enquiry before the second respondent on 28.1.1998 and gave statement as if the writ petitioner had accepted the offence and agreed to pay the royalty cost of minerals and the fine amount.

4. The learned counsel, appearing on behalf of the writ petitioner, states that the impugned order had not been served by the first respondent immediately. Only through the subordinate officials, the order was served to the writ petitioner on 6.4.2004. Therefore, the writ petitioner was not in a position to challenge the said order during the year 1999 and the delay in filing the writ petition occurred on account of the failure on the part of the first respondent in serving the copy of the impugned order to the writ petitioner. It is further contended by the learned counsel for the writ petitioner that no opportunity was provided to the writ petitioner nor an enquiry was conducted, enabling the writ petitioner to establish his innocence. Thus, the impugned order is liable to be scrapped.

5. The learned Government Advocate, appearing on behalf of the respondents, denied the said contentions of the learned counsel for the writ petitioner by relying on the counter-affidavit filed by the first respondent. The counter-affidavit filed by the first respondent states that based on the information the then Deputy Director of Geology and Mining, Special Tahsildar (Mines) and the Assistant Geologist-I, Salem have inspected illicit mining area in Virudhasampatty Village, Mettur Taluk, Salem District on 30.9.1997 and noticed that illicit mining has been done in S.Nos.264/1 and 281/4 at Virudhasampatty Village Mettur Taluk by Thiru P.Ramalingam (the writ petitioner), Kanakkanur H/o.Virudhasampatty.

6. The writ petitioner had appeared before the Deputy Director of Geology and Mining, Salem on 28.1.1998 and had given his statement accepting the offence and agreed to pay the royalty, cost of minerals and the fine amount, if any, levied for the mineral illicitly removed by him. The cost of mineral for Quartz and Feldspar illicitly mined and removed by the writ petitioner, was assessed and he was ordered to pay a sum of Rs.83,275/- to the Government Account. As per the proceedings in Roc.2392/97/Mines-A dated 12.7.1999, the writ petitioner had received the above proceedings by RPAD on 14.10.1999 and on 3.4.2004 through Tahsildar, Mettur but he had not paid the amount. Thus, the writ petitioner filed the present writ

petition only in the year 2004.

7. It is further contended that based on the information, an inspection was conducted and the illicit mining was identified and thereafter, an action was taken against the writ petitioner. The writ petitioner had accepted the offence and agreed to pay the royalty, cost of minerals and the penalty amount. Hence, the Salem Collector's proceedings Roc.No.2392/97/Mines-A dated 12.7.1999, the writ petitioner had been directed to pay a sum of Rs.83,275/- towards royalty, cost of minerals and penalty for the illicitly mined minerals.

8. The learned counsel for the writ petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of O.K.Bhardwaj vs. Union of India and Others [(2001) 9 SCC 180], held in paragraph 3, which reads as under:-

"3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

9. This Court is of an opinion that the said judgment is absolutely not applicable to the facts and circumstances of the present writ petition on hand. In respect of the judgment cited supra, the Hon'ble Supreme Court referred the case of an employee, who committed an act of misconduct and imposition of punishment of withholding the increments of pay with or without cumulative effect, which is a minor penalty. The said case was decided based on the Service Rules applicable to the employees of the Union of India and therefore, the said judgment cited in the case of Service Rules, cannot be relied upon and accordingly, the reliance placed stands rejected.

10. The learned counsel for the writ petitioner further contended that the writ petitioner had mistakenly admitted the offence and therefore, he is entitled for an opportunity. This Court is of an opinion that the writ petitioner had not approached this Court with clean hands and within a reasonable

period of time. First of all, the writ petitioner had received the impugned proceedings dated 12.7.1999 on 14.10.1999 through Registered Post with Acknowledgment Due. However, the writ petitioner denied the same and averred in the affidavit by stating that he received the impugned order through Tahsildar, Mettur only on 6.4.2004.

11. Contrarily, as per the counter-affidavit, the Tahsildar Mettur has served the impugned order once again to the writ petitioner in person on 13.4.2004 at his request. However, the writ petitioner had conveniently suppressed the fact regarding the receipt of the impugned order through Registered Post with Acknowledgment Due on 14.10.1999.

12. When the impugned order originally sent by the authorities through Registered Post with Acknowledgment Due and it was received by the writ petitioner on 14.10.1999 and the records are available in the Office of the respondents, the writ petitioner has sent another representation as if he has not received the impugned order on 23.4.2004. Such an action of the writ petitioner is to save the limitation for filing of the present writ petition and such a conduct of the writ petitioner can never be encouraged by this Court for the purpose of considering the case of the writ petitioner. Thus, the impugned order was served to the writ petitioner through Registered Post with Acknowledgment Due on 14.10.1999 and the present writ petition was filed on 11.5.2004, after a lapse of about five years.

13. This apart, the writ petitioner had admitted the offence and further agreed to pay the royalty, cost of minerals and the fine amount before the Deputy Director of Geology and Mining. When the writ petitioner himself had admitted the offence and agreed to pay the royalty, there is no question of further providing an opportunity to the writ petitioner. The statement made before the Deputy Director of Geology was spontaneous and voluntary in nature, the writ petitioner had not established any grounds for coercion or threat. Thus, the question of conducting further enquiry does not arise at all.

14. The writ petitioner has illegally quarried the mines and minerals in violation of the provisions of the Act and during the inspection, the Deputy Director of Geology and Mining, Salem, found that the writ petitioner had involved in illicit of mines and minerals and accordingly, initiated action after recording the statement of the writ petitioner, he passed the order and imposed penalty.

15. This being the factum of the case, this Court do not find any infirmity or perversity in respect of the order impugned passed by the respondents. Accordingly, the respondents

are empowered to recover the fine amount from the writ petitioner without any undue delay. Thus, the writ petition is devoid of merits and accordingly, the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The District Collector,
District Collector's Office,
Salem,
Salem District.
- 2.The Deputy Director,
(Geology and Mining),
Salem,
Salem District.
- 3.The Tahsildar,
Mettur,
Salem District.

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.80277
+1cc to the Government Pleader, S.R.No.80923

WP No.13727 of 2004

VSNIH(CO)

rrs 13/12/2018

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