IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.958 of 2015
and
M.P.No.1 of 2015

R.Sarasavani ...Appellant

Vs

1.The Government of Tamil Nadu
Represented by the Principal Secretary
Environment and Forest Department
Secretariat, Fort St.George
Chennai 600 009.

2.The Tamil Nadu Pollution Control Board
Rep. by its Chairman
Guindy, Chennai 600 032.

3.Dr.K.Karthikeyan
Joint Chief Environmental Engineer
Tamil Nadu Pollution Control Board
Guindy, Chennai 600 032. ...Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed by this Court in W.P.No.18554 of 2015 dated 26.06.2015.

W.P.No.18554 of 2015:

Petition filed under Article 226 of the constitution of India praying to issue a Writ of certiorari to call for the records relating to the issuance of impugned GO(O) No 3, E & F Department(EC 2) dated 05.01.2015 issued by the 1st Respondent and quash the same.

For Appellant : Mr.N.Subramaniyan
For R1 : Mrs.A.Sri Jayanthi
Special Government Pleader
For R2 : Mr.Abdul Saleem
For R3 : Mr.C.K.Chandrasekar

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JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated 26 June, 2015 in W.P.No.18554 of 2015, whereby and whereunder, the learned Single Judge negatived the plea made by the appellant to quash the Government Order in G.O.(D) No.3, Environment and Forests (EC.2) Department, dated 05 January, 2015 on the ground that action was not taken against her on the basis of the said Government Order and as such, her writ petition was practically not maintainable. Feeling aggrieved, the appellant has come up with this intra court appeal.

2. The learned counsel for the appellant contended that the Enquiry Officer without any rhyme or reason and more particularly, without hearing the appellant, made certain observations with regard to her conduct in accepting licence fee belatedly and renewing licence to M/s Apollo Specialty. The learned counsel contended that such an observation would cause prejudice to the appellant and it would amount to "stigma". According to the learned counsel, the question is not as to whether disciplinary action would be taken against the appellant on the basis of observation, but, however, it would affect the conduct of her, as an Officer of the Tamil Nadu Pollution Control Board.

3. The learned counsel for the third respondent submitted that no action was taken against the appellant and as such, her writ petition was rightly dismissed.

4. We have also heard the learned counsel for the second respondent.

5. The Government of Tamil Nadu initiated disciplinary proceedings against the third respondent. The disciplinary authority appointed an Enquiry Officer to look into the charges framed against the third respondent. The Enquiry Officer in his report made certain observations with regard to the conduct of the appellant. According to the Enquiry Officer, similar consent orders were given by the appellant and that was taken as the basis for giving orders by the third respondent. In short, the earlier conduct of the appellant was referred to in the enquiry report to absolve the third respondent from charges. The same made the appellant to file the writ petition.

6. There is no dispute that the appellant was not heard by the Enquiry Officer before making an observation about her conduct as an Officer of the Tamil Nadu Pollution Control Board

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in renewing licence in favour of M/s Apollo Specialty. The appellant is therefore, correct in her contention that the report would make it appear as if she also violated the provisions of the Act by giving consent to a hospital. Since the conduct of the appellant as an Officer of the Pollution Control Board was referred to in the report of the Enquiry Officer, she should have been given an opportunity to submit her response. It is irrelevant as to whether disciplinary action would be taken against her. The elementary principles of natural justice would require an opportunity to the Officer whose conduct was held in question during the currency of the enquiry proceedings, to express her comments. We are, therefore, of the view that the learned Single Judge was not correct in dismissing the writ petition. We expunge the remarks made against the appellant in the report of the Enquiry Officer and the related Government Order in G.O.(D) No.3, Environment and Forests (EC.2) Department, dated 05 January, 2015.

The intra court appeal is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gms

To
1.The Principal Secretary
Government of Tamil Nadu
Environment and Forest Department
Secretariat, Fort St.George,Chennai 600 009.

2.The Chairman Tamil Nadu Pollution Control Board
Guindy, Chennai 600 032.

+1 CC to M/s. N. Subramaniayan, Advocate sr 2002.
+1 CC to The Govt. Pleader sr 2755.
+1 Cc to M/s.C.K. Chandrasekar, advocate sr 2305.
+1 CC to M/s. Abdul Saleem, Advocate sr 2036.

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GMI(CO)
SP(14/02/2018)

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