



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.05.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

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W.P. (MD) No.10008 of 2018

and

WMP (MD) Nos.9144 and 9145 of 2018

R.Balaji

:Petitioner

Vs.

1. The Revenue Divisional Officer,
Periyakulam Division,
Periyakulam,
Theni District.

2. The Tahsildar,
Aundipatti Taluk,
Aundipatti,
Theni District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the impugned order passed by the first respondent vide Moo.Mu.No.1842/2018/A5, dated 19.04.2018 and quash the same as illegal.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

For Respondents : Mr.D.Muruganandham
Additional Govt. Pleader

O R D E R

Challenge in this writ petition is an order passed under rule 36 A (1) and (3) of Tamil Nadu Minor Mineral Concession Rules, 1959.

2.The learned counsel appearing for the petitioner would submit that the impugned order dated 19.04.2018 came to be passed without giving any opportunity to the petitioner. Hence, he prayed that the same may be set aside.

3.Heard Mr.D.Muruganantham, the learned Additional Government Pleader in this regard. Mr.K.Muruganatham, Assistant, attached to the Office of the Revenue Divisional Officer, Periyakulam also appeared before this court and produced the concerned file.

4.Upon perusal of the file, in the instant case, I could not find out any show cause notice or opportunity of personal hearing afforded to the petitioner before arriving at the conclusion.



5.The Hon'ble Supreme Court, in the case of **Nagarjuna Construction Company Limited Vs. Government of Andhra Pradesh and others**, reported in (2009) 3 MLJ 493 (SC), held as follows:

WEB COPY "35.The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* (1963 (143) ER 414), the principle was thus stated

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

39.Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and



what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary 25 damages. In its wide umbrella comes everything that affects a citizen in his civil life. "

6. Therefore, considering the facts and circumstances of the case, the impugned order passed by the first respondent, dated 19.04.2018, in Moo.Mu.No.1842/2018/A5 is set aside.

7. In the result, the writ petition is allowed and the matter is remitted back to the authorities concerned for fresh consideration. The respondents shall afford an opportunity of personal hearing to the petitioner and pass a final order under Section 36 (A)(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. No costs. Consequently, connected miscellaneous petitions are closed.

8. In so far as the relief of release of lorry is concerned, the following order is passed.

- (i) The petitioner shall pay a sum of Rs.50,000/- (Rupees Fifty thousand only) for each vehicle, before the first respondent within a period of seven days from the date of receipt of a copy of the order. The petitioner should also produce the documents in proof of the ownership of the vehicles as well as the goods transport permit.
- (ii) On receipt of such payment and also on being satisfied with the ownership of the vehicles, the first respondent shall release the vehicles namely Tipper Lorries bearing Registration Nos. TN 60 L 4240 and TN 60 J 4704.
- (iii) The petitioner shall not encumber or alienate the vehicles till the final order is passed by the first respondent under Rule 36(A) of the Tamil Nadu Minor Mineral Concession Rules, 1959.
- (iv) The first respondent shall give an opportunity of hearing to the petitioner and thereafter pass an order under Rule 36 (A) of the Tamil Nadu Minor Mineral



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Concession Rules, 1959 within a period of three months from the date of receipt of a copy of the order.

- (v) If no such order is passed by the first respondent, the amount deposited by the petitioner shall be refunded to him.

Sd/-

Vacation Officer

/True Copy/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer,
Periyakulam Division,
Periyakulam,
Theni District.
2. The Tahsildar,
Aundipatti Taluk,
Aundipatti,
Theni District.

+2cc to Mr.C.Arul Vadivel @ Sekar, Advocate Sr.No.65313

dsk/vs

VB/SV/MMS/SAR2/15/05/2018/4P/5C

ORDER MADE IN
W.P. (MD) No.10008 of 2018
10.05.2018