



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.12015 of 2011

and

M.P(MD)No.2 of 2011

- 1)M.Somasundaram
- 2)D.Jeyasekaran
- 3)S.Joseph Raj
- 4)S.Pitchaiah
- 5)D.Selvadurai
- 6)S.Veerabahu
- 7)S.Siva Subramanian
- 8)M.Subbiah
- 9)J.Rathinasamy
- 10)K.Balasubramanian

... Petitioners

vs.

The Superintendent of Police,  
District Police Office,  
Thoothukudi District  
@ Thoothukudi.

... Respondent

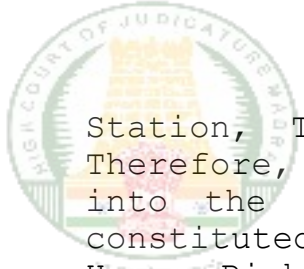
Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the respondent herein in his proceedings D.O.C2/1089/11, C.No.C2/44852/2006 dated 30.08.2011 ordering recovery of Rs.8 Lakhs and quash the same.

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| For Petitioners | : Mr.Ravi Shanmugam           |
| For Respondent  | : Mr.D.Muruganandam           |
|                 | Additional Government Pleader |

ORDER

The present writ petition has been filed for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the respondent herein in his proceedings D.O.C2/1089/11, C.No.C2/44852/2006 dated 30.08.2011, ordering recovery of Rs.8 Lakhs and quash the same.

2.The petitioner would aver among other things that earlier, W.P.No.6195 of 2000 was filed by one Krishnammal, wife of Late Vincent, contending that her husband was killed in police custody on 18.09.1999 by the policemen belonging to Thalamuthu Nagar Police



Station, Thoothukudi District, without any legal justification. Therefore, the said Krishnammal sought to entrust the investigation into the death of her husband to a special investigation team constituted under the provisions of Section 37 of the Protection of Human Rights Act, 1993 or to CBCID. This Court by order dated 19.01.2009, allowed the said writ petition directing the Government to pay a sum of Rs.8,00,000/- to the petitioner. The Court also directed the 1<sup>st</sup> respondent therein to proceed against those officers who were found guilty for violation of all constitutional safeguards given to the citizens, after due notice to those persons and also directed that if necessary, to recover the amounts from the personal salaries of those officers, after due notice to those officers and by passing a speaking order. Based on the said order, the Government issued G.O.Ms.No.682, Public (Law & Order-E) Department, dated 23.07.2009, directing recovery of compensation amount from the erring police personnel. The Government while passing the said G.O., at paragraph 6, has fixed the liability only on 10 police personnel against the report of the Revenue Divisional Officer, Tuticorin, in his report dated 09.04.2000 fixing responsibility on 23 police personnel for the incident. Therefore, the petitioner challenged the above G.O and the consequential recovery proceedings stating that that the petitioners were not given any notice as per the above G.O and also challenged the Government Order itself stating that the petitioners were unaware of the basis on which 10 persons alone were fixed with the liability when the Revenue Divisional Officer's report stated 23 persons, in W.P.Nos.8151 and 8152 of 2011 and this Court by order dated 12.04.2011 set aside the recovery order alone with the direction to the respondents to strictly comply with G.O.Ms.No.682 and pass orders within three months. Based on the above order, show cause notices were issued to the petitioners and the petitioners submitted their replies and the grievance of the petitioners is, none of their replies was considered by the respondents and without giving any reasons, the respondent had passed a non speaking order, stating that the replies were unacceptable. The impugned order passed by the respondent is a non speaking and against the spirit of the order passed in the Government order as well as the order passed by this Court in W.P.Nos.8151 and 8152 of 2011 and therefore, challenging the above order, the present writ petition has been filed.

3.The respondent filed their counter reiterating the orders passed by this Court and had stated that Director General of Police in his proceedings RC.No.174905/Crime 3(2)/2010, dated 20.06.2010, directed the Superintendent of Police, Tuticorin, to take suitable action to recover the compensation amount of Rs.8,00,000/- and accordingly, the Superintendent of Police, Tuticorin, by his order dated 02.02.2011, passed the order of recovery which was challenged in W.P.Nos.8151 and 8152 of 2011. The respondent would also aver that this Court was pleased to set aside the orders of the Superintendent of Police, Tuticorin, on the ground that he had not issued any show cause notice as ordered by this Court and therefore, the Superintendent of Police issued the show cause notice and the petitioners had submitted their replies and considering the replies,

the Superintendent of Police has passed the present order and therefore, there is no illegality in the impugned order.

4. Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

5. Before going into the merits of the case, it is relevant to extract below paragraph 6 of G.O.Ms.No.682, Public (Law & Order-E) Department, dated 23.07.2009:-

''6. As per the decision of Government in para 4 above, and the unequivocal observation of the High Court in W.P.No.6195/2000 for recovery of the compensation amount from the erring police personnel, the Director General of Police, Chennai, is requested to take action to recover the compensation amount of Rs.8 lakhs from the following erring police personnel who were involved in the death of Vincent in the ratio of their starting pay of scale of pay as on 18.9.1999 (i.e. the date of incident) after giving show cause notices to them to satisfy the principles of natural justice and by passing a speaking order for effecting the recovery from their pay or pension as the case may be.

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|--------------------|------------------|
| 1.M.Somasundaram   | Sub Inspector    |
| 2.Jayasekaran      | Sub Inspector    |
| 3.Josephraj        | Gr.I P.C. 1059   |
| 4.Pichaiah         | Gr.I P.C. 2128   |
| 5.Chellathurai     | Gr.I P.C. 2209   |
| 6.Veerabagu        | Gr.I P.C.1920    |
| 7.Sivasubramanian  | Gr.I P.C. 1997   |
| 8.Subbiah          | Gr.I P.C.1123    |
| 9.Rethinasamy      | Gr.I P.C. 1278   |
| 10.Balasubramanian | Gr.I P.C. 1154'' |

6. Though the Government at paragraph 6 of G.O.Ms.No.682, has directed the Director General of Police, Chennai, to issue show cause notices before passing recovery order, to satisfy the principles of natural justice, no show cause notice was issued to the petitioner before passing the recovery order. Therefore, the petitioners 1 and 2 challenged the said Government Order and the consequential recovery proceedings issued by the Superintendent of Police, Tuticorin, by filing W.P.Nos.8151 and 8152 of 2011 and this Court by order, dated 12.04.2011, set aside the recovery order alone with a direction to the respondents to strictly comply with G.O.Ms.No.682 and pass orders within three months. The said order is extracted hereunder:-

''The prayer in the writ petitions is to quash the order issued by the Government in G.O.Ms.No.682 Public Department dated 23.07.2009 and the consequential order of the second respondent dated 02.02.2011 in so far as the respective petitioners are concerned and consequently direct the respondents to strictly adhere to the principles of natural justice.

2. When the matter was posted for admission on



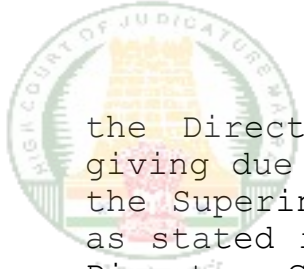
30.03.2011, learned counsel for the petitioners has submitted that the petitioners are not pressing the prayer portion, which challenges the Government order and the consequential recovery order alone can be permitted to be challenged in these writ petitions. The said submission made by the learned counsel for the petitioners was recorded on 30.03.2011 and a direction was issued to the learned Additional Government Pleader to verify whether the petitioners were issued with any show cause notice pursuant to the Government Order and any opportunity was given to the petitioners before the passing of actual recovery order dated 02.02.2011.

3. Today, the learned Additional Government Pleader, on instructions, submits that pursuant to the said Government Order, no show cause notice was issued to the petitioners before passing the actual recovery order. The order of the Government, which was passed pursuant to the order of this Court made in W.P.No.6195 of 2000 dated 19.1.2009. In para 6, the Government has directed the Director General of Police to take action to recover the compensation amount of Rs.8 lakhs from 10 persons including the petitioners herein, who were involved in the death of one Vincent in the ratio of their starting scale of pay as on 18.09.1999, after giving show cause notices to them to satisfy the principles of natural justice and also by passing a speaking order for effecting the recovery from their pay or pension as the case may be. Since the Superintendent of Police, Tuticorin has given instructions to the learned Additional Government Pleader that no show cause notice was issued to the petitioners, the impugned order passed by the second respondent ordering recovery cannot be sustained. The impugned order in so far as the recovery ordered by the second respondent alone is set aside. The respondents are directed to strictly comply with the said Government Order and pass orders within a period of three months from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly.''

7. From the reading of the above order passed in W.P.Nos.8151 and 8152 of 2011, dated 12.04.2011, it is clear that on the instructions of the Superintendent of Police, it had been stated that no show cause notice was issued to the petitioners, which means no show cause notice was issued by the Director General of Police as per G.O.Ms.No.682 and therefore, this Court set aside the order and once again directed to pass orders strictly complying with G.O.Ms.No.682 Public Department dated 23.07.2009. The order passed in W.P.Nos.8151 and 8152 of 2011, dated 12.04.2011 and G.O.Ms.No.682 clearly shows that the Director General of Police, Chennai, has to issue show cause notice to the petitioners and after getting the reply and following the principles of natural justice, has to pass fresh orders.

<https://hcservices.ecourts.gov.in/hcservices/>

8. A combined reading of G.O.Ms.No.682 and the order passed in W.P.Nos.8151 and 8152 of 2011, dated 12.04.2011, clearly states that



the Director General of Police, Chennai, has to pass orders by giving due opportunity to the petitioner. This Court never directed the Superintendent of Police, Tuticorin, to issue show cause notice as stated in the counter. This Court has specifically directed the Director General of Police, Chennai, to comply with the orders passed in G.O.Ms.No.682 and once again, the Superintendent of Police without any application of mind, has passed the present impugned order against the spirit of G.O.Ms.No.682 and the order passed in W.P.Nos.8151 and 8152 of 2011, dated 12.04.2011. Therefore, this Court has no hesitation to set aside the impugned order.

Accordingly, the impugned order dated 30.08.2011 is set aside and the Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

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To  
The Superintendent of Police,  
District Police Office,  
Thoothukudi District  
@ Thoothukudi.

+1cc to Mr.Ravi Shanmugam, Advocate in SR No.82049  
+1cc to Spl Government Pleader, SR No.82198

**W.P(MD)No.12015 of 2011**

NM/RSK/SAR 2/10.10.18/5P/4C