

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-02-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.4335 to 4337, 1960 and 1961 of 2018

And

W.M.P.Nos.5336 to 5339, 2468 to 2473 of 2018

K.Gopi ... Petitioner in WP 4335/2018
D.Senthilkumar Petitioner in WP 4336/2018
R.Dhayalan ... Petitioner in WP 4337/2018
P.Senthilkumar Petitioner in WP 1960/2018
K.Thiruppathi ... Petitioner in WP 1961/2018

Vs

- 1.Tamil Nadu State Marketing Corporation Ltd.,
Represented by its Managing Director,
CMDA Tower-II,
4th Floor, Gandhi Irwin Bridge Road,
Egmore,
Chennai-8.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem Region,
56, Brindavan Road,
Fairlands,
Salem-16.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Vellore District,
National Theatree Opposite,
Katpadi Road,
Vellore. ... Respondents in all WPs 4335 to 4337/18

- 1.Tamil Nadu State Marketing Corporation Ltd.,
Represented by its Managing Director,
CMDA Tower-II,
4th Floor, Gandhi Irwin Bridge Road,
Egmore,
Chennai-8.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai Region,
LLA Building,
Anna Salai,
Chennai-2.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai South District,
SIPCOT Industrial Estate,
Ambattur,
Chennai-58.

... Respondents in WPs 1960&1961/18

WP No.4335 of 2018 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the order dated 22.1.2018 passed by the third respondent in Na.Ka.No.A2/43/CV/2018 and the order dated 2.2.2018 passed by the second respondent in Se.Mu.No.30/2018/E in so far as transferring the petitioner from Shop No.11033 to Shop No.11254 and served on him on 14.2.2018, quash the same and award costs.

WP No.4336 of 2018 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order 2.2.2018 passed by the second respondent in Se.Mu.No.30/2018/E and served on the petitioner on 14.2.2018, quash the same in so far as transferring him from Shop No.11033 to Shop No.11260 and award costs.

WP No.4337 of 2018 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order 2.2.2018 passed by the second respondent in Se.Mu.No.30/2018/E and served on the petitioner on 14.2.2018, quash the same in so far as transferring him from Shop No.11033 to Shop No.11247 and award costs.

WP No.1960 of 2018 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Code of Prevention of Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Ltd-2014, the circular dated 2.1.2018 in RC No.O-1/ 55/2018 and Circular No.1/2018 issued by the second respondent and the consequential orders dated 9.1.2018 in Na.Ka. Nos. A.4/ 1878/2018, issued by the third respondent asking the petitioner to remit a sum of Rs.10,000 towards fine and a sum of Rs.1,800/- towards 18% GST and transferring the petitioner from

Shop No.512 to Shop No.602 respectively and award costs.

WP No.1961 of 2018 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Code of Prevention of Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Ltd-2014, the circular dated 2.1.2018 in RC No.O-1/ 55/2018 and Circular No.1/2018 issued by the second respondent and the consequential orders dated 9.1.2018 in Na.Ka. Nos. A.4/ 1878/2018, issued by the third respondent asking the petitioner to remit a sum of Rs.10,000 towards fine and a sum of Rs.1,800/- towards 18% GST and transferring the petitioner from Shop No.738 to Shop No.512 respectively and award costs.

For Petitioner in all WPs : Mr.V.Ajoy Khose

For Respondents in all WPs : Mr.P.Arumugharajan,
Standing Counsel.

C O M M O N O R D E R

The memo issued against the writ petitioners, imposing the penalty as well as the GST directed to be paid, is under challenge in these writ petitions.

2. The writ petitioners are working as Salesmen/Supervisor in Retail IMFL Vending Shops of the first respondent-Corporation. The first respondent-Corporation framed the Regulations with the heading and title "The Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited - 2014 (The Code)". However, the said Code was never notified or circulated to the employees enabling them to understand the procedures to be adopted in this regard.

3. The Circular issued by the first respondent states that actions will be initiated in case of identifying a MRP violation. Even the said circular was also not notified and circulated to the employees.

4. The grievances of the writ petitioners are that they have not received any show notice or an opportunity was provided, enabling them to defend their case.

5. Contrarily, the impugned order has been passed unilaterally without conducting any enquiry or without even issuing a show cause notice to the writ petitioners.

6. The counter-affidavit filed by the third respondent, more specifically in paragraphs 4, 5 and 6 are extracted hereunder:-

"4. I submit that selling above the Maximum Retail Price (MRP) is an offence under Standards of Weight and Measures Act, 1976, now replaced by Legal Metrology Act, 2009 and rightfully the Code had illustrated the same as a fraudulent act, and accordingly the first respondent herein being the competent authority has issued the impugned circular dated 2.1.2018, in cases of MRP violations and punishments thereof.

5. I submit that the impugned circular read with the impugned Code shall mean that if the employee is found selling liquor more than the MRP prices a department proceedings shall be initiated by issuing a show cause notice calling for an explanation and pending proceedings the delinquent instead of being suspended shall be transferred to another shop of lesser sale within the same Taluk. The maximum punishment for violation of MRP offence to be imposed upon proved or admitted has been stipulated.

6. I submit that on 16.1.2018 the Vigilance Team conducted a surprise check in Shop No.11033 and found the shop supervisor (petitioner) and two salesmen of the shop selling more than the MRP price. Upon receipt of the report of the Vigilance Team, I initiated proceedings against the petitioner and other delinquents by issuing the impugned show cause notice dated 23.1.2018 calling for an explanation within 3 days upon receipt of the said notice, failing which departmental proceedings will be initiated and only advised to pay the fine amount for the violation, pending the above proceedings instead of placing the petitioner under suspension, as instructed under the Code the Senior Regional Manager, TASMAC, Salem had transferred the petitioner to another shop of lesser sale in the same Taluk under the impugned order of transfer dated 2.2.2018. Therefore, the petitioner's contention that he was imposed with punishments without holding an enquiry is misconceived and premature."

7. Though it is stated that the other delinquents were issued with the impugned show cause notice on 23.1.2018 as far as the present writ petitioners are concerned, the memo itself was issued on 2.2.2018. Therefore, the show cause notice said to have been issued on 23.1.2018 may not have any relevance as far as the present writ petitioners are concerned.

8. This Court is of an opinion that any order affecting the rights of an employee must be issued at least by providing an opportunity to the delinquent officials to defend their case in the manner known to law. As far as the other Statutes are concerned, the respondents are bound to follow the procedures contemplated under the Act.

9. However, for imposing penalty and for imposing minor punishments, the procedure of issuing show cause notice and receiving explanations/objections are to be followed by the authorities before taking a decision and passing orders.

10. On a perusal of the impugned order itself, it is clear that no such show cause notice was issued to the writ petitioners.

11. The learned counsel appearing on behalf of the respondents is also unable to establish that an opportunity was provided to the writ petitioners before issuing the impugned order imposing penalty.

12. Under these circumstances, this Court is of an opinion that the writ petitions are fit for remand and accordingly, the impugned orders passed by the second respondent in memo dated 2.2.2018 are quashed. The respondents are directed to issue show cause notice, setting out all the details to the writ petitioners, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the show cause notice from the respondents, the writ petitioners are directed to submit their explanations/objections, along with the documents, if any, within a period of two weeks from the date of receipt of the show cause notice and thereafter, the authorities competent shall consider the materials available on record as well as the explanations/objections submitted by the writ petitioners, take a decision and pass orders on merits and in accordance with law, within a period of eight weeks thereafter. It is made clear that in the event of imposing minor penalty, such a procedure can be adopted and if the authorities are of the opinion that the allegations warranting major penalty, then the procedure of enquiry and other procedures are to be followed in accordance with the Model Standing Orders.

13. With the above directions, the writ petitions stand partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Svn

To

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower-II,
4th Floor, Gandhi Irwin Bridge Road,
Egmore,
Chennai-8.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem Region,
56, Brindavan Road,
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- 3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Vellore District,
National Theatree Opposite,
Katpadi Road,
Vellore.
- 4.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai Region,
LLA Building,
Anna Salai,
Chennai-2.

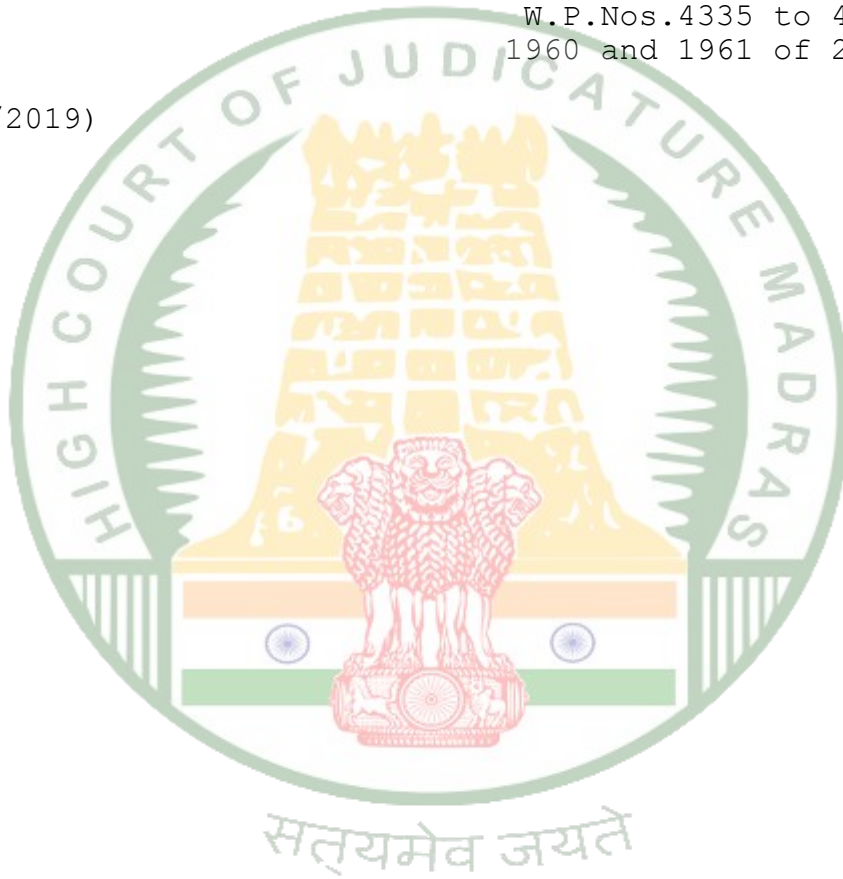
5.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai South District,
SIPCOT Industrial Estate,
Ambattur,
Chennai-58.

+1cc to Mr.P.Arumugarajan, Advocate SR.No.10878

+1cc to Mr.V.Ajoykhose, Advocate SR.No.11124

W.P.Nos.4335 to 4337 of 2018
1960 and 1961 of 2018

SR(CO)
GMY(04/03/2019)



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