IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.33192 of 2019
and
WMP Nos.33644 & 33645 of 2019

K.Govindaraj ... Petitioner

.Vs.

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

2.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Vellore District,
National Theatre Opposite,
Katpadi Road, Vellore. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the orders dated 02.08.2019, 06.11.2019 and 15.11.2019 passed by the 2nd respondent in Na.Ka.No.A2/477/CV/2019 and the Circular No.02/2019 dated 21.01.2019 issued by the 1st respondent in Na.Ka.R-2/14589/2018, insofar as providing for imposition of fine with GST and for relieving of employees from their work, for MRP violations straight away, quash the same, award costs.

For Petitioner : Mr.V.Ajay Khose
For Respondents : Mr.P.Arumugarajan
Standing Counsel

ORDER

The subject matter of challenge in this writ petition is the impugned memorandum that has been issued to the petitioner by the 2nd respondent directing the petitioner to pay the penalty along with GST and to give an explanation with regard to the charges found in the memorandum.

2.The petitioner is working as a salesman in the Retail TASMAC Shop belonging to the 2nd respondent Corporation. The impugned memorandum came to be issued against the petitioner on the ground that the petitioner as a salesman has sold the liquor by illegally adding an amount more than the maximum retail price. Therefore, the petitioner has been directed by the District Manager of TASMAC to repay back the amount as a penalty along with GST and on failure to comply with the same, the petitioner was suspended from service.

3.The learned counsel for the petitioner submitted that the memorandum issued by the 2nd respondent is illegal since they have predetermined the whole issue and therefore no useful purpose will be served by giving the explanation and participating in the enquiry. The learned counsel submitted that the 2nd respondent ought to have given an opportunity to the petitioner and heard him and based on the materials, should have come to a conclusion and only thereafter any such punishment can be imposed against the petitioner. The learned counsel submitted that the petitioner cannot be directed to pay the penalty and the GST and thereafter participate in the enquiry.

4.The learned counsel appearing on behalf of the respondents submitted that the memorandum is more in the nature of a show cause notice and there was no predetermination on the part of the respondents. In the meantime since the penalty and GST was not paid, the petitioner was suspended from service. The learned counsel submitted that an enquiry will be conducted against the petitioner and final orders will be passed.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.This Court had an occasion to deal with a similar issue in C.Sankar .Vs. The Tamil Nadu State Marketing Corporation Ltd., and Others in W.P.No.37 of 2019 dated 27.02.2019 and the relevant portions of the order is extracted hereunder:

> 7. 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 official to defend his 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.
>
> 8. 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.

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

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

11. Under these circumstances, this Court is of an opinion that the writ petition is fit for remand and accordingly, the impugned order passed by the second respondent in memo dated 22.10.2018 is quashed. The respondents are directed to issue show cause notice, setting out all the details to the writ petitioner, 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 petitioner is 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 petitioner, 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.

7.The order passed by this Court in the above writ petition, will squarely apply to the facts of the present case. The petitioner has been punished without even giving an opportunity. Without deciding the charge that has been made against the petitioner, the petitioner has been directed to pay the amount and on non payment, the petitioner has also been suspended from service. This clearly constitutes predetermination of the entire issue. The 2nd respondent cannot compel the petitioner to first pay the penalty and GST, and thereafter participate in the enquiry, and on non payment cannot suspend the petitioner. This procedure adopted by the 2nd respondent is like putting the cart before the horse. The petitioner is first punished and thereafter he is asked to attend for an enquiry. This clearly goes against the principles of natural justice.

In the result, the memorandum dated 15.11.2019, issued by the 2nd respondent is hereby quashed. The 2nd respondent is directed to issue a fresh show cause notice to the petitioner setting out all the details, within a period of four weeks from the date of receipt of copy of this order. On receipt of the show cause notice from the 2nd respondent, the petitioner is directed to submit his explanation/objection and also the documents relied upon by him, within a period of three weeks from the date of receipt of the show cause notice. Thereafter, the Competent Authority shall consider the entire materials and take a decision and pass orders on merits and in accordance with law, within a period of eight weeks thereafter. In the meantime, the petitioner shall be permitted to work as salesman in the TASMAC Shop. By virtue of the conditional order passed by this Court while granting stay, it is brought to the notice of this Court, that the petitioner has already deposited the amount as directed by this Court. The amount paid by the petitioner shall be kept in deposit by the 2nd respondent and it can be refunded or adjusted depending upon the final outcome of the enquiry.

The writ petition is accordingly allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamilnadu State Marketing Corporation Ltd.,
CMDA Tower-II, 4th Floor, Gandhi-Irwin Bridge Road,
Egmore, Chennai-8.

2.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Vellore District,
National Theatre Opposite,
Katpadi Road, Vellore.

AKM/11.12.19/5P-3C /

W.P.No.33192 of 2019