



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **18.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WEB COPY

W.P. (MD)No.17526 of 2019

and

W.M.P. (MD)No.14015 of 2019

C.Muthukumar

: Petitioner

Vs.

The Sub Collector,
Nagercoil,
Kanyakumari District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the respondent in his proceedings Na.Ka.A4/4254/2019, dated 26.07.2019 and quash the same as illegal.

For Petitioner

: Mr.Veera Kathiravan,
Senior Counsel,
For M/s.Veera Associates

For Respondent

: Mrs.J.Padmavathi Devi,
Special Government Pleader

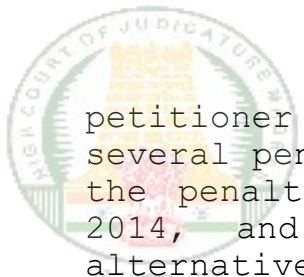
ORDER

The penalty imposed by the respondent dated 26.07.2019 is under challenge before this Court.

2. According to the petitioner, he along with other three persons owns land in Aralvaimozhi North Village. The respondent issued penalty order for having quarried sand from the patta land. Before imposing the penalty, no show cause notice was issued and inspection was done behind his back in violation of principles of natural justice. In support of his contention, he would rely on the following judgments of this Court:

- (i) **Sonai, R. v. The District Collector, Madurai District** reported in **2006(5) CTC 857;**
- (ii) **V.S.O.Balakrishnan v. District Collector** reported in **2009(2) MLJ 577;** and
- (iii) **S.Selvaarajan v. The Revenue Divisional Officer** reported in **2010 (6) CTC 73.**

3. Per contra, the learned Special Government Pleader appearing for the respondent would vehemently contend that the



petitioner is a habitual offender and that he has visited with several penalties in the past also. He approached this Court against the penalty order, vide Writ Petition (MD)Nos.11456 and 11463 of 2014, and they were disposed of, directing to exhaust the alternative remedy of appeal available before the District Collector. On dismissal of the appeal by the District Collector, the further proceedings filed by him is pending before the Commissioner. The learned Special Government Pleader appearing for the respondent would also rely on the judgment of the Hon'ble First Division Bench of this Court in **W.P.Nos.1015 of 2011, etc., batch, dated 26.03.2012**, in the case of **P.Mariadoss vs. The District Collector, Kancheepuram District, Kancheepuram and others**. In that case, it is held that the inspection conducted by the authority does not require any prior notice or advance information. But the issue involved in the present Writ Petition is the imposition of penalty without notice to the petitioner.

4. As held by the judgments relied on by the petitioner in the afore-mentioned cases, it is categorically held that before imposing penalty, the delinquent shall be given an opportunity to explain his case and defend it effectively, on supply and perusal of the documents relied on by the respondent.

5. In **Sonai, R. v. The District Collector, Madurai District** reported in **2006(5) CTC 857**, and in **S.Selvaarajan v. The Revenue Divisional Officer** reported in **2010 (6) CTC 73**, this Court has held as follows:

"9. Imposing of huge fine attaches civil consequences and therefore fairness in procedures and principles of natural justice are to be followed by the respondent. The alleged inspection was made by the Assistant Director (Mines) without issuing notice to the petitioner. The petitioner is not served with the reports dated 5.4.2001 and 9.4.2001 given by the Tahsildar and Assistant Director, Geology and Mining, Tiruvallur, along with the show cause notice or afterwards, i.e., before passing the impugned order or even thereafter. Hence the petitioner is not aware of the alleged reports against him. The respondent solely relying on the report of the Assistant Director (Mines), passed the impugned order.

(a) Similar issue was considered by this Court in an unreported judgment in **W.P.No.32829 of 2002** dated **10.9.2003** i.e., whether a report obtained behind the back of the petitioner therein can be relied on to pass an adverse order against a quarry owner. Learned Judge of this Court (**P.Sathasivam, J.**, as he then was) held as follows,

"..... The main grievance as mentioned above is that though the Assistant Director (Geology and Mining)



had inspected the area of lease land on 24.7.2002 along with Assistant Geologist and submitted a report to the effect that the petitioner has not rectified the defects as mentioned in the show cause notice dated 22.7.2002, the copy of the said report has not been furnished to the petitioner and it is also his grievance that the inspection was made behind the back of him (petitioner). It is seen from the order impugned that though the District Collector has referred to the fact that the Assistant Director (Geology and Mining) had inspected the lease area on 24.7.2002 and reported that the lessee has not rectified the defects, admittedly the said inspection was made subsequent to the personal hearing conducted on 22.7.2002. It is also clear that the visit of the Assistant Director on 24.7.2002 was not intimated to the petitioner. In fairness, the officer ought to have informed the petitioner that he is going to visit the lease land and verify the position therein. Inasmuch as the respondent heard the petitioner in person in the personal enquiry held on 22.7.2002, though the District collector is empowered to get further report with reference to the statement made by the petitioner, it is but proper for the Assistant Director to intimate the same to the petitioner before his inspection. In such a circumstance, the only contention that the District collector arrived a conclusion based on the report of the Assistant Director (Geology and Mining) on 24.7.2002, who visited on 24.7.2002 without notice and behind the back of the petitioner is acceptable. In this regard, learned counsel for the petitioner very much relied on a decision of E.Padmanabhan, J., in Writ Petition Nos.8207 and 10062 of 1997 dated 27.7.1999 (K.Subba Reddy and others v. State of Tamil Nadu, represented by Secretary to Government, Industries Department, Madras-9). Before the learned Judge, similar objection was raised, namely, that materials have been collected behind the back of the petitioner and in particular taking measurements behind the back of the petitioners vitiates the entire proceedings as such those materials cannot be relied upon by the licensing authority. The following conclusion of the learned Judge is relevant : (para 49)

"49. Nextly it was contended that materials have been collected behind the back of the petitioners such as fixing of disputed boundaries, taking measurements without notice and evaluating the alleged quantity of granite illicitly quarried and collection of materials and in particular taking measurements behind the back of the petitioners also



vitiates the entire proceedings and such materials cannot be relied upon by the respondents 2 and 3 to fasten a huge liability on the petitioners and this illegality cannot be cured. In this regard, the learned senior counsel relied upon a decision of this Court as well as a decision of mine in Logasundari vs. District Collector, Madurai, reported in 1998 MLJ (I) 43. In the said judgment it has been emphasised that materials that have been collected behind the back of the petitioner cannot be used against the petitioner as has been emphasised by this Court from time to time."

In R.K. Ramaswamy v. State of T.N., reported in AIR 1995 Madras 106, I had also taken an identical view similar to that as expressed above. Though the petitioner was given show cause notices, he also submitted explanation, he was provided with personal enquiry, etc., the fact remains that the impugned order was passed by the District Collector mainly based on the inspection of the Assistant Director (Geology and Mining) on 24.7.2002. Inasmuch as the petitioner was not given notice for the inspection made on 24.7.2002 by the Assistant Director (Geology and Mining), that too after the completion of the personal enquiry on 22.7.2002 and also of the fact that a copy of the said report was not furnished to the petitioner, in the light of the decisions referred to above, I hold that the materials that have been collected behind the back of the petitioner cannot be used against the petitioner which vitiates the ultimate decision taken by the first respondent. On this ground, the impugned order of the District Collector dated 01.08.2002 is quashed, and the matter is remitted to the respondent for a fresh disposal. " (Emphasis Supplied)

(b) Whether the non-supply of documents relied on during the enquiry is vitiated or not is considered by the Honourable Supreme Court in the decision reported in (2001) 9 SCC 523 (Pepsu Road Transport Corporation v. Lachhman Dass Gupta and another) wherein, in para 3 the Honourable Supreme Court held as follows:

"3. We have examined the judgment of the lower appellate court as well as the impugned judgment of the High Court. In view of the conclusion of the Lower Appellate Court, that even the documents relied upon by the department in establishing the charge have not been given to the delinquent, the conclusion is irresistible



that the delinquent had been denied a reasonable opportunity to defend himself in the proceeding and, therefore, the Lower Appellate Court as well as the High Court are fully justified in setting aside the order of termination passed by the Competent Authority. We, therefore, do not find any ground to interfere with the impugned judgment of the High Court passed in the Second Appeal."

(Emphasis Supplied)

(c) In the decision reported in (2010) 2 SCC 772 (State of U.P. v. Saroj Kumar Sinha) the Supreme Court explained the observance of principles of natural justice in paragraphs 40 to 43, which reads thus, "40. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury.

41. In our opinion the actions of the inquiry officers in preparing the reports ex parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

42. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal.

43. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself in the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court."

10. The contention of the respondent that this writ petition is not maintainable as the petitioner has got a remedy of filing appeal is unsustainable as it is established by the petitioner that the respondent has violated the principles of natural justice at all stages before the impugned order was passed. It is well accepted principle of law that exceptionally Writ Petition can be entertained though alternate remedy is available. In the decision reported in (2008) 5 SCC 632 : (2009) 2 MLJ 1095 (Rajasthan State Electricity Board v. Union of India) in



paragraph 3 the Supreme Court held that 'availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution.'

6. In **V.S.O.Balakrishnan v. District Collector** reported in 2009(2) MLJ 577, this Court has held that when there has been no proper enquiry conducted or no personal hearing was conducted or no materials were produced to show that the petitioners were involved in illicit quarrying, there is violation of the principles of natural justice and the orders imposing penal liability on the petitioners are not justified. In such a case, the availability of alternative remedy is not a bar for maintaining the writ petition.

7. In the instant case, the reference cited mentions,

(i) a letter of Tahsildar dated 18.07.2019;

(ii) an inspection report of the Revenue Inspector dated 22.07.2019; and

(iii) connected documents.

But, there is no specific mention about what are all the connected documents, which are relied on by the respondent. Non-mentioning of the documents by itself is violative of principles of natural justice. Further, imposition of penalty without notice and without hearing the petitioner is a clear violation of principles of natural justice.

8. Therefore, the impugned order dated 26.07.2019 is set aside and the matter is remitted back to the respondent with a direction to initiate proceedings afresh and proceed with the same in conformity with the principles of natural justice and pass orders in accordance with law.

9. The Writ Petition stands allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Sub Collector,
Nagercoil,
Kanyakumari District.

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



+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-87664[F] dated
19/09/2019)
+1 CC to SPL GP (SR-88353[F] dated 20/09/2019)

WEB COPY

Order made in
W.P. (MD) No.17526 of 2019
Dated:- 18.09.2019

SML

MK (30.09.2019) 7P 4C