



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE **M. GOVINDARAJ**

W.P. (MD) No. 22156 of 2019

and

W.M.P. (MD) Nos. 18955 and 18957 of 2019

K. Nagarajan : Petitioner
Vs.

1. The General Manager,
Sivagangai District Co-operative Milk
Producer's Union Ltd.,
Kalanivasal, Karaikudi-2.

2. The Deputy Registrar (Dairying),
Ground Floor,
Manamadurai Milk Producer's
Co-operative Society Building,
Keezhkarai,
Manamadurai-623 606.

: Respondents

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 of the first respondent relating to Na.Ka.No.851/Paa.Vu/2018, dated 04.10.2019 and quash the impugned order of the first respondent dated 04.10.2019.

For Petitioner : Mr. M. Ganesan
For Respondents : Mr. E. Mareeskumar

ORDER

The order under challenge is the termination of contract imposed on the petitioner vide proceedings in Na.Ka.No.851/Paa.Vu/2018 of the first respondent, dated 04.10.2019.

2. On perusing the impugned order, this Court directed the respondents to produce the files.

3. The impugned order is based on the recommendation given by the Enquiry Officer for violation of Condition Nos. 19, 31 and 49.



4. Condition Nos.19, 31 and 49 are extracted as under:

"Condition No.19:

If the contractor (or) his employee is found guilty of stealing milk or malpractice during transportation, entire shortage of that route from the date of award of the contract will be realized from his transport hire charges bill/Security Deposit.

Condition No.31:

In the event of contractor not being able to ply the vehicle upto the contract period the union reserves right to engage a vehicle from other source or ply the union vehicle and the expenditure thereof will be recovered from the transport hire charges bills due to the contractor or from the security deposit. If any amount remains in the security deposit that will also be forfeited. The contract will be terminated without assigning any reason for such lapses, termination at any time if the contractor has not fulfilled the terms and conditions of the union.

Condition No.49:

The contractor alone is responsible to pay salary, batta and other allowances for the drivers, cleaners, load men engaged by them and they are not the employee of this union. The contractor alone is liable for any claim arising out of any labour loss in the cases of persons engaged by him.

5. The punishment for Condition No.19 is that for the shortage of milk, money will be recovered from the Contractor in his transport hire charges bill/security deposit. The other two conditions do not apply to the present case. Condition No.19 does not contemplate capital punishment. It only specifies recovery of the loss caused to the respondent Corporation.

6. Further, a perusal of the enquiry report dated 25.09.2019, shows that it is a statement obtained from the complainants and the concerned officers. It does not disclose the notice issued to the petitioner or the personal hearing conducted in this matter. The enquiry report does not also provide the details of the witnesses and the documents relied on. The minimum requirement of principles of natural justice is not adhered to in this report. It can be treated only as a report submitted by a Field Officer and it cannot be treated as an enquiry report. Therefore, the impugned order does not stand the scrutiny of law for two reasons;

(i) punishment in excess of the one provided by bye-laws of the Society;

(ii) capital punishment came to be imposed without complying



with the principles of natural justice.

7. The learned counsel for the respondents would rely on the judgment of this Court in the case of **Deepika Transports vs. State of Tamil Nadu [MANU/TN/2445/2014, W.P.Nos.24501 and 28029 of 2014, dated 17.11.2014]**. A perusal of the judgment goes to show that the guilt against the contractor was proved and he was penalized in a criminal prosecution. Only after proving of guilt, principles of natural justice was dispensed with. In the instant case, there is no proof as to the guilt. Without enquiry, it will not come to light. Therefore, the judgment relied on by the respondents will not apply to the case on hand.

8. In view of the above, the impugned order in Na.Ka.No.851/Paa.Vu/2018, dated 04.10.2019, of the first respondent is set aside and the matter is remitted back to the respondents for fresh consideration. The respondents shall conduct an enquiry in conformity with principles of natural justice and provide ample opportunity to the petitioner to defend his case. Till such time, *status quo ante* will prevail.

9. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

SML

TO

1.The General Manager,
Sivagangai District Co-operative Milk
Producer's Union Ltd., Kalanivasal, Karaikudi-2.

2.The Deputy Registrar (Dairying),
Ground Floor, Manamadurai Milk Producer's
Co-operative Society Building,
Keezhkarai, Manamadurai-623 606.

+1CC TO MR.M.GANESAN, Advocate Sr. No.95408

+1CC TO MR.E.MAREESKUMAR, Advocate Sr. No. 95424

Order made in

W.P. (MD) No. 22156 of 2019

Dated: 31.10.2019

TR(08.11.2019) 3P 5C

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