IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.957 of 2020
and
WMP.No.1166 of 2020

K.C.Purushothaman ... Petitioner

- Vs -

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

2. The District Manager/Deputy Collector
   (Thiruvallur East District)
   Tamil Nadu State Marketing Corporation Limited,
   No.1, Chennai-Bangalore National Highway,
   SIDCO Industrial Estate,
   Thirumazhisai, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, after calling for the records pertaining to the order dated 26.12.2019 passed by the second respondent in Na.K.No.A1/2327/2019, quash the same, award costs.

For Petitioner : Mr.V.Ajay Khose

For Respondents : Mr.Sathish Kumar

O R D E R

On the consent given by either side, the present writ petition has been taken up for final hearing.

2. This writ petition has been filed challenging the impugned proceedings of the second respondent dated 26.12.2019.

3. The case of the petitioner is that he is working as a Salesman in the TASMAC shop belonging to the respondents. The impugned proceedings came to be issued to the petitioner directing the petitioner to pay the fine and 18% GST within a period of 7 days, failing which, the petitioner will be relieved from his services. This order has become a subject matter of challenge in the present writ petition.

4. Mr.Ajay Khose, learned counsel appearing on behalf of the petitioner submitted that the second respondent has straight away passed an order calling upon the petitioner to pay the penalty along with GST, even without giving an opportunity to the petitioner and therefore, the impugned proceedings of the second respondent is liable to be quashed. The learned counsel in order to substantiate his submission relied upon the earlier order passed by this Court in WP.34379 of 2019 dated 10.12.2019.

5. The relevant portion of the order that was cited by the learned counse for the petitioner is extracted hereunder:-

> "5.The learned counsel for the petitioner submitted that the entire exercise that was carried out by the 3rd respondent was pre-determined and the 3rd respondent had directed the petitioner to pay the penalty and GST, even before the conclusion of the disciplinary proceedings. The learned counsel submitted that the entire dispute pertains to the fact as to whether, the petitioner had charged more than a maximum retail price. Unless the charge is proved, the petitioner cannot be directed to pay the penalty and GST. That apart, the impugned order does not reflect any application of mind.
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> 6.Per contra, Mr.P.Arumuga Rajan, learned Standing Counsel appearing on behalf of the respondents submitted that the petitioner was indulging in selling the liquor bottle by adding an extra cost to the maximum retail price, and thereby the petitioner was misappropriating and enriching himself at the cost of TASMAC. The learned Standing counsel submitted that the respondents was not satisfied with the explanation given by the petitioner, and therefore the petitioner was suspended from services. The learned Standing Counsel further submitted that the petitioner is liable to repay back the amount with GST and there are absolutely no grounds to interfere with the impugned order.
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> 8.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.

9.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 3rd respondent cannot compel the petitioner to first pay the penalty and GST, and thereafter participate in the enquiry, and on nonpayment cannot suspend the petitioner. This procedure adopted by the 3rd 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. 10.In the result, the memorandum dated 04.10.2019, issued by the 3rd respondent is hereby quashed. The 3rd 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 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."

6. Per contra, Mr.Sathish Kumar, learned counsel appearing for the respondents submitted that the impugned proceedings of the second respondent dated 26.12.2019, is only in the nature of a show cause notice and the petitioner can be directed to give the explanation for the show cause notice and the same will be considered and thereafter, final orders will be passed.

7. This Court has carefully considered the submissions on either side and perused the materials available on record.

8. The impugned proceedings of the second respondent eventhough carries the nomen clature of a show cause notice, in effect, it is directing the petitioner to pay the penalty along with GST within a period of 7 days, failing which, the petitioner will be removed from service. Before passing such an

order, the petitioner was not put on notice and his explanation was not sought for. Therefore, the proceedings of the second respondent is in the nature of an order passed behind the back of the petitioner, without affording an opportunity to the petitioner and the same requires interference of this Court on that ground alone.

9. The order cited by the learned counsel for the petitioner, which has been extracted supra squarely covers the facts of the present case. The second respondent has clearly predetermined the entire issue and has directed the petitioner to pay the penalty along with GST, without conducting any enquiry.

10. In the result, the impugned proceedings of the second respondent dated 26.12.2019 is hereby quashed. The second respondent is directed to issue a fresh show cause notice to the petitioner setting out all the details and the petitioner is directed to submit his explanation/objection and on receipt of the same, the second respondent is directed to proceed strictly in accordance with law by affording an opportunity to the petitioner.

11. This writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2. The District Manager/Deputy Collector
(Thiruvallur East District)
Tamil Nadu State Marketing Corporation Limited,
No.1, Chennai-Bangalore National Highway,
SIDCO Industrial Estate,
Thirumazhisai, Chennai.

+1cc to M/s.V.Ajay Khose, Advocate Sr.3567
+1cc to M/s.K.Sathish Kumar, Advocate Sr.3413

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