

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1432 of 2020

M.S. Marketing Services
1/34-A, Jagir Ammapalayam
Near Government Primary School
Salem - 636302
Represented by its Proprietor
M.Satya

... Petitioner

Vs.

1. The District Revenue Officer /
General Manager
The Salem District Co-operative Milk
Producers Union Limited
Sithanoor, Salem - 636 302.

2. Mr. Vijaya Babu

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the First Respondent dated 13.01.2020 in Na.Ka. No. 10316/V/M.4/10 and quash the same consequently direct the Respondents herein to permit the Petitioner to run the parlour as per the award dated 01.04.2019 in the proceedings of the First Respondent herein Ref. No. 10316/Mkg.4/2010.

For Petitioner : Mr. R. Nalliyappan
For Respondents : Mr. L.P. Shanmugasundaram
Standing Counsel

O R D E R

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Heard Mr. R. Nalliyappan, Learned Counsel for the Petitioner and Mr. L.P.Shanmugasundaram, Learned Standing Counsel, who takes notice for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. In view of the narrow compass of the dispute, the Writ Petition is taken up for final disposal by the consent of

parties at the admission stage itself.

3. The Respondent by order in Ref. No. 10316/Mkg.4/2010 dated 01.04.2019 had awarded the right to operate the milk parlour on 'Man and Machine Management' basis to the Petitioner at the Collectorate in Salem for the period from 01.04.2019 to 31.03.2022 on the terms and conditions mentioned therein. However, before its expiry, the First Respondent by proceedings No. 1031/V/M/4/10, dated 13.01.2020 had abruptly terminated that right granted to the Petitioner with effect from 24.01.2020. Aggrieved thereby, the Petitioner has filed this Writ Petition.

4. Learned Counsel for the Petitioner submits that though it has been stated in the impugned order that the rights have been terminated for administrative reasons, it is an arbitrary exercise of power in violation of principles of natural justice, which cannot be sustained.

5. Learned Standing Counsel appearing for the Respondents justifies the impugned order by contending that the termination was necessitated on account of the complaint made against the Petitioner by certain third parties forwarded by the District Collector, Salem in his letter in Na.Ka. No. 01/2020/C2 dated 08.01.2020 and has produced a copy of the same with its enclosures. Referring to clause 8 of the aforesaid order in Ref. No. 10316/Mkg.4/2010 dated 01.04.2019, it is contended that the Respondent had the right to cancel that order without assigning any reason at any point of time, and the Petitioner cannot take any exception to the same.

6. Having regard to the rival submissions made, it is apparent on perusal of the impugned order that there is no reference to any complaint made against the Petitioner, which is now relied by the Respondents, and what has been disclosed therein as the basis for that decision is administrative reasons without furnishing any details in support thereof. The Constitution Bench of the Hon'ble Supreme Court of India in Mohindhr Singh Gill -vs- Chief Election Commissioner, New Delhi [(1978) 1 SCC 405] has laid down the dictum that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It is equally trite that any administrative order which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken, as held by the Hon'ble Supreme Court of India in State of Orissa -vs- Binapani Dei [AIR 1967 SC 1269]. It is not the case of the First Respondent that before

the impugned order was passed, any explanation had been called from the Petitioner on the complaint received against her, which is now buttressed to be the administrative reason asserted in the impugned order. Such incurable flaw in decision-making by the First Respondent vitiates the impugned order which has to be set aside on that sole ground leaving it open to the First Respondent to appropriately deal with the matter following due process.

7. It is also not possible to countenance the submission made on behalf of the Respondents that under clause 8 of the order in Ref. No. 10316/Mkg.4/2010 dated 01.04.2019, the First Respondent has the unrestricted prerogative to cancel that order without assigning any reason at any point of time as expressly provided therein and as such, the exercise of that power by the First Respondent cannot at all be questioned by the Petitioner in this case. Suffice here to quote from the ruling of the Hon'ble Supreme Court of India in *Shrilekha Vidyarthi -vs- State of Uttar Pradesh* [(1991) 1 SCC 212] where the law has been expounded as follows:-

"The expression 'at any time' merely means that the termination may be made even during the subsistence of the term of appointment and 'without assigning any cause' means without communicating any cause to the appointee whose appointment is terminated. However, 'without assigning any cause' is not to be equated with 'without existence of any cause'. It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee. It was held in *Liberty Oil Mills -vs- Union of India* [(1984) 3 SCC 465] that the expression 'without assigning any reason' implies that the decision has to be communicated, but reasons for the decision have not to be stated; but the reasons must exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy."

In the light of this unassailable legal position, it would follow that the contract awarded to the Petitioner for a specified period in this case could not be terminated by the First Respondent in the interregnum without the existence of any reason for the same.

8. That apart, inasmuch as the termination of the right to operate the milk parlour granted by the First Respondent to the Petitioner has stigmatic ramifications touching upon her fundamental right to carry on such occupation for her livelihood, such power has to be reasonably construed on the anvil of Articles 14, 19(1)(g) and 21 of the Constitution eliminating arbitrariness and ensuring fairness and transparency in the procedure, or else its exercise in contravention thereof may amount to an abuse or excess of power affecting the bonafides of the decision itself and exposing it to challenge on those grounds. As a corollary thereof, while taking cognizance of the aforesaid complaint against the Petitioner, the First Respondent is bound to further conduct enquiry to ascertain the truth of its contents for deciding whether the contract with the Petitioner requires to be terminated, and if the result of that investigation is not favourable to the Petitioner, the materials procured in that regard would have to be informed to her along with a copy of that complaint in satisfaction of the principles of natural justice so as to enable her to place her explanation for the same, and if necessary, permit cross-examination of the witnesses where their credibility is doubted. After completing the aforesaid exercise, the First Respondent shall have to take a reasoned decision on merits and in accordance with law and communicate its outcome to her.

9. In view of the foregoing discussion, the impugned order no. Na.Ka. No. 10316/V/M.4/10 dated 13.01.2020 issued by the First Respondent is quashed. This would not, however, preclude the right of the First Respondent to terminate the contract with the Petitioner, if such necessity arises before the lapse of its tenure, in the manner permissible by law.

10. In fine, the Writ Petition is ordered on the aforesaid terms. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

maya/das/sj

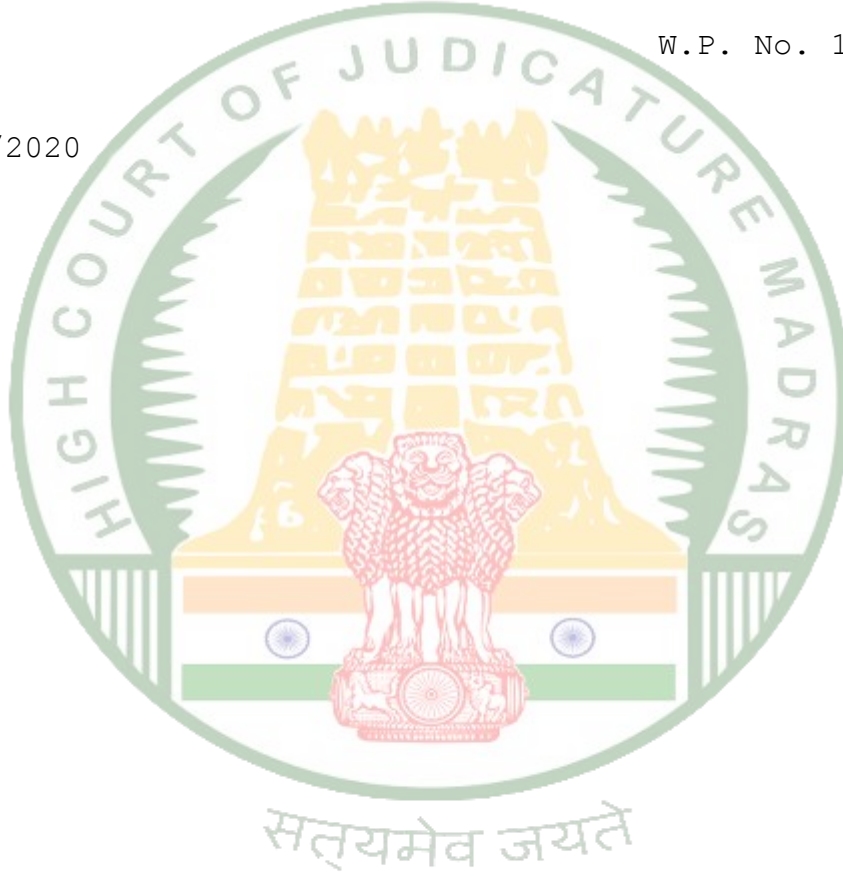
To

The District Revenue Officer /General Manager
The Salem District Co-operative Milk
Producers Union Limited
Sithanoor, Salem - 636 302.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.6016
+1cc to Special Government Pleader, S.R.No.6662
+1cc to the Government Pleader, S.R.No.7153

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NRK (CO)
KKV/10/06/2020



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