IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.33919, 33924 & 33926 of 2019, 4461,
8866, 8867, 8870, 8874, 9164, 11624,
18615 and 5014 of 2020
and
WMP Nos.34484, 34492, 34497 of 2019, 5282, 5284,
10772, 10773, 10777, 11178, 14252,
23086, 23088, 5925 of 2020

W.P.No.33919 of 2019:

M.VADIVEL ... PETITIONER

VS.

THE DISTRICT MANAGER/DEPUTY COLLECTOR,
TAMIL NADU STATE MARKETING CORPORATION LIMITED (WEST),
NO.29-30, KAKKALUR INDUSTRIAL ESTATE,
THIRUVALLUR-631 206. .... RESPONDENT

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the respondent in Na.Ka.No.A2/387/2018-1 dated 28.10.2019 and Che.Mu.Ka.No.A2/387/2018-1 dated 20.11.2019 and quash the same.

WP.No.33924 of 2019:

K.VENKATAMUNI PETITIONER

VS

THE DISTRICT MANAGER, RESPONDENT
TAMIL NADU STATE MARKETING,
CORPORATION LIMITED, (WEST)
THIRUVALLUR - 631 206

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, Calling for the records of the respondent in Na.Ka.No.A2/ 387/2018-2 dated 28.10.2019 and Che.Mu.Ka.No.A2/ 387/ 2018-2 dated 20.11.2019 and quash the same.

WP.NO.33926 OF 2019

K.VASANTH PETITIONER

VS

THE DISTRICT MANAGER, [RESPONDENT]
/ DEPUTY COLLECTOR,
TAMIL NADU STATE MARKETING CORPORATION LIMITED (WEST)
NO.29-30 KAKKALUR INDUSTRIAL ESTATE,
THIRUVALLUR - 631 206

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, calling for the records of the respondent in Na.Ka.No.A2/ 387/2018-3 dated 28.10.2019 and Che.Mu.Ka.No.A2/ 387/ 2018-3 dated 20.11.2019 and quash the same.

WP.No.4461 OF 2020:

G.VIJAYAKUMAR PETITIONER

VS

THE MANAGING DIRECTOR, RESPONDENTS
THE TAMILNADU STATE MARKETING CORPORATION
LIMITED, HEAD QUARTERS, 4TH FLOOR,
CMDA TOWER -2,
EGMORE, CHENNAI -600 008

THE SENIOR ZONAL MANAGER
THE TAMILNADU STATE MARKETING CORPORATION
LIMITED CHENNAI TASMAC LIMITED MOUNT ROAD
CHENNAI - 600 002

THE DISTRICT MANAGER
THE TAMILNADU STATE MARKETING CORPORATION LIMITED,
NO.B-4 AMBATTUR ESTATE, AMBATTUR
CHENNAI - 600 058

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records of the 3rd respondent in proceedings Na.Ka.No.A1/423/2019 dated 03.02.2020 and quash the same.

WP.NO.8866 OF 2020:

S.MATHIYAZHAGAN PETITIONER

VS

1 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD
4TH FLOOR CMDA TOWER- II EGMORE CHENNAI-8.

2 THE SENIOR REGIONAL MANAGER
TRICHY.

3 THE DISTRICT MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD
PERAMBALUR. RESPONDENTS

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records relating to the proceeding of the 3rd respondent bearing No NA.KA.NO 4038/CV/2020/A1 dated 16.6.2020 and quash the same.

WP.8867 OF 2020

R.PUGALENTHI PETITIONER

VS

1 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD,
4TH FLOOR, CMDA TOWER- II EGMORE, CHENNAI-8.

2 THE SENIOR REGIONAL MANAGER,
TRICHY.

3 THE DISTRICT MANAGER,
TAMIL NADU STATE MARKETING CORPORATION LTD,
PERAMBALUR. RESPONDENTS

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records relating to the proceeding of the 3rd respondent bearing No NA.KA.NO 4038/CV/2020/A1 dated 16.6.2020 and quash the same.

WP.8870 OF 2020:

K.RAMALINGAM PETITIONER

VS

1 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD,
4TH FLOOR CMDA TOWER- II EGMORE, CHENNAI-8.

2 THE SENIOR REGIONAL MANAGER,
TRICHY.

3 THE DISTRICT MANAGER,
TAMIL NADU STATE MARKETING CORPORATION LTD,
PERAMBALUR. RESPONDENTS

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records relating to the proceeding of the 3rd respondent bearing No NA.KA.NO 4031/CV/2020/A1 dated 16.6.2020 and quash the same.

WP.8874 OF 2020:

R.KOLAMJIAPPAN PETITIONER

VS

1 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD
4TH FLOOR CMDA TOWER- II,
EGMORE, CHENNAI-8.

2 THE SENIOR REGIONAL MANAGER
TRICHY.

3 THE DISTRICT MANAGER,
TAMIL NADU STATE MARKETING CORPORATION LTD,
PERAMBALUR. RESPONDENTS

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records relating to the proceeding of the 3rd respondent bearing No NA.KA.NO 4029/CV/2020/A1 dated 19.6.2020 and quash the same.

WP.9164 OF 2020

G.CHANDRASEKAR PETITIONER

VS

THE DISTRICT MANAGER RESPONDENT
TAMIL NADU STATE MARKETING CORPORATION LTD.,
COONOOR, NILGIRIS.

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, To Call for the records relating to the proceedings of the respondent bearing No. Na.Ka.A1 No.1988/18 dated 24/06/2020 and quash the same.

WP.11624 OF 2020:

B.NATARAJ ... PETITIONER

VS

THE DISTRICT MANAGER ... RESPONDENTS
TAMIL NADU STATE MARKETING CORPORATION LTD
COONOOR, THE NILGIRIS DISTRICT.

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari,to call for the records pertaining to the impugned order passed by the Respondent in his proceedings in Na.Ka.No.5409/ 2020 dated 30.07.2020 and quash the same as illegal arbitrary and violation of the principles of natural.

WP.18615 OF 2020

R.CHANDRASEKAR ... PETITIONER

VS

THE DISTRICT MANAGER ... RESPONDENT
TAMILNADU STATE MARKETING CORPORATION
LTD(TASMAC), NILGIRIS DISTRICT

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records relating to the proceedings of the Respondent bearing Na.Ka.A1.No.5441/2020 dated 28.10.2020 and quash the same.

WP.No.5014/2020:

1 C.ARULKUMAR ... PETITIONER

VS

1 THE MANAGING DIRECTOR, ... RESPONDENTS
THE TAMILNADU STATE MARKETING CORPORATION
LIMITED, 4TH FLOOR, CMDA TOWER -2, EGMORE,
CHENNAI - 600 008

2 THE SENIOR REGIONAL MANAGER,
NO. 56 BRINDAVAN ROAD FAIRLANDS SALEM
TAMIL NADU - 636 016.

3 THE DISTRICT MANAGER,
87/5 SANDIYUR VILLAGE A.ATTAIYAMPATTI,
VILLAGE SALEM, TAMIL NADU -636 203

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, to call for the records of the 3rd respondent in proceedings Na.ka.No. 964/2019/A4/C.V. dated 12.02.2020 and quash the same.

For Petitioner in WP.33919/19, 33924/19, 33926/19 : Mr.N.G.R.Prasad, for Mr.V.Stalin

For Petitioner WP.4461, 8866, 8870, 8874, 9164, 18615 & 5014/2020 : M/s.K.Bharathi

For Petitioner in WP. 11624/2020 : Mr.M.Vijayaragavan

For Respondents in all Respondents : Mr.K.Sathiskumar, Standing counsel for TASMAC

COMMON ORDER

These matters are taken up through web hearing.

2. These Writ Petitions have been filed, challenging the respective impugned proceedings issued by the respondent against the petitioners, in and by which, the petitioners have been directed to pay penalty amount along with GST for over pricing the liquor bottles more than the MRP rates fixed by the authority.

3. The petitioners are working as Salesmen in the Retail TASMAC shops belonging to the respondent Corporation. The impugned proceedings came to be issued against the petitioners on the ground that the petitioners, being Salesmen, sold the liquor bottles by adding Rs.10/- more than the Maximum Retail Price (MRP).

4. This Court, in similar Writ Petitions, had dealt with the issue and allowed several Writ Petitions by directing the

respondent Corporation to issue proper show cause notice and after receiving explanation from the petitioners therein, take a decision and pass appropriate orders on merits in accordance with law. In fact, the learned Standing counsel for the respondent Corporation brought to the notice of this Court a detailed order passed by this Court in W.P.No.33089 of 2019 dated 09.12.2019 and the relevant portion of the order as found in paragraphs 3 to 8 are extracted as under:

> "3.The learned counsel for the petitioner submitted that the memorandum issued by the 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 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 respondent submitted that the memorandum is more in the nature of a show cause notice and there was no predetermination on the part of the respondent. 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.
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> "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 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 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 05.09.2019, issued by the respondent is hereby quashed. The 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. 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 respondent and it can be refunded or adjusted depending upon the final outcome of the enquiry."

5. The reasons and conclusions reached by the learned single Judge would hold good for the present Writ Petitions as well. In view of the the above ruling, all the respective proceedings impugned in these Writ Petitions are set aside only on the ground that no proper show cause notice was preceded before issuance of the impugned proceedings. It is open to the respondent Corporation to issue proper show cause notice within a period of three weeks from the date of receipt of a copy of this order and after obtaining the explanation/objection from the petitioners, take a decision and pass appropriate orders on

merits and in accordance with law, within a period of eight weeks from the date of receipt of the explanation from the petitioners. It is made clear that the fine amount if already paid by the petitioners, the same shall be refunded or adjusted depending upon the final outcome of the proceedings.

6. The Writ Petitions are accordingly disposed of with the above direction. No costs. Consequently, all connected WMPs are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Suk Sub Assistant Registrar

To

1.The District Manager/Deputy Collector,
Tamil Nadu State Marketing Corporation Limited (West),
No.29-30, Kakkalur Industrial Estate,
Thiruvallur-631 206.

2.The Managing Director,
Tamilnadu State Marketing Corporation Limited,
Head Quarters, 4th Floor, CMDA Tower - 2,
Egmore, Chennai - 8.

3.The Senior Zonal Manager,
The Tamilnadu State Marketing Corporation Limited,
Chennai TASMAC Limited,
Mount Road, Chennai 2.

4.The District Manager,
The Tamilnadu State Marketing Corporation Limited,
No.B-4, Ambattur Estate,
Ambattur, Chennai 58.

5.The Senior Regional Manager,
Trichy.

6.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Perambalur.

7.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Coonoor, Nilgiris.

8.The Senior Regional Manager,
No.56, Brindavan Road,
Fair Lands,
Salem, Tamilnadu. 636 004.

9.The District Manager,
87/5, Sendiyur Village,
A.Attaiyampatti Village,
Salem, Tamilnadu 636 203.

W.P.Nos.33919, 33924 & 33926 of 2019, 4461, 8866, 8867, 8870, 8874, 9164, 11624, 18615 and 5014 of 2020

BS(CO)
GN(19/02/2021)