



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.6809 of 2020

and

W.M.P(MD)No.6209 of 2020

WEB COPY

P.Sampathkumar

... Petitioner

Vs.

1.The Senior Divisional Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Tiruchirapalli.

2.The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Ware Housing Corporation,
S.Vallalapatty Post - 639 004,
Karur - 639 004.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the second respondent in proceedings Na.Ka.Si.Vi.6/204/2020 dated 21.05.2020 and quash the same.

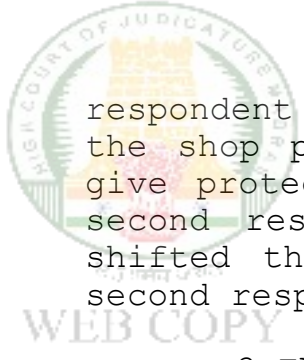
For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.H.Arumugam

ORDER

The Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the second respondent in proceedings Na.Ka.Si.Vi.6/204/2020 dated 21.05.2020 and to quash the same.

2.The learned counsel appearing for the petitioner would submit that the petitioner is working as a Supervisor in TASMAC Shop No.5016, Karur District. On account of COVID-19 pandemic the State and Central Government announced the Nationwide Lockdown from 24.03.2020 for 21 days, limiting movement of the entire population of India as a preventive measure against the COVID-19. Therefore, the second respondent directed the petitioner to close the TASMAC shops till the orders to be passed by the State Government. During the lockdown tenure so many TASMAC shops were break opened by anti-social elements in the State and therefore the second



respondent directed the petitioner to shift the liquor bottles from the shop premises to a particular Marriage Hall enabling them to give protection to the liquor bottles. As per the orders of the second respondent, the petitioner and other staffs of the shop shifted the entire liquor bottles to the place indicated by the second respondent.

3.The learned counsel further submitted that the second respondent immediately sent a message to the petitioner's mobile in the month of April-2020 and stated that there is a deficit in stock and further directed him to pay the stock shortage amount of Rs.6,41,630/- along with interest and GST amount. As per the orders of the second respondent, the stock shortage amount of Rs.6,41,350/- along with interest and GST was paid by him on 16.04.2020.

4.The learned counsel would further submit that the second respondent passed the impugned order and ordered that he should pay 50% penalty along with 24% interest to the above said stock shortage amount and the same is calculated as Rs.3,78,562/- and further ordered that the above said stock shortage penalty amount to be paid within three days in TASMAC Account and further stated that the impugned order has to be treated as charge-memo and directed him to submit his explanation within a period of three days, failing which disciplinary proceedings will be initiated. Hence, the petitioner has filed the present Writ Petition for the above said relief.

5. The learned Standing Counsel appearing for the respondents would submit that only penalty has been imposed and shortage amount has already been paid by the petitioner himself on his own volition and he has not been compelled by the respondents. Only as per the prevailing Rules, he has supposed to pay the penalty amount of difference amount within a period of three days in the TASMAC Account No.444601010035237, Union Bank, (UBI) Branch, Karur District and thereafter, the respondents have to consider the same and pass appropriate orders.

6. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

7.On a perusal of the materials available on record, it is seen that a fine amount of Rs.3,78,562/- with GST under Rule 2(c) (ii) of the Code of Prevention and Detection of Fraudulent Acts in TASMAC have been imposed on the petitioner. The Code 6(n) mandates that before imposing any punishment upon the charges proved at the enquiry, the delinquent shall be given an opportunity to make his representation against the punishment proposed to be imposed on him. The said opportunity of personal hearing has not been followed by the authorities and has directly imposed the punishment directing him to pay the amounts within a period of three days in the TASMAC Account No.444601010035237, Union Bank, (UBI) Branch, Karur District



and further stated that if the same is not deposited within the said period and if no explanation is received, disciplinary action would be taken and orders would be passed on the basis of documents available in the respondent's office.

8. When the Rule says so that an opportunity of hearing has to be given before passing any order of recovery, the respondents have issued a notice alleged to be a show-cause notice wherein they directly imposed a recovery of Rs.3,78,562/- without hearing the petitioner concerned. Hence, as per the said Rule, the respondents are supposed to provide an opportunity of hearing to the petitioner concerned and the impugned orders have to be set aside.

9. Accordingly, the impugned order is set aside and the respondents can issue fresh show-cause notice to the petitioner as per the said Rules afresh, after giving an opportunity of hearing to the petitioner can initiate appropriate proceedings.

10. With the above observations, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADII)

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Senior Divisional Manager,
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