



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WP NOS.17476 AND 17477 OF 2008

C.Albert Xavier

.. Petitioner
in WP No.17476/2008

V.C.Sakthivel

.. Petitioner
in WP No.17477/2008

Versus

1. The Government of Tamil Nadu
Represented by its Secretary
Agriculture (AA-2) Department
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Agriculture
Chepauk,
Chennai - 5.

.. Respondents 1 & 2
in both WPs'

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the respondents herein and quash the charge memo issued by the II respondent herein in No.VCS.3/113137/04 dated 17.04.2008.

For Petitioner : Mr.R.S.Anand
(in both WPs') for M/s.Anand & Suryas

For Respondents : Mr.C.Selvaraj
(in both WPs') Government Advocate (Civil side)

COMMON ORDER

The writ petitioners while working as Agricultural Officer and Production Officer respectively, under the second respondent, were issued with a charge memo dated 17.04.2008.



2.The gravamen of the charges is that the petitioners, in connivance with their subordinates and other officials, have indulged in malpractices in the purchase and distribution of Oil Seeds and created records to show 50 Metric Tonnes of Oil Seeds were procured and distributed to the Farmers and thereby misappropriated Government funds to the tune of Rs.50 Lakhs and for executing lack of integrity.

3.In fact, a charge memo in G.O.(3D) No.370 Agriculture (AA-2) Department, dated 22.11.2007 was issued against one P.Chandrasekaran, formerly Deputy General Manager / Additional Director of Agriculture (Oil Seeds) for misappropriating Government funds in connivance with the subordinate officials to the tune of Rs.2.50 Lakhs and for executing lack of integrity. It is pertinent to note that the charge memo was issued for the incident which had taken place during 1995 and 1996.

4.When the matter was challenged by the said P.Chandrasekaran, this Court in WP No.25971 of 2007, elaborately discussed the issue and quashed the charge memo by its order dated 28.04.2011.

5.The learned counsel for the petitioners would contend that the main allegation against the Deputy General Manager P.Chandrasekaran itself was quashed for the delayed initiation of disciplinary proceedings. The petitioners also implicated in the alleged misappropriation along with P.Chandrasekaran for the same incident. Therefore, the judgment passed by this Court in the above writ petition will squarely apply to the petitioners case also and the initiation of proceedings after a period of 13 years of occurrence vitiates the charge memo. Therefore, they would seek to set aside the impugned charge memo.

6.Mr.C.Selvaraj, learned Government Advocate (Civil Side) appearing for the respondents would contend that the imputation leading to the charge memo given to the petitioners is different from the one which was issued to P.Chandrasekaran. Secondly, this Court, considering the fact that the charge memo was issued on the eve of his retirement, quashed the same. The same principles cannot be applied to the present petitioners as they are still in service. Therefore, they are not similarly placed and the judgment of this Court cannot be applied as facts are different.

7.I have considered the submissions made on either side.

8.It is not in dispute that the disciplinary proceedings have been contemplated for purchase and distribution



of Oil Seeds from the Groundnut farmers at Tiruvannamalai Region during 1995-1996. From a reading of the charge memo issued to P.Chandrasekaran, it is seen that the said P.Chandrasekaran, in connivance with his subordinates, who are named in the charge sheet itself, has misappropriated a sum of Rs.2.50 Lakhs in procuring 50 Metric Tonnes of Oil Seeds. The petitioners name are also triggered as Sl.Nos.9 and 2 respectively, in G.O.(3D) No.370, Agriculture (AA-2) Department, dated 22.11.2007. The charge memo issued to the petitioners also contains the very same facts, very same incident and very same quantity. Therefore, there is no dispute that the charge memo was issued for the very same incident to all the officers and hence, it cannot be said that it is different from the one issued to the P.Chandrasekaran.

9.Apart from the factum that the charge memo was issued for the same incident, the delay in issuing the charge memo has to be considered.

10.Admittedly, the incident had taken place during 1995-1996, whereas, the charge memo was issued to the first delinquent on 22.11.2007. However, the same was issued against the petitioners on 17.04.2008. There is no explanation for the delay in issuing the charge memo after a period of 11 to 12 years in the case of P.Chandrasekaran. Even after naming the petitioners, there is no explanation as to why the charge memo was not issued to the petitioners along with the said P.Chandrasekaran. But, it was further delayed by one year for the respondents to issue a charge memo to the petitioners.

11.As considered by this Court in the case of P.Chandrasekaran in W.P.No.25971 of 2007, the inordinate delay goes unexplained. It is well settled by the Hon'ble Supreme Court that the inordinate delay by itself vitiates the entire proceedings. The Government servants may not be in a position to remember the incidents and may not have a memory like computer. Secondly, it will be very difficult for them to collect evidence to defend their case and gather witnesses to support them.

12.It is relevant to point out that by efflux of time, several of the officers who were working at that point of time could have retired or died. Thus, the totality of the circumstances will deprive the Government servants to effectively defend their case because of the delay in initiating the disciplinary proceedings. Therefore, the delay of 13 years in initiation of proceedings, as held by the Hon'ble Supreme Court, in its various judgments as well as the judgments of this Court, in respect of the delinquents, for the very same incident, vitiates the charge memo issued to the petitioners also.



13. Secondly, there are lot of discrepancies in the charge memo and it is very vague. In the charge memo issued to P.Chandrasekaran with respect to procurement of 50 Metric Tonnes of Oil Seeds, it is alleged that he has misappropriated around Rs.2.50 Lakhs. Whereas, for the same procurement of 50 Metric Tonnes of Oil Seeds, allegations were made against the petitioners for misappropriation of Rs.50 Lakhs. The respondents have not come out with a specific details in the imputation leading to the charge memo and on the other hand, made allegations at random.

14. A perusal of the records shows that the respondents have come out with a clear statement that the groundnut seeds were purchased @ Rs.11.50 per kg and an incentive of Rs.1.50 per kg was given and thus, the procurement cost comes around Rs.13/- per kg. It is stated that it was sold @ Rs.13.50 per kg to the farmers. If that is being taken into account, the cost of one Metric Tonne of Oil Seeds will come around Rs.13,500/- and the cost of 50 Metric Tonnes of Oil Seeds will come around Rs.6,75,000/- whereas, the allegation was that for procurement of 50 Metric Tonnes, there was a loss of Rs.50 Lakhs. It is not comprehensible from where the respondents arrived at that figure. There is lack of specific details and it appears that the respondents have proceeded in a hasty manner on assumption and without any clear proof as to what was the actual sum misappropriated by the petitioners. Therefore, in that view of the matter, the charge memo issued by the respondents suffers from vagueness and discrepancies. Therefore, I do not find any reason to sustain the charge memo which was issued after a delay of 13 years, which is bereft of specific details.

15. In the result, the charge memo issued to the petitioners in Proceedings No.VCS.3/113137/04 dated 17.04.2008 by the second respondent is set aside and the writ petitions are allowed. No costs.

Sd/-
Assistant Registrar (L.A)

//True Copy//

Sub Assistant Registrar

TK



To

1. The Secretary
Government of Tamil Nadu
Agriculture (AA-2) Department
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Agriculture
Chepauk,
Chennai - 600 005.

+2ccs to M/s.Anand & Suryas, Advocate, S.R.No.29927,29928
+1cc to the Government Pleader, S.R.No.30382

WP NOS.17476 AND 17477 OF 2008

UM(CO)
CT(10/08/2021)