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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.18989 of 2013
and M.P.No.1 of 2015

M.P.Thanigaivelan

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Government of Tamil Nadu,
Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in G.D.C.No.E1/12160/2011 of the second respondent dated 28.07.2011 confirmed by the orders passed by the first respondent in G.O. (Pa) No.298, Municipal Administration and Water Supply (Maa.Na3) Department dated 07.06.2013 and quash the orders passed therein and consequently, accord all consequential reliefs and benefits.

For Petitioner : Mr.L.Chandrakumar
for M/s.N.R.Jasminepadma

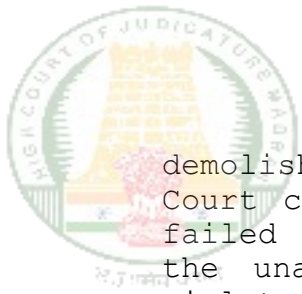
For Respondents : * **Ms.Karthika Ashok**
Standing Counsel

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O R D E R

The Writ Petition is directed against an order of punishment imposed on the petitioner.

2. The petitioner was issued with a charge memo on 24.05.2011 for dereliction of duty. The charges are that he failed to detect unauthorized construction of a residential and commercial building at Plot No.3, Visalakshi Nagar Second Street, Ekkattuthangal, Chennai - 32, and also failed to



demolish the unauthorized constructions which paved way for Court case vide W.P.No.8408 of 2010. Second charge was that he failed to issue notice in time and initiate prosecution against the unauthorized construction. Third charge was that he had violated Rule 20 of Madras Corporation Servants Conduct Bye Laws, 1983.

3. An Enquiry Officer was appointed and found that the charges were proved and on that basis, second respondent imposed punishment of stoppage of increments for three years with cumulative effect. Against which, the petitioner preferred an appeal before the first respondent and the first respondent rejected the appeal. Aggrieved over the same, the present Writ Petition has been filed.

4. I have heard the submissions made on either side and perused the materials placed before this Court.

5. At the outset, the first charge was that the petitioner has failed to detect the unauthorized construction and also failed to demolish the unauthorized construction, which paved way for Court case vide W.P.No.8408 of 2010. But, admittedly, Notice No.D, dated 17.08.2009 was issued by the Corporation of Chennai, Zonal Office - IX, Chennai - 15, to stop the construction work and the owner was called upon to produce a copy of the approved plan within three days. From the Notice dated 17.08.2009, it is very clear that the site inspection was made on 17.08.2009 and Notice was also issued under Section 56 and 57 r/w Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, on the same day.

6. Curiously, Notice was issued by the Executive Engineer of the Zonal Office - IX to the owner of the site. It bears the signatures of the Assistant Engineer and the Assistant Executive Engineer working under the Executive Engineer. Therefore, the charges by itself are without any basis as the inspection was done, unauthorized construction was detected and notice was issued.

7. The learned counsel for the respondent would submit that action was initiated against all the three officials and the punishment was imposed. Be that as it may, but, in view of Notice dated 17.08.2009, charge one and two are baseless. It appears that pursuant to the order passed by this Court in W.P.No.8408 of 2010, the charge memo issued as a hoodwink.

8. Going further, the conduct of the enquiry proceedings would show, it is not in accordance with the procedure laid down by law. From the minutes of the enquiry report, I find that the enquiry was conducted like an interrogative session. There is no



Presenting Officer to present the case of the prosecution and to produce evidence for proving the charge. On the other hand, it appears that questions were put to the delinquents by the enquiry officer himself and the answers were recorded. Thereafter, the Enquiry Officer submitted an enquiry report. The enquiry report describes the charge in the first column, the reply furnished by the officials in the second column and the findings in the third column. It proceeded on the basis of what was perceived by the Enquiry Officer and not on the basis of the evidence recorded during enquiry. The Enquiry Officer arrived at a finding on the basis of the Notice issued on 17.08.2009 and Notices dated 09.03.2011 and 11.03.2011 and not on the basis of the oral and documentary evidence given by the parties. The finding was that the officials had taken 17 months to issue lock and seal notice after he has issued notice to stop the construction work. The finding itself disproved the charges and went beyond the scope of the disciplinary proceedings.

9. It is beneficial to repeat the charges: Charge No.1 was that the delinquent failed to detect the unauthorized construction and failed to demolish the same and Charge No.2 was that not issuing notice in time. On the other hand, the finding of the enquiry officer by itself proved that the notice was issued on 17.08.2009 after detecting the unauthorized construction pursuant to the inspection made on 17.08.2009. In that event, as stated supra, both the charges fall to ground and the finding that delay in locking and sealing the premises is not the charge and it is a subsequent event. Against the enquiry report, the petitioner had submitted his objections, wherein, he had narrated events and stated that after the stop work notice, the owner of the building had approached the Hon'ble High Court by filing a Writ Petition in W.P.No.8408 of 2010 and the Hon'ble High Court granted an interim injunction restraining the respondent from giving effect to the notice dated 24.05.2011.

10. However, the disciplinary authority namely, the second respondent passed an order on 28.07.2011 without advertting to the relevant facts. Wherein he has extracted the charges, explanation submitted by the delinquent and finding of the enquiry officer and straight away imposed the punishment of stoppage of increments for three years with cumulative effect. There is no discussion with regard to objections raised by the petitioner against the enquiry report nor the explanation submitted by him to the charges and the reasons for accepting the findings of the Enquiry Officer. A cryptic order came to be passed by the disciplinary authority in the following lines:-

"All the charges against him are held proved and it is of serious nature. He is lethargic and casual in taking action against the illegal constructions. Based on the Inquiry Officer, stoppage of increment for three



years with cumulative effect is awarded as punishment".

Other than this, no other discussion about the charges, laches of the officials and findings of the Enquiry Officer has been made, no reasons recorded for imposing such punishment.

11. At the out set, the impugned order on the face of it is a non-speaking order and it suffers from non-application of mind. Even though the charges were framed for not detecting the unauthorized construction, not issuing notice, not demolishing the construction, the materials relied on by the enquiry officer by itself proved that notice was issued under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, on 17.08.2009 and hence, the charges are without basis. Further, failure to take action in time was impeded by the interim injunction granted by this Court on 10.03.2011 in W.P.No.8408 of 2010 was not at all considered. The petitioner was not given an opportunity to examine and cross-examine the witnesses nor he was given an opportunity to contradict the allegation made against him.

12. Non-consideration of the material facts and not recording reasons automatically deprive the petitioner from preferring an effective appeal before the appellate authority. Therefore, the non-speaking and cryptic order itself is in violation of principles of natural justice as held by the Hon'ble Supreme Court in the case of The Government of Tamil Nadu and another Vs. Ruchen S.Barua and others [2010 (2) SCC 497]. The relevant portion of the judgment is extracted as follows:-

"19. In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the enquiry officer, but without ever advertting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules of natural justice



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and violation thereof has the effect of vitiating the order passed by the authority concerned." Failure to discuss about the factum of the case is violative of principles of natural justice and vitiates the order passed by the authority concerned.

13. Coming to the order passed by the appellate authority in G.O.(P) No.298, Municipal Administration and Water Supply Department, dated 07.06.2013, it also suffers from the vices of non application of mind and arbitrary exercise of power. The appellate authority after extracting the grounds of appeal raised by the appellant, has found that on perusal of the records, the delinquent has committed inexplicable delay in taking action and therefore, the appeal was dismissed. The order passed by the appellate authority is completely beyond the scope of the charges framed against the petitioner. The charge is not against the delay committed by the delinquents is not stopping the constructions. In fact, the materials go to show that action was taken in time by issuing notice dated 17.08.2009 and the oral evidence adduced by the delinquent goes to show that work was stopped by the petitioner. Due to the pendency of the Writ Petition, the further action could not be proceeded. But absolutely, there is no discussion or finding and there is no application of mind to these material facts either by the disciplinary authority or by the appellate authority.

14. Therefore, this Court is inclined to set aside the order passed by the second respondent in G.D.C.No.E1/12160/2011, dated 28.07.2011, confirmed by the first respondent in G.O.(Pa) No.298, Municipal Administration and Water Supply (Maa.Na3) Department dated 07.06.2013 and are accordingly set aside.

With the above observations, the Writ Petition is allowed. The respondents are directed to settle all the attendant and monetary benefits to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

Dated : 22/07/2021

***Corrected as per order
dated 30/07/2021 in
WP No.18989/13**

**Sd/- Assistant Registrar
dated: 13.08.2021**

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Government of Tamil Nadu,
Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

**To be substituted to the
Order already despatched
on 23.07.2021**

+1cc to M/s.Karthika Ashok, Advocate Sr.No.30532

+1cc to M/s.L.Chandrakumar, Advocate Sr.No.30442

+1cc to Government PLeader Sr.No.30419

W.P.No.18989 of 2013
and M.P.No.1 of 2015

SSN(CO)
A.SK(22.07.2021)
RVM(13/08/2021)