



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD)No.13742 of 2021

and

W.M.P (MD)Nos.10674 and 10677 of 2021

WEB COPY

Durai. Boominathan

... Petitioner

Vs.

The Commissioner,
Sivagangai Municipality,
Sivagangai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent in his proceedings in Na.Ka.No.1881/2019/C-1, dated 29.04.2020 and quash the same as illegal and unconstitutional and for other reliefs.

For Petitioner : Mr.B.Arun

For Respondent : Mr.J.Lawrance

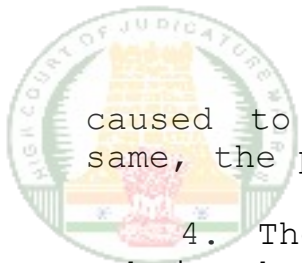
Standing Counsel

ORDER

Mr.J.Lawrance, learned Standing Counsel takes notice on behalf of the respondent.

2. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The Writ Petitioner was appointed as Junior Assistant in the year 1974 in the respondent Municipality. One Mr.Ayub Khan was serving as then Commissioner of respondent Municipality and while considering the proposal of his retirement, audit objections were raised with regard to the accounts of the respondent Municipality and found that the said Ayub Khan has caused loss to the respondent Municipality under various heads, that comes to total loss of Rs.6,76,344/-. The respondent has issued a circular by fixing the responsibility to the concerned officials, in which it is stated that out of the said amount, one Arivalagan, who was the then Town Planning Inspector, is held responsible to pay a sum of Rs.5,07,274/- i.e., 75% of the loss amount. Insofar as the petitioner is concerned, he is held responsible for the alleged loss amount to the tune of Rs.1,35,256/- being 20% of loss amount. Insofar as Mr.Ayub Khan, who was the then Commissioner is concerned, the loss amount payable by him was fixed at 33,814/- i.e., 5% of loss amount. Thereafter, by the impugned order dated 29.04.2020, the respondent has ordered recovery of alleged loss



caused to the respondent Municipality. Aggrieved against the same, the petitioner has filed the present Writ Petition.

4. The learned counsel appearing for the petitioner would submit that the respondent has not provided an opportunity to the petitioner to put forth his explanation to the allegations made against him. Therefore, the impugned order is liable to be set aside on this ground.

5. Learned Standing Counsel appearing for the respondent Municipality has not disputed the said fact and further submitted that in the event of aforesaid proceeding is quashed, liberty may be granted to the respondent Municipality to proceed afresh and pass appropriate orders.

6. I have anxiously considered the submissions made by both sides and perused the materials available on record.

7. On a perusal of the impugned order dated 29.04.2020, it is seen that there is no reference in the said order for giving an opportunity to the petitioner to put forth his contention. Therefore, it is clear from the records that the respondent has not provided an opportunity before passing the impugned order. On the aforesaid violation of principle of natural justice, the impugned order is liable to be quashed. Therefore, this Court has no hesitation to interfere with the impugned order passed by the respondent Municipality.

8. In view of the above facts and circumstances, this Court is inclined to pass the following order:

i) the impugned order dated 29.04.2020 passed by the respondent is quashed;

ii) liberty is granted to the respondent Municipality to consider the case of the petitioner afresh after providing an opportunity of personal hearing to the petitioner; and

iii) Petitioner shall also co-operate for the enquiry and if any further particular is required, the same shall be submitted within a period of one week from the date of receipt of a copy of this order and after receipt of the same, the respondent Municipality shall pass a final order, after providing an opportunity to the petitioner, as expeditiously as possible preferably, within a period of twelve (12) weeks from the date of receipt of a copy of this order.



9. With the above directions, this Writ Petition is allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Commissioner,
Sivagangai Municipality,
Sivagangai.

+1 CC to M/s.J.LAWRENCE, Advocate (SR-25695[F] dated
09/08/2021)

+1 CC to M/s.B.ARUN, Advocate (SR-25906[F] dated
11/08/2021)

W. P (MD) No.13742 of 2021

09.08.2021

CN(17.08.2021) 3P 4C