



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) No.13923 of 2018

and

W.M.P. (MD) Nos. 12650, 12651 and 16218 of 2018

WEB COPY

N.C. Parameswari

...Petitioner

Vs.

The Director of Town Panchayats
Kuralagam, Chennai.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorari, calling for the records of the respondent in its Roc.No.1714-1/2017/A5 dated 12.06.2018 and quash the same and pass orders.

For Petitioner : Mr. V. Vijayshankar
For Respondent : Mr. A.K. Manikkam,
Special Government Pleader

ORDER

The petitioner has challenged an order of suspension dated 12.06.2018. The circumstances leading to the suspension have been recorded in an interim order passed by this court on 29.06.2018 and upon being satisfied that a prima facie case has been made out, an interim stay of the impugned order was granted for a period of four weeks that was subsequently extended until further orders by order dated 23.07.2018.

2. The interim order is extracted below for completion of narration:

"Two reasons have been given in the impugned suspension order dated 12.06.2018. One is that, in the name of constructions of a latrine under Swachh Bharath Mission scheme, a sum of Rs.8,000/- has been given to one beneficiary, which is irregular. The second reason is that without following the procedures, which are in vogue, in respect of an approved lay out, the petitioner alleged to have committed irregularities in maintenance of pipe line works and by that caused a loss of a sum of Rs.83,234/- by way of not deducting the income tax, GST from the contractor with malafide intention.

2.The learned counsel appearing for the petitioner has demonstrated that, insofar as the



first reason is concerned, the respondent Town Panchayat is having shopping complex, where some shops were already built and have been let out for rent. Those who are using shopping complex jointly made a request to the Town Panchayat to construct a latrine for their purpose of usage. Only in this regard, a sum of Rs.8,000/- has been sanctioned from Swachh Bharath Mission Fund and the remaining construction cost would be borne by the said lessees. However, subsequently, it was pointed out to the petitioner that even for construction of latrine under Swachh Bharath Mission scheme, the place to be earmarked, must be belonging to private individual and therefore, for the construction of latrine in the shopping complex belonging to the Town Panchayat, the said amount of Rs.8,000/- should not have been released under the said scheme.

3. On coming to know the said thing, the said amount of Rs.8,000/- had been paid back by the individual lessees, who had been benefitted to construct the said latrine in the shopping complex belonging to the Town Panchayat and such remittance has been made on 09.02.2018 and a receipt to that effect given by the Town Panchayat has been produced before this Court.

4. With regard to the second reason of alleged loss of a sum of Rs.83,234/- is concerned, the learned counsel also has demonstrated that, it was a lay out proposal approved by the competent authority and after the lay out has been made, after approval, the Developer of the lay out himself laid the roads and erected pipe line and other facilities and after completing the work, had handed over the streets and open spaces to the respondent Town Panchayat. This was in tune with clause (v) of G.O. (Ms) No.134, Municipal Administration & Water Supply (MAI) Department, dated 20.09.2002.

5. The learned counsel would submit that, in fact, no work was entrusted to lay the roads and making the common facilities, to any contractor by the Town Panchayat and the said amount of alleged loss of Rs.83,234/- as alleged in the impugned order is nothing but fictitious amount as there was no occasion for the Town Panchayat or the petitioner to deduct any income tax or GST from any contractor as there was no such work entrusted to any one by the Town



Panchayat. By making such argument, the learned counsel appearing for the petitioner would submit that, both the reasons have been given without any basis and therefore, the said order of suspension, which is impugned herein is passed out of malafide as the petitioner had already challenged the order of transfer before this Court in a writ petition, which is still pending.

6. However, per contra, the learned Additional Government Pleader appearing for the respondent would submit that, with regard to the first reason of loss of Rs.8,000/- is concerned, as per the Swachh Bharath Mission scheme, construction of latrine can be undertaken only at private land and such scheme cannot be extended to a land or building belongs to the Town Panchayat and therefore, in this regard, since the amount of Rs.8,000/- has been wrongly paid, though it was subsequently recovered, in the name of construction of latrine by an individual, thereby the scheme of Swachh Bharat Mission has been misused, for which, even the petitioner might have created some documents, as if the said latrine was constructed for private purpose. The learned Additional Government Pleader would further submit that, insofar as the alleged loss of Rs.83,234/- is concerned, whether the said amount mentioned in the impugned order is related to the lay out plan referred to by the petitioner side or any other lay out proposal, has to be ascertained.

7. I have heard the said submissions made by both sides.

8. Though it was submitted by the learned Additional Government Pleader that the two reasons cited in the impugned order have to be verified from the records of the Town Panchayat, it cannot be concluded that two reasons cited therein are without any records. Be that as it may, at least prima facie, this Court feels that the two reasons, for which documents have been filed by the petitioner side showing that, the said alleged loss of Rs.8,000/- or the alleged loss of Rs.83,234/-, should not have been made, as there was no occasion to make such loss. In this regard, since the receipt dated 09.02.2018 remitting the said Rs.8,000/- by the lessees to run the shops of the shopping complex of the Town Panchayat had been filed and also the relevant



G.O. for lay out proposal also has been produced before this Court. On perusal of those documents, this Court prima facie feels that the two reasons cited in the impugned order may not be justifiable.

9. However, veracity of the said charges, for which it has been shown the said reasons for making this impugned order of suspensions, can be decided only after hearing the respondents, if they file counter with documents. As of now, atleast the prima facie case, since has been made out, this Court is inclined to interfere with the impugned order of suspension.

10. In the result, there shall be an order of interim stay of the impugned order for a period of four weeks.

11. Post on 20.07.2018.

12. Mr. D. Muruganantham, learned Additional Government Pleader accepted notice for the respondents."

3. It appears that despite the order of stay, the petitioner was not reinstated and it was only after a Contempt Petition was filed by the petitioner in Cont.P.(MD) No. 213 of 2019, and when statutory notice came to be issued to the respondent, that the petitioner was finally reinstated on 21.03.2019, though subject to the result of the writ petition.

4. Needless to say, the period between 29.06.2018 and 21.03.2019 when the petitioner had been directed to be reinstated in service shall be treated as regular service for the period of all service benefits.

5. Mr. Manikkam, learned Special Government Pleader, for respondent, would confirm today that no charge memo has been issued to the petitioner in connection with the impugned suspension. In such a circumstance, there is no justification whatsoever for the suspension and the impugned order is set aside.

6. With this, this writ petition is closed as are the connected miscellaneous petitions. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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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 Director of Town Panchayats
Kuralagam, Chennai.

+1 CC to Mr.V.KARTHIKEYAN, Advocate SR.No. 38034
+1 CC to Mr. Special Government Pleader, SR.No. 38106

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BK (CO)
TR (01.02.2022) 5P 4C