

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 29.06.2022

PRONOUNCING ORDERS ON : 04.07.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.19342, 19343 and 19344 of 2013
and MP.No.1,1,1 of 2013

V.Krishnamurthy
Proprietor: M/s.Meena Advertisers
S/o.Virudhachala Reddiar
No.142, Eldams Road
Chennai 600 018.

...Petitioner in all WPs

.Vs.

1. The State of Tamilnadu
Rep.by its Secretary to Government
Youth Welfare & Sports Development Dept.,
Fort St.George, Chennai-600 009.
2. The Collector of Chennai
Rajai Salai
Chennai 600 001.
3. The Tahsildar
Mylapore-Triplicane Taluk
Chennai 600 028.

...Respondents in all WPs

Prayer in W.P.No.19342 of 2013: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the 2nd respondent dated 2.7.2013 bearing No. Pro. G2/ 56444/ 2013 and quash the same.

Prayer in W.P.No.19343 of 2013: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to G.O.Ms.No.45 Youth Welfare and Sport Development Department, the 1st respondent dated 12.10.2000 and quash the same and direct the 1st respondent to disburse the sum of money due towards advertisement charges to the petitioner as per G.O.Ms.No.324 dated 6.5.1996.

Prayer in W.P.No.19344 of 2013: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the communication of the 1st respondent dated 2.6.2012 in letter No.52/S2/2007 and quash the same.

For Petitioners : Mr.G.Rajagopalan
(in All WPs) Senior Counsel
for M/s.G.R.Associates

For Respondents : Mr.V.Arun
(in All WPs) Additional Advocate General
Asst.by:
Mr.R.Kumaravel
Additional Government Pleader

COMMON ORDER

The facts in all these Writ Petitions are common and the issues involved are also common and hence, this Court is taking up all the Writ Petitions together and passing this Common Order.

2.The petitioner is the proprietor of M/s. Meena Advertisers which is an advertising concern. The South Asian Federation Games (hereinafter referred to as 'SAF games') were held at Chennai during December 1995. The Government of Tamil Nadu made elaborate arrangements to conduct the event in a grand manner. The Government thought it fit to utilise these games and make a viable economic proposition by commercialisation of the events and to involve private players. In the said process, M/s.Times TV was appointed as the marketing agency and they were expected to obtain sponsorship for television, instadia publicity, sole status appointment such as mineral water supplies, official caterer etc. They were expected to pay 30% of the gross revenue generated through commercialisation and for all direct revenue sources through SAF games organisers. M/s. Times TV was permitted to retain 5% commission.

3.A letter of appointment was issued to M/s. Times TV on 2.11.1995. It seems that M/s. Times TV were not able to get any concrete financial commitment and therefore, it was decided to call for quotations from leading marketing agents in Madras city and appoint marketing agent to carry on with the decision taken by the Government.

4.The petitioner participated in the tender process and submitted the highest bid amount. Thereafter, the petitioner was called for negotiations and was asked to improve the offer and ultimately the petitioner guaranteed a sum of Rs.3 Crores for

commercialisation of the games subject to certain rights given to the petitioner. This resulted in the passing of G.O.(D) No. 177, dated 9.12.1995. The Government Order recorded the guarantee given by the petitioner and the exclusive rights given to the petitioner were provided at paragraph 9 of the G.O. and paragraph 10 of the G.O. contemplated signing of a Memorandum of Understanding and the conditions were also specifically stipulated therein. The G.O. also directed the petitioner to pay a sum of Rs.3.50 Lakhs to M/s. Times TV as a reimbursement for the publicity measures already undertaken by them.

5.A Memorandum of Understanding was entered into on 9.12.1995 and it specifically provided the terms and conditions and the rights given to the petitioner.

6.After the completion of the SAF games, the petitioner made a representation on 3.2.1996 to the Chairman and Managing Director of TAMIN and requested for remitting a sum of Rs.1 Crore instead of Rs.3 Crores and to waive the balance of Rs.2 Crores. The petitioner gave various reasons for making this request. According to the petitioner, he incurred a loss of Rs.26.75 Lakhs and that he had spent a sum of Rs.2.25 Crores towards advertisement charges and requested the Government to release the payment.

7.The Government issued G.O.Ms.No.324, dated 6.5.1996 and waived the sum of Rs.2 Crores that was guaranteed by the petitioner subject to the condition that the petitioner must pay the sum of Rs.3.50 Lakhs to M/s. Times TV and must withdraw the suit filed by him for recovery of money. Accordingly, the petitioner paid the amount to M/s. times TV and also withdrew C.S.No.95 of 1996 that was pending before this Court.

8.An FIR came to be registered by the Vigilance and Anti-Corruption Department on 27.8.1996. The petitioner was also added as A6 in this FIR. The complaint that led to the registration of the FIR was that a favourable treatment was given to the petitioner inspite of the Model Code of Conduct which was in force in view of the Assembly elections and inspite of the serious objections raised by the Finance Department which resulted in the State exchequer incurring a wrongful loss of a sum of Rs.2 Crores. The FIR was registered as against six accused persons for offences under the Prevention of Corruption Act and IPC.

9.The petitioner started knocking the doors of the State Government and called upon the Government to pay the expenses incurred by the petitioner towards advertisement charges. The Government replied to the petitioner stating that the criminal case is pending and it will not be possible to settle the claims made by the petitioner.

10.The petitioner was also blacklisted by the Government of Tamil Nadu through a G.O. dated 3.4.1997. It is stated that W.P.No.5257 of 1997, was filed against this Order and the Writ Petition was allowed by an Order dated 5.10.2002.

11.A communication dated 20.6.2000 was sent to the petitioner calling upon the petitioner to show cause as to why G.O.Ms.No.324, dated 6.5.1996 should not be cancelled. The petitioner challenged the same by filing W.P.No.11616 of 2000 and this Writ Petition was dismissed by an Order dated 12.7.2000 and the petitioner was directed to submit his reply for the show cause notice.

12.There was exchange of notices between the petitioner and the Government wherein the petitioner was requesting for copies of documents relied upon by the Government. Ultimately, the petitioner was allowed to inspect the documents and according to the petitioner, the counsel was allowed to inspect only certain documents and the entire materials were not shown to him. Thereafter, the petitioner once again filed W.P.No.14476 of 2000 questioning the letter dated 21.8.2000 issued by the Government, wherein the Government informed the petitioner that no further extension of time will be granted for giving the reply for the show cause notice and the petitioner also sought for the relevant materials relied upon by the Government. The above Writ Petition came to be dismissed by this Court by an Order dated 25.8.2000. The petitioner thereafter gave an additional reply dated 27.8.2000 through his Counsel.

13.The Government considered the explanation given by the petitioner and G.O.Ms.No.45, dated 12.10.2000 was issued and by virtue of the same, G.O.Ms.No.324, dated 6.5.1996 was cancelled. The petitioner filed W.P.No.17844 of 2000 and challenged G.O.Ms.No.45, dated 12.10.2000. The Government also filed a detailed Counter in this Writ Petition. The petitioner chose to withdraw this Writ Petition on the ground that he intends to approach the Government to reconsider the G.O. and the Writ Petition, by an Order dated 22.8.2002 was dismissed as withdrawn and it was made clear that if the petitioner is aggrieved by any further decision of the Government, he was at liberty to approach the Court.

14.The petitioner made a representation dated 2.12.2002 to the Government and requested for the cancellation of G.O.Ms.No.45, releasing his payments incurred towards advertisement charges and to drop the action in the criminal case.

15.A closure report was filed in the criminal case before the concerned Court and further action was dropped and the concerned Court also passed an Order on 9.12.2004, recording the same.

16.The Collector of Chennai issued a Notice dated 31.10.2006 and initiated proceedings under the Revenue Recovery Act for the recovery of a sum of Rs.2 Crores from the petitioner. The petitioner filed W.P.No.49785 and 49786 of 2006 and challenged G.O.Ms.No.45 and also the communication dated 31.10.2006 sent by the Collector.

17.The petitioner chose to withdraw both the Writ Petitions on the ground that they once again wanted to make a representation to the Government and this Court disposed of the Writ Petitions as withdrawn and gave liberty to the petitioner if in any case, any adverse order is passed against him. Immediately thereafter a representation was made by the petitioner to the Government on 6.9.2011 and a further representation on 16.9.2011. A detailed reminder dated 11.10.2011 was also sent to the Government.

18.The Government, on considering the representations made by the petitioner, through a letter dated 2.6.2012, rejected the request made by the petitioner. The District Collector also initiated proceedings under the Revenue Recovery Act, for the recovery of a sum of Rs.2 Crores from the petitioner.

19.The petitioner has therefore filed three Writ Petitions. W.P.No.19342 of 2013, has been filed challenging the proceedings of the District Collector dated 2.7.2013. W.P.No.19343 of 2013, has been filed challenging G.O.Ms.No.45, dated 12.10.2000. W.P.No.19344 of 2013, has been filed challenging the letter dated 2.6.2012 issued by the Government rejecting the representations made by the petitioner.

20.The 1st respondent has filed a common counter affidavit. All the claims made by the petitioner has been refuted in the counter affidavit and the 1st respondent has given their justification for cancelling G.O.Ms.No.324 and for initiating Revenue Recovery proceedings against the petitioner.

21.Heard Mr.G.Rajagopalan, learned Senior Counsel for the petitioner and Mr.U.Arun, learned Additional Advocate General for the respondents.

22.This Court has carefully considered the submissions made on either side and the materials available on record.

23.The main issue that has to be focused by this Court is with respect to G.O.Ms.No.45, dated 12.10.2000 through which the earlier G.O. in G.O.Ms.No.324, dated 6.5.1996 was cancelled and the waiver that was granted in favour of the petitioner was withdrawn. The subject matter of challenge in W.P.No.19342 and 19344 of 2013 wherein the proceedings of the Collector of Chennai dated 2.7.2013 and the communication of the Government of Tamil Nadu, dated 2.6.2012, are consequential to G.O.Ms.No.45. Therefore, if G.O.Ms.No.45 is interfered by this

Court, the consequential proceedings will automatically fall. On the other hand, if this Court does not interfere with G.O.Ms.No.45, the consequential proceedings will stand.

24.The main ground of attack by the Learned Senior Counsel appearing on behalf of the petitioner was that:

- The Government Order was passed in violation of principles of natural justice.
- After the FAD report was filed in the criminal case, there is no ground to sustain the impugned G.O.
- The materials relied upon by the Government was not disclosed to the petitioner.
- The impugned G.O. suffers from lack of jurisdiction since the dispute between the petitioner and the Government should have been decided by a different body and the Government should not have decided its own case.
- The petitioner was made to act upon G.O.Ms.No.324 and hence, G.O.Ms.No.45 is vitiated by principles of estoppel.
- The impugned G.O. is vitiated by mala fides.

25.This is a peculiar case where the petitioner used his proximity with the Government which was in the helm of affairs and managed to get certain favours. The proximity of the petitioner with the head of the Government is clearly admitted by the petitioner in the affidavit filed in support of the Writ Petition. The conduct of the petitioner right through also clearly indicates that he will use this Court by filing Writ Petitions whenever the political climate is not in his favour and withdraw the same once it turns in his favour. The reason as to why this Court predicated this Order with such an adverse statement, will be evident while discussing the facts of the case hereunder.

26.The Government took a decision to use the SAF games as a viable economic proposition by commercialisation of the events involving private sector in this regard. This decision was taken on 28.7.1994 and the SAF games were planned to be conducted between 18.12.1995 to 27.12.1995. A tender was floated in this regard on 31.5.1995 and M/s. Times TV, was declared as the highest bidder and they started spending money on the advertisements. It is at this point of time, the petitioner got into the scene and he quoted an amount of Rs.2 Crores. Immediately, a discussion was held with the petitioner and he seems to have increased the offer to Rs.3 Crores. A G.O. was passed on 9.12.1995 in favour of the petitioner and a Memorandum of Understanding was also entered into with the petitioner. The G.O. as well as the Memorandum of Understanding contains various terms and conditions. After the SAF games ended, the petitioner made a request on 3.2.1996 seeking for the waiver of a sum of Rs.2 Crores and the petitioner came forward to remit only a sum

of Rs.1 Crore. On 15.4.1996, the petitioner submitted a breakup of the expenditure and receipts. In this letter, there were absolutely no details or bills attached to substantiate the claim made for the expenditure incurred by the petitioner. By the time this letter was issued, the Model Code of Conduct was brought into force by the Election Commission on 10.3.1996 since the Assembly elections were slated to be held on 2.5.1996. It is quite surprising that even during this period, the request made by the petitioner was very actively considered and G.O.Ms.No.324, dated 6.5.1996 was issued by granting waiver to the petitioner to the tune of Rs.2 Crores.

27.The results of the Assembly elections was declared on 9.5.1996 and the party in power lost the said election. The party which came to power found that the entire transaction was done against the interest of the State and consequently, there was a loss for the State exchequer. It was also found that the G.O. was issued inspite of the objections raised by the Finance department. It was further found that the G.O. was issued hurriedly just before the declaration of the election results and when the Model Code of Conduct was in force. Hence, the Vigilance and Anti-Corruption Wing registered an FIR against six accused persons and the petitioner was made as A6. The investigation was going on in this criminal case.

28.The Government took a decision to reconsider G.O.Ms.No.324 and hence issued a show cause notice dated 20.6.2000 to the petitioner calling upon the petitioner to show cause as to why the said G.O. should not be cancelled. The attempt made by the petitioner to challenge the steps taken by the Government to cancel the G.O. in W.P. 11616 of 2000 and W.P.14476 of 2000 failed and this Court directed the petitioner to submit his reply for the show cause notice. Accordingly, the petitioner also gave his reply.

29.The Government, on considering the reply given by the petitioner and various other facts and circumstances, issued G.O.Ms.No.45, dated 12.10.2000 cancelling G.O.Ms No.324, dated 6.5.1996. This Court carefully went through the entire G.O. and found that sufficient reasons have been assigned to justify the cancellation of G.O.Ms.No.324. Every ground that was raised by the petitioner was considered and rejected and the same is evident from paragraph 21 of the said G.O. The Government came to a categoric conclusion that it was the petitioner who volunteered and agreed to give a minimum guarantee amount of Rs.3 Crores to the Government and there was no compulsion for the petitioner if he had felt that it will not be possible for him to earn such an income. The Government also came to a conclusion that G.O.Ms. No. 324 was issued by flouting the Tamil Nadu Government Business Rules and undue favouritism was shown in favour of the petitioner.

30.The petitioner chose to challenge G.O.Ms.No.45 by filing W.P.17844 of 2000. A detailed counter affidavit was also filed by the Government justifying the issuance of the G.O. If the petitioner was really serious and aggrieved by the issuance of G.O.Ms.No.45, he should have contested this Writ Petition on merits. However, the petitioner found that there was a subsequent change in the political climate and the party which favoured him took over the reins. The petitioner obviously wanted to take advantage of the changed scenario and he consciously took a decision to withdraw the Writ Petition and accordingly, the Writ Petition was dismissed as withdrawn through an Order dated 22.8.2002. Immediately thereafter, the petitioner makes a representation dated 2.12.2002 to the Government and it will be interesting to take note of the request that was made by the petitioner which is extracted hereunder:

"9) Hence I request the Government.

(g) To Cancell G.O.MS No.45 youth Welfare and Sports Development Department dated 12.10.2000 and restore G.O. M.S no.324 dated 6.5.96.

(h) Release Payment of newspapers to us, so that we can inturn release payment to the newspapers.

(i) Forthwith drop further action in crime no.8/96 DVAC Hq."

31.The representation made by the petitioner was acted upon and as a first step, a closure report was filed before the Criminal Court and an Order was passed on 9.12.2004, closing the FIR as "further action dropped".

32.The petitioner also started pushing for the payments made by him for advertisement and hence called upon the Government to release the payments as per G.O.Ms.No.324. At this point of time, there was once again a change in Government after the next elections. Since G.O.M.S.No.45 was in force, the Collector of Chennai called upon the petitioner to settle the sum of Rs.2 Crores, failing which, proceedings would be initiated under the Revenue Recovery Act.

33.The petitioner decided to once again challenge G.O.M.S.No.45 and also the letter of the Collector informing the petitioner that proceedings will be initiated under the Revenue Recovery Act and hence, filed W.P.Nos.49785 and 49786 of 2006. Some interim orders were passed in these Writ Petitions and these Writ Petitions were pending.

34.Once again there was a change in the political climate in the year 2011. The petitioner obviously decided to make use of the same and once again chose to withdraw both the Writ Petitions and the Writ Petitions were dismissed as withdrawn by

an Order dated 30.8.2011. The petitioner also got a liberty to work out his remedy with the State Government. For the first time, the then Government was not prepared to accede to the request made by the petitioner for withdrawing G.O.Ms.No.45 and for making the payments claimed by the petitioner. Hence, the representations made by the petitioner were rejected through a communication dated 2.6.2012 and once again revenue recovery proceedings were initiated by the Collector for recovery of a sum of Rs.2 Crores from the petitioner. Once again the petitioner knocked the doors of this Court and filed the above three Writ Petitions. It is clear from the conduct of the petitioner that he will resort to legal proceedings depending upon the Government that was in the helm of affairs. By doing so, the petitioner has challenged G.O.Ms.No.45 for the third time and the revenue recovery proceedings for the second time before this Court.

35.The ground raised by the learned Senior Counsel for the petitioner as if, the impugned G.O. was issued in violation of principles of natural justice, is clearly unsustainable. The petitioner was put on notice and he gave detailed reply and every ground was considered and only thereafter, G.O.Ms.No.45 came to be issued. Merely because further action was dropped in the criminal case, that by itself is not a ground for withdrawing G.O.Ms.No.45 and the reasons for issuing this G.O. has been elaborately discussed in the G.O.

36.Insofar as the ground of lack of jurisdiction is concerned, it is always left open to a Government to correct its mistakes when a palpable illegality is brought to its notice. The circumstances under which G.O.Ms.No.324 was issued, is quite curious. This G.O. was issued with a tearing hurry just before the election results were announced and the powers that be went that extra mile to favour the petitioner and caused a loss of Rs.2 Crores to the State exchequer. The petitioner was bound by G.O.(D)No.177 and Memorandum of Understanding and the terms and conditions contained therein and for a commercial venture of this nature, it is too unnatural for a Government to waive the amount undertaken by the petitioner. That is the reason why this Court commented that undue favour was shown to the petitioner utilising his proximity to the then head of the Government. In view of the same, this Court holds that it was perfectly within the power and jurisdiction of the Government to issue G.O.Ms.No.45.

37.There is no question of applying the principles of estoppel in this case since G.O.Ms.No.324 was a favour that was done to the petitioner for obvious reasons and the principle of estoppel is not meant to be applied in cases of this nature.

38.The ground of mala fides raised by the Petitioner also does not pass muster. This Court has already found that there were sufficient grounds to cancel G.O.Ms.No.324 through

G.O.Ms.No.45 and this was done after affording opportunity to the petitioner and after providing sufficient reasons for the cancellation of the earlier G.O. If any person chooses to conduct his business with an apparent political identity, it has its own consequences. With such a political identity, a routine ground that is always raised is mala fides when action is initiated by the subsequent Government. Mala fides is a ground which has to be pleaded and proved and it is not a matter of assumption. The petitioner has not made out a case for mala fides and G.O.Ms.No.45 gives solid reasons as to why the earlier G.O. was cancelled and it has to be sustained on its own merits.

39.The learned Additional Advocate General questioned the maintainability of these Writ Petitions on the ground that the petitioner had withdrawn the earlier Writ Petitions and hence, the present Writ Petitions are hit by the principles of res judicata. In the considered view of this Court, the petitioner managed to get some liberty from this Court and hence this Court did not want to reject the Writ Petitions on the ground of res judicata and hence, discussed the merits of the case. However, the manner in which the petitioner was filing one Writ Petition after another and withdrawing it on his own whims and fancies, is a conduct which strongly goes against the petitioner.

40.In view of the above discussion, this Court does not find any merits in the claim made by the petitioner and there are absolutely no grounds to interfere with G.O.Ms.No.45 dated 12.10.2000. Accordingly, W.P.No.19343 of 2013 is liable to be dismissed.

41.Insofar as W.P.Nos.19342 and 19344 are concerned, the impugned proceedings under challenge are consequential to G.O.Ms.No.45. Since this Court upholds G.O.Ms.No.45, the consequential proceedings will also stand and as a result, these two Writ Petitions are also liable to be dismissed.

42.The learned Senior Counsel appearing on behalf of the petitioner was continuously harping on the advertisement charges not being paid by the Government. The petitioner ought to have prosecuted and sought for the recovery of the amount in the Civil Suit. The petitioner took a calculated risk and withdrew the Civil Suit and hence he has to blame only himself for the situation in which he is placed. A litigant must understand that Court proceedings are to be taken seriously and the rights have to be agitated sincerely before a Court. The Court will come to the aid of only such litigants. Insofar as the petitioner is concerned, he was coming to this Court as if it was an amusement park and he got in and got out as per his own whims and fancies. The petitioner has to necessarily face the consequences for such a conduct.

43.In the result, all the Writ Petitions stand dismissed and the petitioner is directed to pay a cost of Rs.1,00,000/- (Rupees One Lakh only) to the Chief Justice Relief Fund within a period of four weeks from the date of receipt of copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Secretary to Government
State of Tamilnadu
Youth Welfare & Sports Development Dept.,
Fort St.George, Chennai-600 009.
2. The Collector of Chennai
Rajai Salai
Chennai 600 001.
3. The Tahsildar
Mylapore-Triplicane Taluk
Chennai 600 028.

Copy to :

The Section Officer,
Accounts Section,
High Court, Madras.

+1cc to M/s.G.R.Associates, Advocate SR. No. 42181
+1cc to Government Pleader SR. No. 42977

W.P.Nos19342,193433 and 19344 of 2013

MG (CO)
PR (21/07/2022)