IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.06.2022
Pronounced On	08.07.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.4373 of 2022
and
W.M.P.No.4492 of 2022

M.Antonysamy John Peter ... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Additional Chief
Secretary to Government,
Cooperation, Food and Consumer
Protection Department,
Fort St.George,
Chennai.

2.The Registrar of Co-operative Societies,
Chennai – 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the order issued in G.O.(D) No.179, Cooperation, Food and Consumer Protection

Department, dated 04.10.2018 of the first respondent confirming the order dated 22.05.2007 in Na.Ka.No.104146/ON 1 of the second respondent and quash the same.

For Petitioner : M/s.A.L.Gandhimathi

For Respondents : Mr.M.S.Premkumar,
Government Advocate

ORDER

The petitioner has challenged the impugned G.O. (D) No.179, Cooperation, Food and Consumer Protection Department, dated 04.10.2018 of the first respondent, whereby, the first respondent has confirmed the punishment imposed on the petitioner by the second respondent vide his impugned proceedings dated 22.05.2007 in Na.Ka.No.104146/O.N.1.

2. The specific case of the petitioner is that a property was purchased by the petitioner's wife Mrs.M.Selva Sigamani on 08.03.2005 out of the retiral benefits of her father, i.e. the father-in-law of the petitioner, measuring to an extent of 16.49 Acres in Villapatti Village in Pudhukottai District. It is also the case of the petitioner that this was brought to the knowledge of the Joint Registrar of Co-operative Societies,

Pudukkottai by the petitioner voluntarily vide his communication dated 16.03.2005.

3. However, vide communication dated 09.06.2005, the Registrar, Co-operative Societies Chennai has directed the Joint Registrar, Pudukkottai to call for an explanation from the petitioner and for seeking permission of the Government vide a consent letter. In the said communication, the Registrar, Co-operative Societies Chennai has directed the Joint Registrar, Pudukkottai to send a report after enquiring as to whether the father of the petitioner's wife had indeed funded for purchase of the property by the petitioner's wife. In the said communication, the Registrar, Co-operative Societies Chennai has also raised question as to how the aforesaid property was purchased by the petitioner's wife contrary to the provisions of Tamil Nadu Government Servants' Conduct Rules, 1973. The petitioner was thereafter called upon to give explanation by the second respondent.

4. It appears that the petitioner's father-in-law, by a letter dated 05.10.2005, confirmed that the purchase of the property was funded by

him out of his retiral benefits. It is further case of the petitioner that despite the above, the second respondent initiated disciplinary proceedings under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and issued a Show Cause Notice dated 03.08.2006 to the petitioner to show cause as to why the disciplinary proceedings should not be initiated against him under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for violating Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 for purchasing the property in name of his wife out of her father's retiral benefits without prior permission of the Government.

5. The petitioner has replied to the same vide letter dated 26.10.2006 and also given additional explanations vide letter dated 16.11.2006, which has culminated in the order of the second respondent dated 22.05.2007, whereby, the punishment of censure was imposed on the petitioner. The operative portion of the order of the second respondent dated 22.05.2007 is extracted below:-

"4.திரு எம்.அந்தோணிசாமி ஜான் பீட்டர், முன்னாள் துணைப்பதிவாளர், தற்போது கூட்டுறவு சங்கங்களின் இணைப்பதிவாளர் மீதான குற்றச்சாட்டு,

> *குற்றச்சாட்டுக்கான அவரது விளக்கம் ஆகியவை உரிய ஆவணங்களுடனும், சுய சார்புடனும் பரிசீலிக்கப்பட்டது. இவர் அரசின் முன் அனுமதியின்றி தனது மனைவி திருமதி. ம.செல்வசிகாமணி, அவரது தந்தையிடமிருந்து ரூ.2,95,000/- மதிப்புள்ள அசையா சொத்தினை பரிசாக பெறுவதற்கு அனுமதித்ததின் மூலம் தமிழ்நாடு அரசுப் பணியாளர் நடத்தை விதிகளின் விதி 3(1)ஐ மீறி செயல்பட்டுள்ளார் என்ற குற்றச்சாட்டு நிரூபணமாகிறது. ஏனவே நிரூபணமான குற்றச்சாட்டிற்கு இவருக்கு "கண்டனம் (Censure)" எனும் தண்டனை வழங்கலாம் என முடிவெடுக்கப்பட்டு அவ்வாறே ஆணையிடப்படுகிறது."*

6. By the above order dated 22.05.2007, the second respondent concluded that the charges against the petitioner were proved and concluded that the petitioner was liable to be punished under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for having violated Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

7. The case of the petitioner is that against the said order dated 22.05.2007, the petitioner preferred an appeal before the first respondent. The said appeal was dismissed by the first respondent vide impugned G.O. (D) No.179, Cooperation, Food and Consumer Protection Department, dated 04.10.2018 without any reasoning.

8. The learned counsel for the petitioner submits that the first respondent has passed the impugned G.O. merely reiterating the order of the second respondent dated 22.05.2007 and that both the impugned G.O. dated 04.10.2018 of the first respondent and the order dated 22.05.2007 of the second respondent are liable to be quashed. On merits, it is submitted that there is no necessity to give notice to the prescribed authority and/or seek prior permission from the prescribed authority for acquisition or disposal of immovable property from the family members of the petitioner if the immovable property in question is not purchased from the resources of the petitioner as per Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

9. Opposing the prayer in this Writ Petition, the learned Government Advocate for the respondents submits that while working as Deputy Registrar of Co-operative Societies, Pudukottai, in his letter dated 31.03.2005 bearing reference Rc.No.7759/2004/A1, the petitioner has sent a copy of the property statement of the petitioner along with a copy of the sale deed for the land measuring to an extent of 16.49 Acres

(valued at Rs.4,12,250/-) situated in the Vilapatti Village, Illuppur Taluk, Pudukottai District which was purchased in the name of petitioner's wife Mrs.M.Selva Sigamani. It is submitted that when the sale deed was called for, the petitioner, in his letter dated 30.06.2005 bearing reference Rc.No.7759/2004/A1, has informed that the father-in-law of the petitioner has gifted the land purchased by him to his daughter, i.e. wife of the petitioner and that the wife of the petitioner gave her consent letter for having received the land as gift from her father.

10. It is submitted that the land in question is a gift and therefore, the petitioner violated Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973. It is submitted that the above details were reported to the Government by the respondent in letter bearing reference Rc.No.49905/2004/DA2, dated 19.07.2005 and the Government have been requested to accord permission under Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 ratifying the action of the petitioner in having accepted the gift of the land given to the petitioner's wife by her father.

11. It is submitted that in the letter dated 12.06.2006 bearing reference No.23786/CH-2/2005-12, the Government after obtaining all the connected details of the above gift accepted by the petitioner's wofe has stated that the petitioner has not obtained previous sanction of the Government under Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 before the petitioner permitted his wife to accept the gift for purchase of immovable property from her father and therefore, there is no irregularity in the Show Cause Notice dated 03.08.2006 and the impugned order dated 22.05.2007 of the second respondent and therefore, the impugned order dated 22.05.2007 of the second respondent requires no interference.

12. It is submitted that the explanation that was given by the petitioner that the land in question was purchased not from the petitioner's fund but purchased from the amounts given by the father-in-law, cannot be countenanced as it is a gift under Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973. Therefore, the dismissal of further appeal by the first respondent vide impugned G.O. dated

04.10.2018 confirming the impugned order dated 22.05.2007 of the first respondent, also cannot be interfered.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

14. A short point that arises for consideration in this Writ Petition is whether the case of the petitioner falls under Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 or under Explanation to Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973?

15. For discussing further on the law, both the Rules are reproduced below:-

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973	**Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973**
3.Gifts : (1) <u>Save as otherwise provided in these rules, no Government servant shall,</u>	**7. Movable, immovable and valuable property -**, (1) (a) No Government

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973	Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973
except with the previous sanction of the Government, accept or permit his wife, or any other member of his family, to accept from any person any gift of value exceeding Rs.5000/- (Rupees five thousand only) **Provided** that the Government Servant may accept any gift of a value exceeding Rs.5,000/- from a personal friend or close relation, on special occasions such as weddings, anniversaries, funerals and religious functions, when the making or receiving of such gifts is in conformity with the prevailing religious or social customs and shall make a report to the Government within one month of the acceptance of the gift. **Provided also** that nothing in this rule shall apply in respect of Government Servants belonging to Groups B C and D to accept travel, living and other related expenses from their personal friends or their close relations as gift, whenever they go abroad with the previous sanction of the Heads of Departments. **Explanation I** - For the purpose of this sub-rule, any trowel, key or other similar articles offered to a	servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member his family. Such a notice will be necessary even where any immovable property is acquired by any member of the family of the Government servant out of the resources of the Government servant: **Provided** that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Government servant. **Provided further** that the previous sanction of the prescribed authority shall not be necessary for

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973	Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973
Government servant at the laying of a foundation stone or the opening of a public building or any ceremonial functions shall be deemed to be a gift. **Explanation II** - The expression "gift" shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than +(close relations) or personal friend having no official dealings with the Government servant. Note I - A casual meal, lift or other social hospitality shall not be deemed to be a gift. Note II - A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organisations, etc. (2) If any question arises whether any gift is one which can be accepted without the permission of the Government or if a Government servant is in any doubt whether a gift offered to him is one which can be accepted without the permission of the Government, a reference shall be made to the	the acquisition of immovable property in respect of house-site assigned by the Government to the Government servant. **Explanation** - A Government servant is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government servant concerned.

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973	Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973
Government by such Government servant and the decision of the Government thereon shall be final. (3) Nothing in this rule shall be deemed to prevent any Government servant from sitting, at the request of any public body, for a portrait, bust or statue not intended for presentation to him. (4) No Government servant shall enter into any transaction with any private person or firm or company engaged in any business or profession, for the purchase of costly second hand goods such as vehicles for conveyance, furniture and electrical domestic appliances at a favourable price, which may tend to result in favouritism or patronage being shown to the Government servant or which may render such Government servant under an obligation to such private person or firm or company and which may be construed as a subtle form of corruption. (5) Notwithstanding anything contained in sub-rules (2), (3), and (4), a Government servant, being a member of an Indian delegation or otherwise, may receive and retain gifts from foreign dignitaries, if the market value of gifts received on one occasion does not exceed rupees one thousand. In all other cases, the acceptance and	

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973	Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973
retention of such gifts shall be regulated by the instructions issued by the Government in this regard from time to time. (6) A Government servant shall not accept any gift from any foreign firm which is either contracting with the Government or is one with which the Government servant had, has or is likely to have official dealings. Acceptance of gifts by a Government servant from any other firm shall be subject to the provisions of sub-rule (4). Explanation - Nothing in this sub-rule shall prevent any Government servant from entering into any transaction with any person or firm or company for the purchase of second hand articles at the normal or prevailing market rate of such second hand article.	

16. The facts of the case indicate that the allegation against the petitioners is that the petitioner failed to obtain prior permission /prior sanction of the Government under Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973. On the other hand, the defence of the

petitioner is that the immovable property was not purchased out of resource of the petitioner and therefore, the petitioner was not required to obtain previous sanction under Rule 7 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

17.As per Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973, no “Government Servant” shall, except with the previous sanction of the Government, accept or permit his wife, or any other member of his family to accept any gift of value exceeding Rs.5,000/- from any person. The expression “gift” has not been defined in the Tamil Nadu Government Servants' Conduct Rules, 1973.

18. However, a reading of the aforesaid provision indicates that “gift” means any movable or immovable property, free transport, boarding, lodging or other services or any other pecuniary advantage when provided by any person other than close relation or personal friend having no official dealing with the “Government Servant”. Thus, for receiving any pecuniary advantage even from a close relation for a sum exceeding Rs.5,000/-, mandatory declaration and prior permission under

Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973 is a must.

19. Under Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules, 1973, no “Government Servant” shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family.

20. As per Explanation to Rule 7 of the Tamil Nadu Government Servants' Conduct Rules, 1973, a “Government Servant” is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or for disposal of immovable properties by the member of his family under sub-clause (a) to Section 7(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, if the immovable property in question is not acquired from the resource of the concerned “Government Servant”.

21. In my view, the Explanation to Rule 7 of the Tamil Nadu Government Servants' Conduct Rules, 1973 will be available to the

petitioner only if the wife of the petitioner had purchased the aforesaid property or acquired the aforesaid property out of her own earning / independent income other than the income/ resource of the petitioner or her father.

22. In other words, the defence under Rule 7 of the Tamil Nadu Government Servants' Conduct Rules, 1973 will be available to the petitioner only if the petitioner's wife was self-employed and had an independent source of income to purchase the property. Admittedly, this is not the case.

23. Therefore, it was incumbent on the part of the petitioner to have made appropriate declaration and obtained prior sanction of the Government under Rule 3 of the Tamil Nadu Government Servants' Conduct Rules, 1973 before the property was purchased in the name of the petitioner's wife. The fact on record also indicates that the petitioner has *post facto*, made a declaration.

24. Therefore, such declaration should have been accepted. It is not

as if, the purchase of the property came to the knowledge of the respondent after investigation and on account of suppression of fact by the petitioner. Therefore, imposition of minor penalty of censure has to be considered disproportionate to the alleged mis-conduct of the petitioner even if the amount was indeed fully paid by the petitioner's father-in-law for the purchase of property by the petitioner's wife.

25. A mere declaration of the petitioner’s father in law that the property was purchased out of his contribution is not sufficient. Fact on record indicates that an extent of 16.49 Acres of land was purchased in Villapatti Village in Pudhukottai District. The value of the land is stated to be Rs.4,12,250/-. The amount that was allegedly gifted by the petitioner’s father-in-law to the petitioners wife was only Rs.2,95,000/- for the purchase of the aforesaid agricultural land.

26. The respective impugned orders are silent as to how the balance amount of Rs.1,17,250/- (4,12,250 - 2,95,000) was met for the purchase of the land in the said village measuring an extent of 16.49 Acres. These aspects have not been properly considered either by the second

respondent as the original authority or by the first respondent as the appellate authority.

27. Further, a mere self declaration of the father-in-law was not sufficient to exonerate the onus that is cast on the petitioner as a “Government Servant”. These, aspects ought to have been probed thoroughly and answered. Therefore, I am inclined to quash the impugned orders and remit the case back to the respondents for re-examination of the issue afresh and for passing a denovo order on merits after giving an opportunity to the petitioner to explain his case.

28. This exercise shall be completed by the original authority namely, the second respondent within a period of 180 days from date of receipt of a copy of this order.

29. This Writ Petition stands disposed with the observation. No cost. Consequently, connected Miscellaneous Petition is closed.

08.07.2022

Internet : Yes/No
Index : Yes / No
Jen

To

1. The Additional Chief Secretary,
   Cooperation, Food and Consumer Protection Department,
   Fort St.George,
   Chennai.

2.The Registrar of Co-operative Societies,
   Chennai – 600 010.

C.SARAVANAN, J.

Jen

Pre-Delivery Order in
W.P.No.4373 of 2022 and
W.M.P.No.4492 of 2022

08.07.2022