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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25 / 04 / 2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.34703 OF 2012

AND MP NOS.1 OF 2012 AND 1 OF 2013

R.Selvaraj

... Petitioner

VS.

The Revenue Divisional Officer

Perambalur,

Perambalur District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the respondent's show cause notices bearing Na.Ka.அ 1/7332/2012 dated 27.09.2012 pertaining to the stone quarry bearing S.F.No.130 (Part) admeasuring 1.00.0 Hectare in Pudundavalur Village, Perambalur Taluk and District, quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.K.M.D.Muhilan
Government Advocate

O R D E R

In this writ petition, the show cause notice dated 27.09.2012 issued by the respondent is put to challenge.

2.From a reading of the show cause notice, it is seen that on an inspection conducted by the respondent, it was found that the Licensee / petitioner had unauthorisedly quarried 10150 cubic meters of the minerals and transported the same without permission and therefore, as to why penalty proceedings shall not be initiated as per Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. From a reading of the above show cause notice, it is very clear that the respondent has pre-determined that the Licensee has committed an offence of unauthorised quarrying and transportation of the minerals, without giving an opportunity to the petitioner before arriving at the finding. Before pre-determining the issue, the show



cause notice with regard to imposition of penalty of proceedings was issued.

3. Heard the submissions made on either side and perused the materials available on record.

4. The learned Government Advocate for the respondent would rely on the following judgments in support of his contention:-

(i) Judgment of this Court in SIVA BLUE METALS VS. DISTRICT COLLECTOR [2012 SCC ONLINE MAD 481] wherein it is observed as under:

"2. By virtue of the show cause, dated 14.09.2011, of the RDO/R2, the petitioner was called upon to submit his explanation as to why he should not be directed to pay Rs.2,21,48,000/-, Rs.20,76,375/- and Rs.25,000/- towards cost of the mineral quarried more than the permitted limit, seigniorage fee and penalty respectively; while, by way of the show cause notice, dated 24.09.2011, issued by the District Collector/R1, the petitioner was required to submit his explanation on the alleged violations of Rule-36(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as the 'Rules'), liable for action under Section 36 (5)(h) of the Rules which may result in cancellation of the lease.

.....

3.F) As regards pre-determination, a decision of the Apex Court in Siemens Ltd. v. State of Maharashtra (2006 (12) SCC 33) and that of a Division Bench of this Court in Messrs. Madurai Metal Industries v. Union of India (1991 Writ Law Reporter 59) have been pressed into service to highlight the legal position that if a show cause notice is issued with premeditation, a writ petition would be maintainable and that a show cause notice indicating a pre-conceived or pre-judged and foreclosed mind on the part of the authorities would get vitiated automatically. In the present case, the RDO, based on mere recommendations of the Assistant Director (G & M) decided to levy the exorbitant penalty on untenable allegations against the petitioner and



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were carried out by a battery of officials not as a surprise inspection or without the knowledge of the petitioner, for, the Manager of the petitioner was very much present in the course of the proceedings. Further, in the case on hand, learned Additional Advocate General convinced this Court that the full-fledge details collected from the very records of the petitioner were reflected in the show cause notice only to enable the petitioner to reply exhaustively and properly. More over, now, all the documents said to have been withheld from being furnished to the petitioner have been filed herein as typed set of papers by the Special Government Pleader and, it could be seen that a copy of the said typed set has been received by the petitioner's counsel on 21.11.2011 after making an endorsement. That being so, with the available exhaustive materials, what remains for the petitioner is to submit their explanation for the show cause notices within a stipulated time. "

(ii) Judgment of this Court in M/S.RPR GRANITES VS. THE STATE OF TAMIL NADU [2014 SCC ONLINE MAD 6509] wherein it is observed as under:

"7.7. The learned Special Government Pleader also submitted that the writ petition against show-cause notice is not maintainable and he heavily relied on the judgment of the Apex Court in Union of India and another Vs. Kunisetty Satyanarayana reported in 2006 (12) SCC 28. 7.8. The learned Special Government Pleader submitted that the writ petitions are premature one and they deserve to be dismissed.

9. The following issues arise for consideration in these writ petitions :

(I). Whether the first respondent has got power and jurisdiction to issue the impugned show-cause notices under Section 4-A(4) of the Act or the second respondent has power to initiate proceeding under Section 4-A(4) of the Act ?

(II). Whether the show-cause notices are liable to be quashed for not enclosing the inspection reports, reports of the District



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under Article 226 of the Constitution of India but the entertainability of the writ petition has to be considered by the Courts while admitting the writ petitions challenging the show cause notices. The writ petitions filed against a show cause notice may be entertained on the ground that the Authorities having no jurisdiction issued the show cause notice directly hitting the provisions of the Act or an allegation of malafides are raised. Even in the case of raising an allegation of malafides, the Authority against whom such an allegation is raised, must be impleaded as a party respondent in his personal capacity in the writ proceedings.

14. In all other circumstances, the persons who received such show cause notices are expected to submit their explanations/objections and defend their case and the Authorities competent are bound to consider those explanations and take a decision on merits and in accordance with law. Thereafter, if any Appellate remedy is contemplated under the provisions of the Act, the said remedy also must be exhausted by the aggrieved persons. Contrarily, the writ petitions need not be entertained at premature stage, which will cause prejudice to either of the parties. There is a possibility of miscarriage in view that the entire factual adjudications are not done at the stage of show cause notice. This apart, the High Court may not be in a position to venture into an adjudication of such disputed facts, which all are to be done based on the original documents and evidences to be considered by the competent Authorities.

15. The power of Judicial Review under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the Authorities in consonance with the provisions of the Act and by following the procedures as contemplated, but not the decision itself. Thus, adjudication which is an important factor must be allowed to be done by the competent Authorities. In the event of premature adjudication of facts by the High Court, undoubtedly, there is a possibility of error, omission or commission which would cause prejudice to either of the parties and it is not desirable. The importance



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10.The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant [2006 (6) SCALE 66], stating:

"48.The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49.In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held :

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

11.A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

7.It is relevant to note that the Hon'ble Supreme Court in ORYX FISHERIES PRIVATE LIMITED VS. UNION OF INDIA AND OTHERS [2010 (13) SCC 427] has observed as under:

"23.Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.



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24.This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25.Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India and others, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also."

8.As per the above judgment, when an Authority has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant, the subsequent proceedings of appeal, is an empty ritual and an idle formality. A show cause notice is meant to give a person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. But, in the instant case, the Authority has already found that the petitioner has unauthorisedly quarried an excess quantity and removed the same and thus, he is liable to be punished. Such a show cause notice with pre-determination is not sustainable in law and is violative of principles of natural justice.

9.In fact, a learned Single Judge of this Court in N.THAVASI VS. THE DISTRICT COLLECTOR, DINDIGUL DISTRICT AND OTHERS [WP (MD) NO.513 OF 2013 DECIDED ON 27.08.2019] has relied on the very same judgment of the Division Bench of this Court in P.MARIADOSS's case (cited supra) and discussed the same and came to a conclusion that where there is violation of principles of natural justice, the impugned penalty order should be liable to be set aside. In the present case also, the impugned order came to be passed in violation of principles of natural justice and passed with pre-judged view. Therefore, it is not sustainable in law.



10. Accordingly, the impugned show cause notice bearing Na.Ka.m1/7332/2012 dated 27.09.2012 passed by the respondent is set aside and the matter is remitted back to the respondent with a direction to issue fresh show cause notice to the petitioner with specific details and provide ample opportunity of personal hearing to effectively defend his case and thereafter, pass orders on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order. It is made clear that if the respondent decides to take measurements again, it shall be made in the presence of the petitioner.

11. In fine, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

TK

To

The Revenue Divisional Officer
Perambalur,
Perambalur District.

+1 cc to Mr.V.Sanjeevi Advocate sr28060

WP NO.34703 OF 2012

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