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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.20676 OF 2014

AND

MP NO.1 OF 2014

D.Kandan

... Petitioner

Vs.

The Sub-Collector

Perambalur, Perambalur District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent relating to the order passed in Proceedings Na.Ka.No.A1/242/ 2014 dated 13.03.2014, quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.B.Vijay
Additional Government Pleader

O R D E R

Challenging the penalty imposed on the petitioner by the respondent vide order dated 13.03.2014, the present writ petition has been preferred.

2.The petitioner was granted lease to quarry stones in S.F.No.328/2, Block - 20, within an area of 1.00.0 Hectares in Kalpadi (N) Village, Perambalur Taluk and District for a period of ten years. On an inspection conducted by the respondent, it was found that the Licensee / petitioner had unauthorisedly quarried 21916 cubic meters of the minerals and transported the same without permission and in violation of the Rules. On the basis of the same, a show cause notice was issued to the petitioner on 13.02.2014, as to why action shall not be initiated against him for unauthorised quarrying. The petitioner had submitted his explanation that in the quarry allotted to him, only the soil and quarry waste was there and that he has not unauthorisely quarried any minerals. Thereafter, without conducting any enquiry, the penalty proceedings came to be passed.



3. From a reading of the impugned proceedings, it is noted that the authorities, without following the principles of natural justice have determined that the petitioner has committed violation of Rules and quarried the minerals unauthorisedly. The issue was pre-determined. Thereafter, a show cause notice came to be issued. In spite of the objection raised by the petitioner that he has not committed any violation of Rules, no enquiry was conducted and opportunity to challenge the pre-determination of illegal quarrying was not afforded to him. On the other hand, on the basis of the pre-determined decision, the penalty order came to be passed without affording any opportunity to the petitioner.

4. According to the respondent, during the joint inspection conducted by him along with the Assistant Geologist, on 20.12.2013, it was found that the petitioner has quarried excess quantity of stones from the area which was not allotted to him and also transported excess quantity of stones than the permitted quantity. Thereafter, on 13.02.2014, another notice was issued with enclosures and called for explanation for the same. The petitioner submitted his explanation stating that he had quarried only in the place allotted to him and that he has not quarried in any other place, much less an excess of the permitted quantity. The respondent in his proceedings Na.Ka.No.A1/242/2014 dated 13.03.2014, imposed penalty on the petitioner.

5. A reading of the impugned order reveals that the petitioner has submitted his explanation that he has not illegally quarried the stones. But without discussing or recording any reasons, the respondent straight away imposed the penalty of a sum of Rs.2,00,15,700/-. Aggrieved over the same, the petitioner is before this Court.

6. The learned counsel for the petitioner would submit that no show cause notice as required under the Rules was issued by the respondent before passing the impugned order. Further, as per Rule 36(5)(h) of the Tamil Nadu Minor Mineral Concession Rules, 1959, the respondent has no power to cancel the lease and it is only the District Collector, who empowers to cancel the lease for violation of lease condition / breach of rules. Such an order can be passed only after providing an opportunity of hearing to the lessee. But, in the impugned notice, the respondent Sub-Collector, without any authority has called for the explanation as to why the lease should not be cancelled for violation of rules. Further, during the inspection, the petitioner was not present and that it is highly improbable to take measurements, identification of the leasehold area, fixing the boundary of the leasehold area, etc., by the respondent along with Assistant Geologist without the presence and



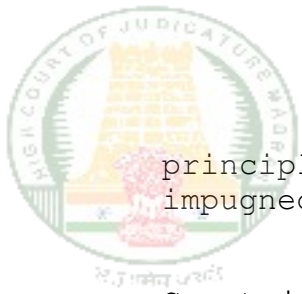
assistance of the Surveyors. Therefore, it is purely based on assumption and information given by somebody else. There is no detail as to whether the quarry was made and that it was done by the petitioner. Without discussing or recording the above details, the impugned order came to be passed. Further, there are lot of discrepancies in the calculation and without giving any revised order, the respondent has proceeded to impose penalty and therefore, it is illegal.

7. Resisting the submission, the learned Additional Government Pleader would vehemently contend that for conducting surprise inspection, prior notice is not required. It is specifically stated that the petitioner has quarried in a place, which is not allotted to him and also the records proved that he has transported more than the quantity which is permitted to him. Since all the details have been provided along with the notice and that the petitioner was given ample opportunity to specifically deny the same, the petitioner has not given specific reply / explanation, to the notice. On the other hand, he would make a bald and vague allegation, without denying the specific measurements and excess quarrying and transporting as submitted in his reply. This non-denial will amount to implied admission of the guilt. Once there is no denial, the Authority need not give elaborate reasons to the admitted breach.

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

9. On a perusal of the impugned order, it is noted that a notice was issued by the respondent stating that the petitioner has quarried 21916 CUM of minerals without permission and in violation of rules. The impugned order further reveals that a show cause notice was issued and a reply was given and that it was not acceptable and therefore, the penalty was imposed. Other than this, no reasons were recorded therein. While passing a penalty order, it is incumbent on the authority to specifically state what is the area allotted for quarrying, what is the area leased out for quarrying and that the area in which the lessee is quarrying in violation of the license condition or rules and regulations and the quantum of excess quarrying and the method of calculation in arriving at the penalty in accordance with the rules. Without discussing the reply submitted by the lessee and without recording any specific details of violation and the reasons for imposing penalty, if an impugned order is passed, it is violative of principles of natural justice and that it will amount to non-application of mind.

10. Any penalty order, without recording the reasons shall be construed as an arbitrary award and it is violative of



principles of natural justice. In such view of the matter, the impugned order does not stand the scrutiny of law.

11. It is relevant to note that the Hon'ble Supreme Court in SIEMENS LTD., VS. STATE OF MAHARASHTRA AND OTHERS [2006 (12) SCC 33] wherein it is observed as under:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

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



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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."

12.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.

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."

13.The learned Additional Government Pleader would rely on the following judgments to buttress his contention that writ



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petition is not maintainable against a show cause notice and that the petitioner can avail opportunity of getting the records from the respondents and submit an effective reply.

(a) Judgment of this Court in SIVA BLUE METALS VS. THE DISTRICT COLLECTOR, THOOTHUKUDI AND OTHERS [2012 SCC ONLINE MAD 481]

(b) Judgment of this Court in M/S.RPR GRANITES VS. THE STATE OF TAMIL NADU AND ANOTHER [2014 SCC ONLINE MAD 6509]

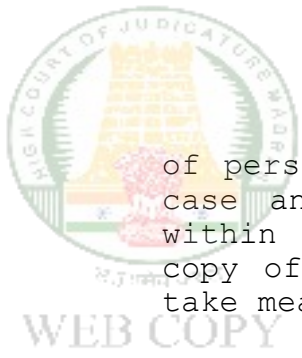
(c) Judgment of this Court in V.KANDASAMY VS. THE REVENUE DIVISIONAL OFFICER, PERAMBALUR [WP NOS.3018/2013 AND 6697 TO 6701 OF 2015 DECIDED ON 14.12.2021]

14.Further, the learned Additional Government Pleader would rely on a judgment of the Division Bench of this Court in P.MARIADOSS VS. THE DISTRICT COLLECTOR AND OTHERS [WP NOS.1015 OF 2011 ETC., BATCH DECIDED ON 26.03.2012] wherein it is observed that the petitioner shall avail the remedy of appeal and agitate the matter before the Appellate Authority.

15.But, in the instant case, show cause notice categorically mentioned that the petitioner has already committed an offence and that he is liable to be punished. After forming of an opinion, the respondent has issued the show cause notice and any amount of explanation will not be fruitful. The show cause notice was also not properly issued in the manner known to law and appropriate opportunity was not given to the petitioner to put forward his defense. Therefore, the judgments relied on by the learned Additional Government Pleader will not be applicable to the present case on hand.

16.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 without issuing any show cause notice and without adhering to the settled procedure and therefore, it is liable to be set aside.

17.Accordingly, the impugned order passed by the respondent in Proceedings Na.Ka.No.A1/242/ 2014 dated 13.03.2014 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 the petitioner to effectively defend his case and pass orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. If required, the respondent is directed to take measurements in the presence of the petitioner.

18.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

The Sub-Collector
Perambalur,
Perambalur District.

+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.16091
+1cc to the Government Pleader, S.R.No.16217

WP NO.20676 OF 2014

VBM(CO)
GN(23/05/2022)