

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.5516 of 2016
and
W.M.P.No.4858 of 2016

K.R.Viswanathan

..Petitioner

Vs.

- 1.Tamil Nadu Industrial Development Corporation Limited (TIDCO),
Represented by its Chairman and Managing Director,
No.19A, Rukmani Lakshmipathy Road (Marshall's Road),
Egmore, Chennai - 600 008.
- 2.Tamil Nadu Road Development Company Limited,
Represented by its Managing Director,
No.171, II Floor, Tamil Nadu Maritime Board Building,
South Kesavaperumal Puram,
Pasumpon Muthuramalingam Road,
(Near Greenways Road MRTS Station),
Raja Annamalai Puram, Chennai - 600 028.
- 3.IT Expressway Limited,
Represented by its Managing Director,
No.171, II Floor, Tamil Nadu Maritime Board Building,
South Kesavaperumal Puram,
Pasumpon Muthuramalingam Road,
(Near Greenways Road MRTS Station),
Raja Annamalai Puram, Chennai - 600 028.
- 4.The Chief General Manager,
IT Expressway Limited,
No.171, II Floor, Tamil Nadu Maritime Board Building,
South Kesavaperumal Puram,
Pasumpon Muthuramalingam Road,
(Near Greenways Road MRTS Station),
Raja Annamalai Puram, Chennai - 600 028.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari Mandamus, calling for the records of the 3rd and 4th respondents culminating in the impugned letter bearing

Ref.No.ITEL/CMD/3594/2016 dated 20.01.2016 issued to the petitioner pursuant to the 3rd respondent's letter bearing ITEL/MD/2010-4 dated 30.04.2010 and all other connected proceedings, quash the same and the respondents to forbear from initiating any action which are in excess of their jurisdiction against the petitioner.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Arun Anbumani

For Respondents: Mr.M.Sivavarthanana for R2 to R4
R1 - No Appearance

O R D E R

Challenge in the Writ Petition is to the communication of the 3rd respondent dated 20.01.2016 requiring the petitioner to visit the Corporate Office of the 3rd respondent for perusal of records.

2.Though this communication appears to be very innocuous, the consequences of this communication are bound to be serious. The petitioner, who was a Director of Tamil Nadu Industrial Development Corporation was sent on deputation to the 2nd respondent namely, the Tamil Nadu Road Development Company. He was originally appointed as a Director in-charge of the 2nd respondent and subsequently, appointed as a Managing Director of the 3rd respondent namely, IT Expressway Limited.

3.It is not in dispute that the petitioner attained the age of superannuation on 31.01.2009 and he has also been allowed to retire. On 30.04.2010, the 3rd respondent sent a notice requiring the petitioner to show cause for certain commissions and omissions alleged to have been committed by the petitioner during his term of Office with the 3rd respondent. The petitioner sent a reply, primarily, contending that in view of the agreed terms and conditions of deputation between TIDCO, his employer and the Tamil Nadu Road Development Company / the 2nd respondent, neither the 2nd respondent nor the 3rd respondent have a right to take any action against him, since he would be governed only by the conduct rules of the TIDCO as an employee of the TIDCO. There was certain correspondence on this aspect till 2011 i.e., on 12.05.2011. Thereafter, nothing moved.

4.However, the petitioner was visited with another letter dated 24.04.2015 requiring the petitioner to send a reply to the letter dated 05.05.2011. The petitioner sent a reply on 28.05.2015, stating that he had already sent a reply on

12.05.2011 and the petitioner also sought for copies of the documents. Apart from pointing out the absence of jurisdiction on the part of the 3rd respondent to take action against him. It was followed by another letter dated 24.06.2015 and the final notice dated 20.01.2016.

5.Primary contention of Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioner is that the petitioner, who is an employee of the first respondent, was only sent on deputation with clear terms and conditions that he will continue to be the employee of TIDCO and he would be governed by the service conditions of TIDCO. It is also further contended, TIDCO having allowed him to retire, no action can be taken by the 2nd and 3rd respondents against him.

6.Mr.M.Sivavarthanan, learned counsel appearing for the respondents 2 to 4 would contend that the acts of commissions and omissions made by the petitioner when he was the Managing Director of the 3rd respondent had caused serious financial loss to the 3rd respondent and therefore, the 3rd respondent is well within his rights to take action against the petitioner.

7.In the counter affidavit filed, it has been contended that there were some irregularities in obtaining the sanction of the board for certain contracts, which are awarded to one M/s. Ascent Engineers for construction of Toll Plazas. It is not in dispute that the Contractor made a claim against the 3rd respondent which went into Arbitration and the Arbitrator held that the 3rd respondent is liable to pay the agreed amount and an attempt under Section 34 to have the award set aside also failed and the threat of disciplinary action against the petitioner, which was withheld in the year 2011 was renewed in the year 2015 after this Court has rejected the challenge under Section 34. Therefore, it is clear that the action is reaction to the award being confirmed by this Court.

8.Be that as it may. We are on a limited point of jurisdiction regarding the disciplinary action. The terms and conditions of the deputation between TIDCO and the Tamil Nadu Road Development Company Limited / the 2nd respondent are very clear to the effect that the petitioner will be deemed to be a member of the services of TIDCO and for any act or omission committed by him, he would be liable as per the rules of the TIDCO and the TIDCO alone will be competent to institute disciplinary proceedings against him. Clauses 15, 16 & 17 rules reads as follows:-

"15.Thiru K.R.Viswanathan, Director (Projects), who is a member of Tamil Nadu Industrial Development Corporation Ltd., service will be deemed to be such a member for the purpose of Service Rules

nowwithstanding that his services are placed at the disposal of TNRDC Ltd.

16.If he commits any act or omission, it renders him liable for penalty as per the Rules of TIDCO and TIDCO alone will be competent to institute disciplinary proceedings against him and impose on him such penalty as TIDCO deems fit and TNRDC Ltd in which he is serving at the time of institution of such proceedings shall be bound to render all reasonable assistance to TIDCO to institute and to conduct such proceedings.

17.He will be deemed to be a member of TIDCO service for the purpose of conduct, discipline and appeal rule notwithstanding that his services are placed at the disposal of TNRDC Ltd."

9.In the light of the above categoric agreement between the two Companies when the petitioner, who was sent on deputation, I do not think either the 2nd respondent or the 3rd respondent will have a right to take action against the petitioner for the alleged dereliction of duty. It was only open to TIDCO under law to take action against the petitioner. I am not traversing on the merits of the claim of either of the parties, since I am on the question of jurisdiction alone. The above three conditions set out in the terms and conditions of deputation are so clear and categoric that by no stretch of imagination the power to initiate or proceed with disciplinary action, against the petitioner, be vested with the respondents 2 and 3.

10.Therefore, the Writ Petition will stand allowed, the attempted disciplinary proceedings against the petitioner by the 2nd and 3rd respondents will stand set aside and it is made clear that this will not debar them from taking any other proceedings, which will open to them under law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To:-

1. The Chairman and Managing Director,
Tamil Nadu Industrial Development
Corporation Limited (TIDCO),
No.19A, Rukmani Lakshmipathy Road (Marshalls Road),
Egmore, Chennai - 600 008.
2. The Managing Director,
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+1cc to Mr.Arun Anbumani, Advocate SR.No.42517

+1cc to Mr.T.S.Gopalan and Co, Advocate SR.No.42250

+1cc to Mr.M.Sivavarthan, Advocate SR.No.41797

W.P.No.5516 of 2016
and
W.M.P.No.4858 of 2016

AJS(CO)
GMY(19/07/2022)