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W.A.Nos.1738, 1739 and 1740 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.10.2022

Delivered on: 07.12.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.Nos.1738, 1739 & 1740 of 2022

V.Krishnamurthy

Proprietor M/s.Meena Advertisers,

No.142, Eldams Road,

Chennai-600 018.

...

Appellant in all W.As.

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,

Rajaji Salai, Chennai-600 001.

3.The Tahsildar,

Mylapore-Triplicane Taluk,

Chennai-600 028.

..

Respondents in all W.As.

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 04.07.2022 made in W.P.Nos.19342, 19343 and 19344 of 2013.



W.A.Nos.1738, 1739 and 1740 of 2022

For Appellant
in all W.As.

: Mr.G.Rajagopalan, Senior Counsel
for M/s.G.R. Associates

For Respondents

: Mr.V.Arun,
Additional Advocate General
assisted by
Mrs.R.Anitha,
Special Government Pleader

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

The appellant/writ petitioner, challenging the common order dated 04.07.2022 made in W.P.Nos.19342, 19343 and 19344 of 2013, in and by which the writ petitions filed by him came to be dismissed, has filed the present writ appeals.

2. Facts leading to the filing of the writ petitions, briefly narrated are as follows:

2.1. The writ petitioner / appellant 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 and thought it fit to



W.A.Nos.1738, 1739 and 1740 of 2022

utilise these games to 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, in stadia 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.

2.2. A letter of appointment was issued to M/s.Times TV on 2.11.1995. It seems that M/s.Times TV were unable to get any concrete financial commitment and therefore, it was decided to call for quotations from leading marketing agents in Chennai and appoint marketing agent to carry on with the decision taken by the Government. The appellant/writ petitioner participated in the tender process and submitted the highest bid amount. Thereafter, the appellant was called for negotiations and was asked to improve the offer and ultimately, the appellant guaranteed a sum of Rs.3 Crores for commercialisation of the games, subject to certain rights given to



W.A.Nos.1738, 1739 and 1740 of 2022

him. This resulted in the passing of G.O.(D) No. 177, Education, Science and Technology (Y2) Department dated 9.12.1995. The Government Order recorded the guarantee given by the appellant and the exclusive rights given to the appellant were portrayed 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 said Government Order also directed the appellant/writ 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.

2.3. A Memorandum of Understanding was entered on 9.12.1995 and it specifically portrayed the terms and conditions and the rights given to the appellant. After the completion of SAF games, the petitioner / appellant made a representation dated 3.2.1996 to the Chairman and Managing Director of Tamil Nadu Minerals Limited [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, giving various reasons for making this request. According to the appellant, he incurred a loss of Rs.26.75 Lakhs and he had



W.A.Nos.1738, 1739 and 1740 of 2022

spent a sum of Rs.2.25 Crores towards advertisement charges and requested the Government to release the payment.

2.4. The Government had issued G.O.Ms.No.324, Education, Science & Technology (Y2) Department dated 6.5.1996 and waived the sum of Rs.2 Crores that was guaranteed by the appellant subject to the condition that the appellant 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 appellant paid the amount to M/s.Times TV and also withdrew C.S.No.95 of 1996 that was pending before this Court.

2.5. An FIR came to be registered by the Vigilance and Anti-Corruption Department on 27.8.1996, in which the appellant was added as 6th accused for the offences under the Prevention of Corruption Act & IPC. The complaint that led to the registration of the FIR was that a favourable treatment was given to the appellant 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



W.A.Nos.1738, 1739 and 1740 of 2022

State exchequer incurring a wrongful loss of a sum of Rs.2 Crores.

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2.6. The appellant/writ petitioner started knocking the doors of the State Government and called upon the Government to pay the expenses incurred by the appellant towards advertisement charges. The Government replied to the appellant / writ petitioner stating that the criminal case is pending and it will not be possible to settle the claims made by the appellant / writ petitioner. The appellant was also blacklisted by the Government of Tamil Nadu through a G.O.Ms.No.94, Information Department dated 3.4.1997. It is stated that W.P.No.5252 of 1997, was filed challenging the order of black listing and the Writ Petition was allowed, by order dated 5.10.2002.

2.7. A communication dated 20.6.2000 was sent to the appellant calling upon him to show cause as to why G.O.Ms.No.324, Education, Science & Technology (Y2) Department dated 6.5.1996 should not be cancelled. The appellant challenged the same by filing W.P.No.11616 of 2000 and it was dismissed, by order dated 12.7.2000 and he was directed to



W.A.Nos.1738, 1739 and 1740 of 2022

submit his reply for the show cause notice.

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2.8. There was exchange of notices between the appellant and the Government, wherein the appellant has requested for copies of documents relied upon by the Government. Ultimately, the appellant was allowed to inspect the documents and according to the appellant, the counsel was allowed to inspect only certain documents and the entire materials were not shown to him. Thereafter, the appellant 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 appellant that no further extension of time will be granted for giving the reply to the show cause notice and the appellant also sought for relevant materials relied upon by the Government. The said writ petition came to be dismissed by this Court by an order dated 25.8.2000. The appellant / writ petitioner thereafter gave an additional reply dated 27.8.2000 through his Counsel.

2.9. The Government has considered the explanation given by the appellant/writ petitioner and G.O.Ms.No.45, dated 12.10.2000 was issued



W.A.Nos.1738, 1739 and 1740 of 2022

cancelling the waiver granted by, G.O.Ms.No.324, dated 6.5.1996. The appellant has filed W.P.No.17844 of 2000 by challenging G.O.Ms.No.45, dated 12.10.2000, wherein the Government has also filed a detailed counter. The appellant / writ petitioner chose to withdraw the writ petition on the ground that he intends to approach the Government to reconsider the Government Order and by order dated 22.8.2002, the writ petition was dismissed as withdrawn and it was made clear that if the appellant/writ petitioner is aggrieved by any further decision of the Government, he was at liberty to approach the Court.

2.10. The petitioner made a representation dated 2.12.2002 to the Government and requested for cancellation of G.O.Ms.No.45, releasing his payments incurred towards advertisement charges and to drop the action in the criminal case. A closure report was filed in the criminal case before the concerned Court and recording the same, further action was dropped and the concerned Court also passed an order on 9.12.2004.



W.A.Nos.1738, 1739 and 1740 of 2022

2.11. The Collector of Chennai has 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 appellant / writ petitioner. Challenging G.O.Ms.No.45 and also the communication dated 31.10.2006 sent by the Collector, the appellant had filed W.P.Nos.49785 and 49786 of 2006. But the appellant / writ 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 appellant, if any adverse order is passed against him. Thereafter, a representation was made by the appellant 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.

2.12. The Government, considering the representations made by the appellant, by letter dated 2.6.2012, has rejected the request made by the appellant. The District Collector has also initiated proceedings under the Revenue Recovery Act, for recovery of a sum of Rs.2 Crores from the appellant. The appellant / writ petitioner has therefore filed three Writ



W.A.Nos.1738, 1739 and 1740 of 2022

Petitions viz., W.P.No.19342 of 2013, challenging the proceedings of the District Collector dated 2.7.2013, W.P.No.19343 of 2013, challenging the G.O.Ms.No.45, dated 12.10.2000 and W.P.No.19344 of 2013, challenging the letter dated 2.6.2012 issued by the Government rejecting the representations made by the appellant.

2.13. The first respondent has filed a common counter affidavit refuting the claim made by the appellant / writ petitioner and the first respondent has given their justification for cancelling G.O.Ms.No.324 dated 06.05.1996 and for initiating Revenue Recovery proceedings against the appellant / writ petitioner.

2.14. The learned Judge, taking into consideration the rival submissions and the materials on record, held that there is no violation of the principles of natural justice and the impugned G.O.Ms.No.45 has been passed after affording reasonable opportunity to the appellant. Insofar as the ground of lack of jurisdiction is concerned, the learned Judge has held that it is always left open to the Government to correct its mistakes when a



W.A.Nos.1738, 1739 and 1740 of 2022

palpable illegality is brought to its notice and ultimately held that it was perfectly within the power and jurisdiction of the Government to issue G.O.Ms.No.45. The learned Judge further observed that there is no question of applying the principles of estoppel in this case, since G.O.Ms.No.324 was a favour that was given to the appellant/writ petitioner for obvious reasons and the principle of estoppel is not meant to be applied in cases of this nature. The learned Judge, having observed 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 cancellation of earlier Government Order, has dismissed the writ petitions, by common order dated 04.07.2022. Challenging the same, the present writ appeals are filed.

3. Mr.G.Rajagopalan, learned Senior Counsel appearing for the appellant submitted that even while the criminal investigation was pending and not concluded, the Government has issued G.O.Ms.No.45 dated 12.10.2000, cancelling the earlier Government Order in G.O.Ms.No.324 dated 06.05.1996, but ultimately by order dated 09.12.2004, the FIR was



W.A.Nos.1738, 1739 and 1740 of 2022

closed by the Criminal Court after taking into account the report of the DVAC that there is no sufficient evidence to proceed and hence further action was dropped. It is further submitted that the learned Judge ought to have seen that this Court issued a direction for consideration of the representation and hence, by order dated 30.08.2011, the same was sought to be withdrawn and once this Court has thought fit to issue such a direction, in the subsequent case, the petitioner cannot be faulted for the same. It is further contended that all documents relied upon by an adjudicating authority while passing an order ought to be disclosed to the person concerned and non-adherence of the same vitiates the entire proceedings and the learned Single Judge, without going into the said issue, erroneously had held that there is no violation of the principles of natural justice.

4. Mr.V.Arun, learned Additional Advocate General, assisted by Mrs.R.Anitha, learned Special Government Pleader submitted that G.O.Ms.No.324 was cancelled after following due process of law, that too



W.A.Nos.1738, 1739 and 1740 of 2022

after filing of two writ petitions and after the change of Government, the appellant/writ petitioner took a U turn and challenged the infirmity of G.O.Ms.No.45 and he wanted to make use of his influence by which he withdrew the writ petition with liberty to challenge if any adverse order was passed against him and therefore, prays for the dismissal of these writ appeals. The learned Additional Advocate General, in support of his submissions, has placed reliance on the following decisions:

(i) The State of Tamil Nadu v. V.Krishnamurthy [Order dated 11.4.2008 in W.A.Nos.1030, 1031 and 1465 of 1998]

(ii) V.Krishnamurthy & another v. State of Tamil Nadu and Others [Order dated 26.03.2019 in Civil Appeal Nos.7703-7704 of 2009]

5. This Court has considered the rival submissions and also perused the materials available on record.

6. The fact remains that the Government has passed orders in G.O.Ms.No.324 dated 06.05.1996 granting waiver of Rs.2 Crores to the appellant/ writ petitioner subject to certain conditions and one of the



W.A.Nos.1738, 1739 and 1740 of 2022

conditions was that the appellant should unconditionally withdraw all the Suits in compliance with the said conditions. The order passed by the Government in G.O.Ms.No.324 could not be implemented due to intervening general elections and certain cases were filed against the appellant and the Government declined to settle the dues on the ground that investigation was pending.

7. At this juncture, a communication was issued by the State Government dated 20.06.2000 to show cause as to why G.O.Ms.No.324 should not be cancelled, and after certain protection given by the Court, a detailed reply was given by the appellant. Challenging the show cause notice dated 20.06.2000, the appellant / writ petitioner has filed W.P.No.11616 of 2000 and it was dismissed by this Court on 12.07.2000, granting liberty to the appellant to raise all his legal contentions and to submit his explanation by 5.00 p.m on 21.07.2000 and thereafter, it is open to the respondents to proceed further.

8. Pursuant to the order passed in W.P.No.11616 of 2000, the appellant had sent a legal notice to the first respondent dated 17.07.2000, pointing out that the basis on which the show cause notice said to have been



W.A.Nos.1738, 1739 and 1740 of 2022

issued have not been disclosed, except a vague reference to the pending investigation by DVAC, and that the respondents have not enclosed the details of the investigation said to have been made by DVAC in the said show cause notice and sought to disclose all the materials. Thereafter, the appellant submitted a detailed reply to the show cause notice dated 21.07.2000. The appellant has also sought for production of material documents, by communication dated 10.08.2000 and by response dated 14.08.2000, the Government has accorded permission to peruse the records. The Government, by communications dated 18.08.2000, 21.08.2000 have called for further explanation and also gave time till 28.08.2000 to submit his reply, failing which further action would be pursued. Challenging the communication of the first respondent dated 21.08.2000, the appellant / writ petitioner filed W.P.No.14476 of 2000 and the said writ petition was dismissed. The petitioner filed additional reply dated 27.08.2000 and thereafter, the Government has issued the impugned G.O.(Ms.)No.45, Youth Welfare & Sports Development (S2) Department dated 12.10.2000, cancelling the waiver granted by G.O.Ms.No.324 dated 06.05.1996.

9. The appellant / writ petitioner challenged G.O.Ms.No.45 dated



W.A.Nos.1738, 1739 and 1740 of 2022

12.10.2000 by filing W.P.No.17844 of 2000 by raising various grounds such as violation of principles of natural justice, malafide etc. The said writ petition was dismissed as withdrawn, by order dated 22.08.2002. It is relevant to refer to the following portion of the said order:

“3. The learned Senior Counsel for the petitioner seeks ***permission of this Court to withdraw the above writ petition in order to facilitate the petitioner to approach the Government to reconsider the impugned G.O., after giving him due opportunity.***

4. The learned Additional Government Pleader has no objection to permit the petitioner to approach the Government.

5. Accordingly, the petitioner is permitted to withdraw the above writ petition, making it clear that if and when the petitioner is aggrieved by the further decision of the Government, he is at liberty to approach this Court, if he is so advised.”

10. A perusal of the aforesaid communications between the appellant/writ petitioner and the respondents would reveal that sufficient opportunity has been afforded to him at the show cause notice stage itself before passing the impugned G.O.Ms.No.45 dated 12.10.2000. Moreover, it is seen from the order dated 22.08.2002 passed in W.P.No.17844 of 2000 that before deciding the validity of G.O.Ms.No.45 on merits by this Court, the petitioner himself has chosen to withdraw the above writ petition in



W.A.Nos.1738, 1739 and 1740 of 2022

order to facilitate him to approach the Government to reconsider the impugned Government Order after giving him due opportunity.

11. Pursuant to the order passed by this Court dated 22.08.2002 in W.P.No.17844 of 2000, the petitioner made a representation to the first respondent on 02.12.2002 seeking to reconsider and cancel G.O.Ms.No.45 dated 12.10.2000. The criminal case registered by DVAC in Cr.No.8/AC/1996/HQ was closed by order dated 09.12.2004 as further action dropped. In the light of dropping of criminal proceedings, the petitioner has made further representation to the first respondent on 23.02.2005 seeking to restore G.O.Ms.No.324 dated 06.05.1996 and to release the payment due to the newspapers for the advertisements published on behalf of the Government. Subsequently, the second respondent / Collector of Chennai District has issued a communication dated 31.10.2006 informing the petitioner / appellant to send the settlement due details immediately, failing which action will be initiated under the provisions of Revenue Recovery Act through the third respondent / Tahsildar.

12. It is to be pointed out at this juncture that the appellant/writ



W.A.Nos.1738, 1739 and 1740 of 2022

petitioner, having undertaken to withdraw the earlier writ petition in W.P.No.17844 of 2000 in order to facilitate him to approach the Government to reconsider the impugned G.O.Ms.No.45 after giving him due opportunity, has once again filed W.P.No.49785 of 2006, challenging the very same Government Order and filed W.P.No.49786 of 2006 challenging the communication dated 31.10.2006.

13. W.P.Nos.49785 and 49786 of 2006 were disposed of on 30.08.2011 with a direction to consider the petitioner's representation dated 23.02.2005 on merits and in accordance with law after affording reasonable opportunity to the appellant/writ petitioner. The respondent has filed M.P.Nos.1 in the above writ petitions, seeking extension of time to comply with the order and eight weeks time was granted by this Court to comply with the directions. Thereafter, the 1st respondent has passed the order dated 02.06.2012, impugned in W.P.No.19344 of 2013, by considering the appellant / writ petitioner's representations dated 23.02.2005 and 11.10.2011 and decided to reject his request to cancel G.O.Ms.No.45, Youth Welfare and Sports Development Department dated 12.10.2000.



W.A.Nos.1738, 1739 and 1740 of 2022

14. It is useful to extract the impugned order dated 02.06.2012; as follows:

“I am directed to invite your attention to your representations dated 23.02.2005 and 11.10.2011 and to state that your representations were considered and they were examined in detail in consultation with concerned departments. After detailed scrutiny and examination, the Government in Youth Welfare and Sports Development Department has decided to reject your request to cancel the G.O.Ms.No.45, Youth Welfare and Sports Development Department dated 12.10.2000, as your representations do not have the requisite merit and sufficient grounds.

2. Accordingly, I am directed to state that, your request to cancel G.O.Ms.No.45, Youth Welfare and Sports Development Department dated 12.10.2000 is hereby rejected.”

15. A bare perusal and reading of the aforesaid impugned order of the first respondent dated 02.06.2012 reveals that the first respondent has stated that the same has been passed after consultation with the various departments, however, the details of such departments and the persons with whom consultations were done have not been disclosed. The appellant/writ petitioner has also not been afforded the opportunity of personal hearing before passing the said order. Except referring to G.O.Ms.No.45 and the representations of the appellant dated 23.02.2005 and 11.10.2011 and the interim order of this Court dated 30.08.2011, there is no other details about



W.A.Nos.1738, 1739 and 1740 of 2022

internal communications between various departments with regard to consultation made by the first respondent. Therefore, this Court has no hesitation to hold that the impugned order of the first respondent dated 02.06.2012 is nothing but a cryptic and non-speaking order. It is to be pointed out that the order of waiver vide G.O.Ms.No.324 was passed in the year 1996, which was subsequently cancelled vide G.O.Ms.No.45 in the year 2000 and the criminal case registered by DVAC was also dropped and now almost three decades have passed and after a long efflux of time, the matter would not require for reconsideration afresh and therefore, we are of the view that the impugned Government Order in G.O.Ms.No.45 dated 12.10.2000 is also unsustainable.

16. The second respondent/District Collector has also passed a proceeding in Proc.No.G2/56444/2013 dated 02.07.2013, order impugned in W.P.No.19342 of 2013, directing the third respondent, namely the Tahsildar, Mylapore-Triplicane Taluk to recover the above said amount from the defaulter / appellant by invoking the provisions of Revenue Recovery Act and remit the same. At this juncture it is useful to extract the



W.A.Nos.1738, 1739 and 1740 of 2022

said order as follows;

“In the reference 1st read above, the Secretary to Government, Youth Welfare and Sports Development, Chennai-9 has requested to recover a sum of Rs.2,00,00,000/- (Rupees Two Crores Only) from M/s.Meena Advertisers, 142, Eldams Road, Teynampet, Chennai-18 towards Guarantee amount dues.

The Tahsildar, Mylapore-Triplicane Taluk is authorised to recover the above said amount from the defaulter invoking the provisions of Revenue Recovery Act, and remit the amount under the following Head of Account.

*0202 Education – Sports Arts and Culture
03-Sports and Youth Services
800 – Other Expenditure
AF Receipts under Seventh South Asian Federation Games
(DPC 0202-03-800 AF-0003)
under intimation to this office.”*

17. A perusal of the aforesaid impugned order of the second respondent dated 02.07.2013 would reveal that except referring to the communication of the first respondent dated 12.06.2013, there is no reference whatsoever as to whether an opportunity of personal hearing was afforded to the appellant / writ petitioner and without assigning proper



W.A.Nos.1738, 1739 and 1740 of 2022

reasons, the aforesaid order has been passed. Though the learned Additional Advocate General for the respondents contended that sufficient opportunity has been afforded to the appellant/writ petitioner, no supportive material/record has been produced and as such, this Court finds that the contention of the appellant that the respondents have passed impugned orders in violation of the principles of natural justice and also in violation of the earlier order passed by this Court, merits acceptance. The learned Judge has also not considered the said aspect in proper perspective and dismissed the writ petitions as if there is no violation of the principles of natural justice, which this Court finds to be wholly unsustainable.

18. In the light of the reasons assigned above, these Writ Appeals stand allowed and the impugned common order dated 04.07.2022 passed in W.P.Nos.19342 to 19344 of 2013 stands quashed. No costs.

[T.R., ACJ.,] [D.K.K., J.]
07.12 .2022

Index: Yes/No
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W.A.Nos.1738, 1739 and 1740 of 2022

To

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



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W.A.Nos.1738, 1739 and 1740 of 2022

T.RAJA, ACJ.,
and
D.KRISHNAKUMAR, J.

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Common Judgment in
W.A.Nos.1738, 1739 & 1740 of 2022

07.12.2022