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In the High Court of Judicature at Madras

Dated: 27.01.2022

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The Honourable Mr.JUSTICE V.PARTHIBAN

W.P.No.32332 of 2019

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.... Petitioner

Vs.

1. The Principal Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply (MAWS)
Department, Fort St. George, Chennai - 600 009.

2. The Director of Town Panchayats,
Directorate of Municipal Administration,
MRC Nagar, Raja Annamalaipuram,
Chennai, Tamil Nadu - 600 028.

.... Respondents

PETITION filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his Proceedings in Na.Ka.No.17096/2014/A5 dated 08.03.2018 and the consequential order passed by the 1st respondent in G.O.(10 years) No.295 MAWS (TP4) Department dated 26.07.2019 and quash the same and consequently direct the respondents to reinstate the petitioner back into service with all attendant benefits.

For Petitioner : Mr.V.Vijayshankar

For Respondents: Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

The case of the petitioner is that she was initially appointed as Bill Collector and subsequently promoted as Head Clerk in the year 2007. She was placed under suspension on 03.12.2014 while he was working as Executive Officer of Koothappar Town Panchayat. Subsequently, she was served with a charge memo containing 5 articles of charges.

2. The charges were framed on the basis of the audit objections raised by the Local Fund Audit. Subsequent to the framing of the charge, enquiry proceedings was set in motion and in the enquiry proceeding, the petitioner was directed to appear



on 23.12.2015 and she appeared as per the direction. On that day, very few questions were put to the petitioner and thereafter she was directed to leave the place. No witnesses were examined, only the petitioner was given an opportunity to put forth her case. The petitioner was not even given any further opportunity, except the enquiry officer enquired her with some questions.

3. It transpired that behind the back of the petitioner, enquiry report was prepared on 05.02.20217. Subsequently, on 08.03.2018, the second respondent passed an order removing the petitioner from service. As against that, an appeal was preferred before the first respondent on 11.04.2018. But the appeal came to be rejected on 26.07.2019 through the impugned Government Order. Challenging the imposition of penalty of removal from service and the Government Order confirming the same, the petitioner is before this Court.

4. Mr.Vijay Shankar, learned counsel for the petitioner would submit that the impugned action of the respondent is ex facie illegal and arbitrary and cannot be countenanced, both in law and on facts. When charges were framed against the petitioner under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short 'Rules'), viz., major penalty proceedings, the respondents ought to have followed the elaborate procedure contemplated for conduct of disciplinary action in respect of 17(b) charges. But unfortunately, in this case, while appointing the enquiry officer, no Presenting Officer was appointed and that role was taken over by the enquiry officer himself.

5. According to the learned counsel, the enquiry officer was not even aware of the basic and fundamental procedure to be followed in such disciplinary matters, but merely asked few questions to the petitioner, who was directed to be present before him and thereafter by exercising undue influence on the petitioner, obtained a letter from her as if enquiry proceedings were conducted properly and fairly and also a statement has been obtained forcibly as if she was not interested in cross examining any witness.

6. The enquiry officer acted in tandem with the disciplinary authority by relinquishing his role as an impartial officer and in that process he has also thrown to the winds all the mandatory procedures to be followed in the matter. At the end, there was no evidence let in, as no witnesses were examined. However, the report was prepared and submitted as if the charges stood established in the enquiry. The disciplinary authority with a pre-determined mind has accepted the report without raising any issues as to the improper procedure followed



7. It is unfortunate again that the appellate authority who is supposed to exercise his independent application of mind to see whether there was any defect in the enquiry, has simply rejected the appeal without any application of mind. In the said circumstances, the entire disciplinary proceedings as well as the final order of removal from service along with the appellate orders confirming the punishment are liable to be set aside as being ex facie illegal and arbitrary.

9. The counter affidavit further stated that if the petitioner felt that she had not been afforded proper opportunity, she ought to have registered a complaint at that relevant point of time or immediately thereafter and consequently, ought to have cross examined any witness to prove her case. Having admitted in her handwritten letter that the process of enquiry was to her satisfaction and revealed she had no further evidence, the petitioner is estopped from raising the issue of non-affording of opportunity in the enquiry at this distance of time, that too in this Writ Petition for the first time and not earlier.

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authorities have appreciated the materials which formed the basis of the report and rightly taken a decision against the petitioner, which is liable to be upheld by this Court.

11. In response to the aforesaid submission, learned counsel for the petitioner would submit that the stand taken by the respondents in the counter affidavit ought not to be countenanced, both in law and on facts. Under no circumstances, a Government servant can give up his or her fundamental right to be provided by affording sufficient opportunity to defend himself/herself against the charges. This is particularly so, when the charges have ultimately culminated in the imposition of extreme penalty of removal from service. Even if a Government servant is not asking for such opportunity, it is the bounden duty of the employer, namely, the respondents herein to inform the availability of such rights to the petitioner and to ensure that such opportunity be availed by her before proceeding and concluding the disciplinary action initiated against her.

12. As a matter of fact, learned counsel further submitted, that even for exparte enquiry, proper procedure of examining witnesses and marking of documents is to be followed and only thereafter, the enquiry report can said to be having any legal sanctity. As far as the present case is concerned, the enquiry report on the basis of the defective conduct of disciplinary proceedings can only be called perverse report and nothing else.

13. In support of the legal contention, learned counsel would rely on the following decisions:

(i) K.Govindasamy V. Tamil Nadu Civil Supplies Corporation Ltd. (1998 3 LLN 326)

In the aforesaid decision, learned counsel would draw the attention of this Court to paragraphs 13 and 14, which are extracted hereunder:

13. Further, it is settled law that it is for the Management to prove the charges beyond any doubt. Merely because the petitioner did not seek opportunity that would not mean that charges were established. As observed by Shivaraj Patil, J., in a decision reported in N. Radhakrishnan v. T.N.C.S. Corporation Ltd. (1995) 2 L.L.N. 1081, it was for the management to establish the charges by the materials on record. As a matter of fact, in our case, it is seen that the petitioner not only denied the charges but also sought permission to examine witnesses on his side even in the Questionnaire form. The said procedure has not been followed. Kanakaraj, J., in W.P.No. 11145 of 1987 dated 19.2.1991



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has taken the same view that failure to follow the said principle vitiates the enquiry and ultimate Order passed by the respondents. Abdul Wahab, J., in a decision reported in K. Mohan Doss v. Tamil Nadu Civil Supplies Corporation (1997) 2 L.L.N. 892. has held that without examining any witness and marking documents, submission of a report by the Enquiry Officer and basing on that report, imposition of punishment cannot be sustained and the procedure adopted for enquiry is not proper. In Writ Appeal No. 782 of 1992 dated 18.3.1997 the Division Bench of this Court, in a similar circumstance has held as follows:

...We are of the view and it is by now well settled that in a domestic enquiry, as in a regular trial the burden of proof of establishing the guilt on a charge is always on the accuser and not on the accused and this burden must be discharged fully in conformity with the principles of natural justice. The employer should take steps first to lead evidence against the workmen charged, give him an opportunity to cross-examine the said evidence and then should ask the concerned workman whether he wants to give any explanation about the evidence led against him. Before asking the workman to produce his evidence, it was also held in catena of cases, that it is not fair at the very outset to closely cross-examine even at the commencement of the domestic enquiry the delinquent officer concerned and act upon the answers given or materials gathered during the preliminary enquiry, without making it part of the regular enquiry during the course of the domestic enquiry held by the Enquiry Officer appointed for the purpose. The procedure adopted by the domestic Enquiry Officer in this case as also the materials relied upon could not be said to be a legal one and enquiry is vitiated seriously. The Order of punishment passed on the basis of such enquiry and the enquiry report cannot also be sustained by us.

14. Apart from this, the Appellate Authority, without considering the case of the petitioner merely confirmed the Order passed by the original authority.

In the above matter, the learned Judge (as he then was), after adverting to the earlier decisions has held that it is settled law that the management has to prove the charges beyond any doubt regardless of the fact whether the petitioner has sought an opportunity or not.



(ii) State of Uttaranchal and others V. Kharak Singh ((2008) 8 SCC 236).

The learned counsel has referred to paragraph Nos.15, 16 and 19, which are extracted here below:

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15) From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

16) Now, let us consider the merits of the case on hand and whether the High Court is justified in quashing the orders passed by the disciplinary authority as well as the appellate authority dismissing the respondent from service. In the proceedings Letter No. 1644/8 Haldwani dated December 19, 1984 (Annexure-P1) after furnishing certain factual details, the following charges have been levelled against the delinquent:



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"Charge 1: You have concealed the illegal cutting which took place in Asani Block from your higher officials deliberately which caused huge financial loss to the department.

Charge 2: You have not obeyed the orders of your higher officials and you have traveled leaving your working without any reason in arbitrary manner.

Charge 3: You have shown negligence in discharging your duties."

Though a detailed explanation has been submitted controverting the above charges, no enquiry in terms of the above-mentioned principles was ever conducted.

.....
19. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing /disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

In the above case, the Hon'ble Supreme Court has frowned upon the manner in which the enquiry officer conducted himself while conducting the enquiry. The Court held that the conduct of the enquiry officer as prosecutor was contrary to the well known principles enunciated by the Court.

(iii) Roop Singh Negi V. Punjab National Bank and others ((2009) 2 SCC 570)

This Court's attention has been drawn to paragraph Nos.14 and 23, which are extracted hereunder:

14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the



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Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

.....
23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

In the above matter also, no witness was examined to prove the charges in the enquiry. The Court emphasised adherence to the principles of natural justice and held in that case the enquiry report was based on ipse dixit and surmises and conjectures.

(iv) State of Uttar Pradesh and others V. Saroj Kumar Sinha ((2010) 2 SCC 772

The learned counsel has drawn the attention of this Court to paragraph Nos. 27 to 34 and 43, which are extracted hereunder:

27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the enquiry officer to fix a date for his appearance in the enquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the enquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement



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of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311 (2) of the Constitution of India the departmental enquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In the case of *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

32. The affect of non disclosure of relevant documents has been stated in Judicial Review of



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Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet.

34. This Court in the case of Kashinath Dikshita vs. Union of India, (1986) 3 SCC page 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by



the appellant was in terms turned down by the disciplinary authority.

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43. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the enquiry. We, therefore, have no reason to interfere with the judgment of the High Court.

In the above matter, the Hon'ble Supreme Court has enunciated the importance of adhering to the fundamental principles of natural justice and held that in case of violation, such enquiry proceedings cannot be stated to be valid in the eye of law.

14. According to the learned counsel for the petitioner, the Courts have consistently held that in disciplinary matters, the mandatory procedure laid down in the rules should be followed strictly without any deviation. In this case, admittedly, such procedure has not been followed. The learned counsel would therefore request this Court to set aside the entire disciplinary action as well as the punishment and remand the matter to the authorities. The petitioner may be given an opportunity to give explanation to the audit objections and only in the event of her explanation is not satisfactory by the audit authorities, liberty may be given to the respondents to proceed further in the matter.

15. According to the learned counsel, the above request is made for the reason that the charges in substance was that in the capacity of Executive Officer of Koothappar Town Panchayat she has incurred expenditure towards clearing of bushes and desilting the drainage without proper estimation and also not following the procedure resulting in loss to the Town Panchayat. The dereliction of duty that the petitioner was accused of was on the basis of the audit objection and therefore she ought to have been heard by the audit authorities first before the department proceeded to frame charges against her, which procedure had not been followed in the present case. Therefore, at least, this time she may be provided with such opportunity to present her case before the audit authorities and thereafter, the respondents may be permitted to take a call in the matter.

16. This Court considered the submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader and perused the pleadings, materials and the case laws cited.

17. At the outset, it is not in dispute that disciplinary proceedings has not been conducted in terms of the procedure contemplated in the rules in respect of the major penalty



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proceedings initiated pursuant to 17(b) charges. The enquiry officer, as rightly contended by the learned counsel for the petitioner, either was blissfully ignorant of the mandatory procedure to be followed by him in the conduct of disciplinary proceedings or was ostensibly instructed by the higher official to complete his exercise as an empty formality paving way for imposition of penalty on the petitioner. The enquiry proceedings has been initiated, conducted and concluded in total contravention of the mandatory procedure contemplated in the relevant Disciplinary and Appeal Rules, and going by their own record, as averred in the counter affidavit, the disciplinary proceedings cannot held to be conducted fairly or properly. The petitioner herein has not been given any opportunity at all to defend her position against the charges.

18. Admittedly no witnesses were examined nor any documents marked in the presence of the petitioner. The contention of the respondents that the petitioner herself had given a letter stating that she was satisfied about the conduct of the procedure and therefore no further issues could be raised on the same is to be rejected outright as the same is without merits.

19. As rightly contended by the learned counsel for the petitioner, it is incumbent upon the authorities to provide all opportunities to the petitioner regardless of the fact whether she sought for it or not. Merely because a letter was given by the petitioner supporting the shoddy enquiry proceedings conducted by the enquiry officer does not mean that the Courts should affix its stamp of approval on such invalid proceedings which culminated in the imposition of penalty of removal from service of the petitioner.

20. When the Department is proceeding against its servants on the basis of the allegations which are likely to lead imposition of extreme penalty of removal or dismissal from service, every aspect of principles of natural justice is mandatorily to be followed without a slightest deviation or infraction. On the other hand, in the present case, the respondents have given a complete go by to the entire procedure contemplated in the relevant rules and concluded the enquiry proceedings undermining the fundamental right of the petitioner of fair hearing. The way in which the departmental proceedings has been conducted and concluded is nothing but a wholesale violation of the procedure contemplated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

21. But what is more surprising and intriguing in this case is the conduct of the disciplinary authority who appeared to have turned a Nelson's eye to the ex facie illegal conduct of the disciplinary proceedings by the enquiry officer. The



disciplinary authority was either responsible for such sloppy conduct of the enquiry proceedings by prevailing upon the enquiry officer nor he was also ignorant of the mandatory procedure to be followed in such matters. Either way, the action of the disciplinary authority cannot be allowed to stand in the eye of law. What is further surprising is the discharge of quasi judicial function by the appellate authority who merrily thought fit to confirm the action of the disciplinary authority, reflecting complete lack of application of mind on his part.

22. The very concept of appealing against the order of the disciplinary authority under the rules is to rectify and correct any error by the disciplinary authority. If such error is overlooked by the insouciant appellate authority by nonchalant discharge of duties on his part, the appellate order too would become vulnerable to judicial interference.

23. The learned counsel for the petitioner has referred to a number of decisions of the Hon'ble Supreme Court and the relevant observations have also been extracted supra. The rulings as cited by the counsel elucidate the indisputable legal mandate to be followed in the disciplinary proceedings. The mandate as such is beyond any negotiation. However, for the sake of reminding the respondents of their solemn duty towards fair play in action, paragraph 30 of the decision of the Hon'ble Supreme Court reported in 2010 (2) SCC 772 (State of Uttar Pradesh and others V. Saroj Kumar Sinha), is extracted hereunder:

30. When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

In this case, the conduct of the respondent is just the opposite of the above sacrosanct principles laid down by the Hon'ble the Supreme Court

24. For the above stated reason, the impugned Proceedings in Na.Ka.No.17096/2014/A5 dated 08.03.2018 and the consequential order passed by the 1st respondent in G.O. No.295 MAWS (TP4) Department dated 26.07.2019 are set aside.



25. (i) The respondents are directed to pass appropriate orders within a period of four (4) weeks from the date of receipt of a copy of this order reinstating the petitioner.

(ii) On such reinstatement, the petitioner is entitled to all the benefits on notional basis. The respondents are also at liberty to proceed against the petitioner, provided there are sufficient materials to proceed against her in the matter.

(iii) If any decision to pursue disciplinary action against the petitioner, the petitioner shall be given an opportunity to explain to the audit authorities in respect of the objections raised by them.

(iv) If the audit authorities are still not convinced and satisfied with the explanation of the petitioner, then it is open to the respondents to take further action in the matter as they deem fit in the circumstances of the case, then prevailing.

26. The Writ Petition is allowed in the above terms. No costs.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply (MAWS)
Department, Fort St. George, Chennai - 600 009.
2. The Director of Town Panchayats,
Directorate of Municipal Administration,
MRC Nagar, Raja Annamalaipuram,
Chennai, Tamil Nadu - 600 028.

+1cc to Mr.V.Vijayshankar, Advocate SR.No.5107

+1cc to Government Pleader SR.No.5158

W.P.No.32332 of 2019

GJ(CO)
GMY(17/03/2022)