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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

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THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 26490 of 2017
and
W.M.P. No. 28205 of 2017

S.Deva

... Petitioner

-vs-

1. The Tamil Nadu Local Bodies Ombudsman,
No. 100, Anna Salai,
Guindy,
Chennai - 600 032.
2. The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009.
3. The Director of Town Panchayats,
Chennai - 600 104.
4. The Assistant Director of Town Panchayats,
Erode,
Erode District.
5. The Executive Officer,
Modakurichi Town Panchayat,
Erode District.
6. The Chairman,
High Level Committee,
Local Fund Audit/District Collector, Erode,
Erode District - 638 011.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the First Respondent in Complaint No. 0129/2015, Order No. 071/2016 dated 15.04.2016 and consequential proceeding issued by the Fourth Respondent in his proceeding Na. Ka. No. 2926/2016/Pa3 dated 21.09.2016 and quash the same.



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For Petitioner : Mr. T.Dharani
for M/s.N.Kolandaivelu

For Respondents: Mr. B.Nedunchezhiyan (for R1)

Mrs. C.Sangamithirai,
Special Government Pleader
(for R2 to R6)

O R D E R

Heard Mr. T.Dharani, Learned Counsel for the Petitioner, Mr. B.Nedunchezhiyan, Learned Counsel for the First Respondent and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Second to Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was earlier working as the Executive Officer, Modakurichi Town Panchayat and later transferred to Perunthurai Town Panchayat. A complaint under Section 7(i) of the Tamil Nadu Local Bodies Ombudsman Act, 2014 (hereinafter referred to as 'the Act' for short) was made by one B.Senthilkumar, Councillor, Ward No. 2, Kattupalayam, Modakurichi Town Panchayat against the Petitioner alleging irregularities in the discharge of his duties in Modakurichi Town Panchayat by not having ensured the transfer of 10% of land under Open Space Reservation (hereinafter referred to as 'OSR' for short) from the land owners while granting lay-out approval and making payment of bills for laying borewells for amounts in excess of the actual work done. After enquiry under the provisions of the Act, the First Respondent by Order No. 071/2016 dated 15.04.2016 held that the allegations against the Petitioner were proved and determined his liability to an extent of Rs. 37,41,366/- for the loss incurred by not getting OSR lands transferred from the land owners. It had been further held that payments had been made for erection of borewells for an extent of 251.40 meters, but actual work had been done only to an extent of 198.50 meters and the differential extent of 52.90 meters for which the work had not been done had been assessed at the rate of Rs. 250/- amounting to Rs. 13,225/-. In terms of Sections 7(2)(b) and 8(3) read with 12(1)(a) and (b) of the Act, liability was fastened on the Petitioner for recovering the said amounts.

3. In the meanwhile, there had also been audit objection on the said irregularities and the Petitioner had made a representation dated 26.10.2016 to drop the same and this Court by order dated



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22.11.2016 in W.P. No. 40618 of 2016 directed the Fourth and Fifth Respondents therein to consider and pass appropriate orders on that representation. Thereafter, the Regional Director of Local Fund Audit, Tiruppur Region by Order in Na. Ka. No. 942/2016/Tha2 dated 25.01.2017 concurred with that the assessment of loss caused by the Petitioner made in the order passed by the First Respondent. The Petitioner has filed this Writ Petition challenging the Order No. 071/2016 dated 15.04.2016 passed by the First Respondent and the consequential order for recovery in Na. Ka. No. 2926/2016/Pa3 dated 21.09.2016 passed by the Fourth Respondent.

4. Though a contention has been raised that no prior opportunity had been granted to the Petitioner before the passing of the impugned orders, it is evident that the Petitioner had submitted his explanation during the hearing before the First Respondent on 30.11.2015 and a reading of the impugned order passed by the First Respondent discloses that the contention of the Petitioner that the requirement of obtaining 10% land under OSR from the land owners would not be applicable in the case where the lands are below 2,500 square meters had been duly considered and it was factually noticed that all the lands for which the Petitioner had granted approval were above 2,500 square meters. In respect of the claim for excess payment made towards borewells, the Petitioner had contended that it was the acts of the subordinate staff, but the First Respondent has held that the Petitioner as the final authority for making payment ought to have checked the measurement before making payment and would have to bear responsibility for such loss occurred. It would be clear from what has been stated earlier that the impugned recovery is fully justified and is in accordance with law.

5. Learned Counsel for the Petitioner lastly made a fervent plea that the allegations against the Petitioner did not relate to any corruption and the same could not be brought under the category of maladministration. It requires to be noticed here that 'maladministration' has been defined in Section 2(8) of the Act as follows:-

"'maladministration' means an action taken or purported to have been taken in the exercise of administrative function in any case:-

- (i) where such action, administrative procedure or practice governing such action is unreasonable, unjust, oppressive, discriminatory or nepotistic and will make illegitimate gain or loss or will deny deserving benefits; or
- (ii) where there is wilful negligence or delay in taking such action, or the administrative



procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by malfeasance or misfeasance:"

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Inasmuch as the Petitioner in the present case had not followed the requirements of administrative procedure, it clearly amounts to dereliction of duty causing loss to the employer and would fall within the meaning of maladministration for which the Petitioner had been made accountable. It is also made clear that in terms of Section 69 of the Indian Contract Act, 1872, the Petitioner, after making such payment, is not precluded from working out his remedies for reimbursement from the concerned persons, who had been unjustly enriched by such dereliction of duty committed by him, before the proper forum in accordance with law.

6. In such circumstances, there does not appear to be any justification to interfere with the impugned orders passed by the First and Fourth Respondents in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution of India.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Local Bodies Ombudsman,
No. 100, Anna Salai,
Guindy, Chennai - 600 032.
2. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George,
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3. The Director of Town Panchayats,
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4. The Assistant Director of Town Panchayats,
Erode,
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5. The Executive Officer,
Modakurichi Town Panchayat,
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6. The Chairman,
High Level Committee,
Local Fund Audit/District Collector, Erode,
Erode District - 638 011.

+1cc to Mr. B.Nedunchezhiyan, Advocate, S.R.No.16742

+1cc to M/s.N.Kolandaivelu, Advocate, S.R.No.16860

+1cc to the Government Pleader, S.R.No.17052

W.P. No. 26490 of 2017

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NSK/19/05/2022