BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.12.2022**

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THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.14473 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015

R.Ganesan ... Petitioner

/vs./

1.The Principal Secretary to the Government,
Registration and Commercial Tax Department,
Secretariat,
St.George Fort,
Chennai.

2.The Inspector General of Registration,
100, Santhom High Road,
Chennai -28.

3.The District Registrar (Registration),
Palani.

4.The Sub Registrar Office,
Ottanchatiram,
Dindigul District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the impugned proceedings of the 1st respondent in G.O.(T) No.171 dated 12.05.2015 and the impugned proceedings of the 2nd respondent dated 08.10.2014 in Na.Ka.No.50421/S1/2013 and quash the same.

For Petitioner : M/s.V.Muthukamatchi

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The petitioner being aggrieved against the order of the Government made in G.O.(T) No.171, Commercial Tax and Registration (M2) Department, dated 12.05.2015 passed by the first respondent confirming the order passed by the second respondent had approached this Court seeking to quash the same.

2.Heard M/s.V.Muthukamatchi, learned counsel for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents.

3.M/s.V.Muthukamatchi, learned counsel for the petitioner would submit that a show cause notice dated 19.04.2010 had been issued to the petitioner calling upon him to submit his explanation as to why his licence as Document Writer should not be permanently cancelled. She would submit that the petitioner had sent his explanation on 19.05.2010. Thereafter, the second respondent by its order dated 18.08.2011 had cancelled the licence of the petitioner. Being aggrieved against the same, he had preferred further appeal before the first respondent and the first respondent, by its order dated 09.03.2012 in G.O.(T) No. 106, Commercial Tax and Registration (M2) Department, had passed orders setting aside the order of the second respondent and directing a *de novo* enquiry from the stage, where the error had crept in. The first respondent had also instructed an issuance of a show cause notice under Rule 16(3) of Tamil Nadu Document Writers Licence Rule, 1982 calling upon the petitioner as to the violation of conditions of (d), (h) and (k) framed under Rule 9 of the said Rule.

4.M/s.V.Muthukamatchi, learned counsel for the petitioner would vehemently contend that the second respondent had not issued any such further notice and has directly called upon the petitioner for enquiry and had passed an order cancelling the licence on 08.10.2014. Being aggrieved against the same, the petitioner had preferred further appeal to the first respondent and the first respondent had also confirmed the orders passed by the second respondent.

5.M/s.V.Muthukamatchi, learned counsel for the petitioner would seriously contend that when the first respondent had remitted the matter back with a specific direction to issue the show cause notice, no such show cause notice has been issued to the petitioner except for calling upon the petitioner to attend the enquiry. This, according to the learned counsel for the petitioner, would vitiate the further proceedings and therefore, on that ground alone, she had sought to set aside the order impugned in this writ petition.

6.Countering her arguments, Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents would submit that the petitioner had been called for enquiry and he has been heard. Therefore, there will be no prejudice caused to him. Further, relying upon the counter filed by the respondents 1 to 3, he would submit that by a communication dated 14.08.2014, the petitioner was called upon for enquiry and he had submitted his explanation on the same day and thereafter, an enquiry was conducted on 19.09.2014 by the second respondent and only thereafter, the impugned order of the second respondent came to be passed. Therefore, there is no error apparent for this Court to interfere with the orders passed by the first respondent confirming the order of the second respondent.

7.I have considered the rival submissions made by the learned counsels appearing on either side.

8.The short point that is to be decided in this writ petition is that whether there has been a show cause notice issued to the petitioner as directed by the first respondent in his order dated 09.03.2012. If such notice has been issued, then the case of the petitioner falls on that ground. But on the contrary, if such notice has not been issued, the entire procedure followed by the second respondent in passing the impugned order dated 08.10.2014 would have to fall and also the consequential order of the first respondent passed in the appeal against the order of the second respondent.

9.A perusal of the impugned order passed by the second respondent would show that by letter No.536/B3/2013 dated 14.10.2014, the petitioner was called upon to submit his explanation and he had submitted his explanation on the same day. A perusal of the counter would also proceed on the same line. The said communication is admittedly a communication asking the petitioner to attend the enquiry. The order of the first respondent remitting the matter to the second respondent clearly indicates that the petitioner should be put on notice as to the actual violations of the conditions that had been framed under Rule 9 of the Tamil Nadu Document Writers Licence Rule, 1982 along with the imputations and thereafter, the second respondent was directed to proceed afresh. This direction has not been followed by the second respondent. When a licence is sought to be cancelled, the same should have been done in the manner as prescribed. In this case, Rule 16(3) of Tamil Nadu Document Writers Licence Rule, 1982 contemplates a show cause notice. Such a show cause notice in this case has not been issued to the petitioner. Hence, I am of the view that the order impugned in this writ petition suffers from procedural irregularity and therefore leading to violation of the basic principles of natural justice, as the petitioner had not at all been served with show cause notice as to why the licence should be cancelled.

10.In fine, the Writ Petition is allowed. The impugned order passed by the first respondent in G.O.(T) No.171 dated 12.05.2015 confirming the order passed by the second respondent is set aside. The matter is remitted back to the second respondent. If the second respondent deems it fit, he shall issue the show cause notice as prescribed under the Rules and proceed in accordance with law and thereafter pass appropriate orders on merits. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

22.12.2022

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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K.KUMARESH BABU, J.

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