



W.P(MD)Nos.9323 & 9324 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.9323 & 9324 of 2017

and

W.M.P.(MD)Nos.7101 & 7102 of 2017

and

W.M.P.(MD)No.22839 of 2019

M.Dhinakararaju ... Petitioner in W.P.(MD)No.9323 of 2017

U.Alagar ... Petitioner in W.P.(MD)No.9324 of 2017

Vs.

1.The Ombudsman

Tamil Nadu Local Bodies Ombudsman Forum

No.100, Anna Salai,

Guindy,

Chennai-600 032.

2.The Commissioner of Municipal Administration,

Ezhilagam, Chepauk,

Chennai.

3.A.Minaa Noordhin

4.A.Abdul Rahman

... Respondents in both W.Ps.

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order No.0036/2017, dated 24.03.2017 passed by the first respondent in Petition No.0495/2016/Na and quash the same as illegal.



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For Petitioner : Mr.C.Arul Vadivel @ Sekar
For R1 : Mr.D.Shanmugaraja Sethupathi
For R2 : Mr.A.K.Manikkam
Special Government Pleader
For R3 & R4 : no appearance
(in both W.Ps.)

COMMON ORDER

Heard the learned counsel on either side.

2. Shri.M.Dhinakararaju was employed as Revenue Inspector in Karaikudi Municipality in the year 2016, while Shri.U.Alagar was employed as Revenue Inspector in the said Municipality in the year 2016. A complaint was received against both of them from the sons of one A.Pappathi Begum. The complaint was made before the various authorities including the Ombudsman for Tamil Nadu Local Bodies. The writ petitioners herein were issued with notice dated 10.06.2016 calling upon them to submit written statement in response to the complaint given by the sons of the said A.Pappathi Begum. A copy of the complaint was enclosed along with the said notice. The writ petitioners sent a letter dated 04.07.2016 pointing out that the relied upon documents were not furnished. The allegations made against them were also denied. It appears that without serving the relied upon documents on the petitioners, they were instead sent to the Commissioner, Karaikudi Municipality



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along with the communication dated 12.07.2016. The Ombudsman independently enquired the complainant and the writ petitioners herein. Their statements were also recorded. Thereafter, the impugned order dated 24.03.2017 came to be issued recommending initiation of departmental action against both of them. Challenging the same, these writ petitions came to be filed.

3. I initially entertained a doubt as to whether these writ petitions are maintainable. The learned counsel appearing for the writ petitioners drew my attention to the scheme of Tamil Nadu Act No.27 of 2014 (Tamil Nadu Local Bodies Ombudsman Act, 2014). Section 7 of the said Act sets out the functions of Ombudsman. Section 7 is as follows:-

7. The Ombudsman shall perform all or any of the following functions, namely:—

(i) enquire into any written complaint from the Government or that has come to the notice of the Ombudsman in which corruption or maladministration of a public servant or a local body is alleged;

(ii) pass an order on the proved allegation in the following manner, namely:

—

(a) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate investigating agency for necessary action;

(b) where the irregularity involves loss of the fund of the local body, order recovery of such loss from those who are responsible for such irregularity;

(c) where the irregularity is due to wilful negligence or dereliction of duty of any officer or employee of the local body, recommend for departmental action by



the appropriate authority under the relevant rules.

Section 12 of the Act sets out the manner of disposal of the complaints. It reads as follows:-

12. (1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, namely:—

(a) order the recovery of loss caused to the local body from the person responsible;

(b) order the recovery of loss from the accused failing which order for recovery of the amount as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864;

(c) refer the complaint to the appropriate authority to take disciplinary action for willful negligence or dereliction of duty of any officer or employee of the local body;

(d) order other necessary remedial measures considering the facts and circumstances of the case;

(e) where the Ombudsman finds that the procedure or practice regarding the administration of local body gives room for complaint, he/she may give suggestions to the Government or local body relating to the measures for avoiding the recurrence of such complaint.

(2) The Ombudsman shall submit an annual report regarding the performance of his/her functions under this Act to the Government and the Government shall lay it before the Legislative Assembly with an explanatory memorandum.

4. Thus, the order passed by the Ombudsman directing the recovery of loss caused to the local bodies from the person responsible would definitely be amenable to legal challenge. Under Section 11 of the Act, if, after an enquiry, the Ombudsman finds that there is a prima facie case against a public servant involving a criminal offence, the Ombudsman may refer the complaint and the



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findings with recommendation to the appropriate investigating agency. The appropriate investigating agency on completion of investigation shall initiate prosecution after obtaining sanction from the competent authority.

5. In my view, since any person can set the criminal law in motion, when the Ombudsman refers the complaint with recommendation to the appropriate investigating agency, the same may not be open to challenge. However, the consequential registration of FIR and the other steps taken by the investigating agency will of-course be open to challenge under Section 482 of Cr.P.C. If the Ombudsman had merely recommended to the appropriate authority for taking disciplinary action, that by itself will not be open to challenge. But then, the order of the Ombudsman should not contain any definite conclusions. At best, he can indicate that he can found a *prima facie* case for taking disciplinary action.

6. In the instant case, the impugned order states that the allegation of corruption made against the writ petitioners has been established. The learned counsel for the petitioners had taken a specific ground that the statement of the complainants were recorded behind their back and that they were not allowed to cross examine the said complainants. Based on the statement recorded behind the back of the writ petitioners, the Ombudsman had rendered a categorical finding that the allegations made against the writ petitioners stood



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confirmed. When such a finding had been rendered by the Ombudsman, the disciplinary authority will not dare to take a different view. Any disciplinary action that may be initiated by the authority will only be a empty formality.

7. In view of the grave violation of the principles of natural justice, I have to necessarily interfere with the order impugned in these writ petitions. The order passed by the Ombudsman is quashed. I however make it clear that if the disciplinary authority is of the view that action has to be taken against the writ petitioners, that is a call which the disciplinary authority can very well take and it is not for this Court to tie the hands of the disciplinary authority. In other words, the decision of the disciplinary authority will have to be independently formed and it cannot be anchored on the impugned order passed by the Ombudsman particularly when I have already quashed the same.

8. With this observation and liberty to the disciplinary authority concerned, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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To
The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai.



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G.R.SWAMINATHAN, J.

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