



W.P.(MD)No.22430 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.22430 of 2017

and

W.M.P.(MD)No.18747 of 2017

N.Meera Ali

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Municipal Administration and Water Supply [ME-3]
Department,
Secretariat, St. George Fort,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk, Chennai-5.

3.The Commissioner,
Aranthangi Municipality,
Aranthangi-614 616,
Pudukottai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned Government Order passed by the 1st respondent in G.O.(D).No.407, dated 13.10.2017, confirming the order passed by the 2nd respondent in his proceedings Roc.No.33800/2014F1-1, dated 18.10.2016 and to quash the same as illegal.

For Petitioner	: Mr.H.Mohammed Imran for M/s.Ajmal Associates
For R1 and R2	: M/s.D.Farjana Ghoushia Special Government Pleader
For R3	: Mr.P.Mahendran

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned Government Order passed by the 1st respondent in G.O.(D).No.407, dated 13.10.2017, confirming the order passed by the 2nd respondent in his proceedings, dated 18.10.2016.

2. The brief facts as stated in the affidavit are that initially the petitioner was appointed as Work Inspector at Karaikudi Municipality on 21.02.1994. Thereafter, promoted as Municipal Engineer. The petitioner was given



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Commissioner (in-charge) in Devakottai Municipality. When the petitioner was working at Aranthangi Municipality, a charge memo, dated 30.10.2014 was issued, alleging that when the petitioner was working as Municipal Commissioner (Additional charge in Devakkottai Municipality), the petitioner awarded a lease to a contractor without publishing tender notice. All other charges are incidental to the above allegation. The petitioner submitted an explanation refuting the allegation leveled against the petitioner. Thereafter, an enquiry officer was appointed and the petitioner submitted detailed explanation. The enquiry officer has held that the charges 1 to 3 was proved and the 5th charge was not proved, the 4th charge was held to be partly proved. The enquiry officer has not considered the petitioner's explanation, moreover the conclusion was not supported by any reasons. The petitioner received the enquiry report and submitted further explanation on 28.12.2015. Thereafter, the 2nd respondent, vide proceedings, dated 18.10.2016, imposed the punishment of stoppage of increment for two years with cumulative effect. The petitioner preferred an appeal before the 1st respondent wherein the 1st respondent, vide impugned G.O.(D)No.407, Municipal



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Administration and Water Supply [ME.3] Department, dated 13.10.2017, has rejected the appeal by a cryptic non-speaking order.

3. The contention of the petitioner is that the 1st respondent being the appellate authority ought to have considered the petitioner's explanation in proper perceptive. But without considering the explanation of the petitioner, the 1st respondent passed the impugned order. Though the impugned order passed by the appellate authority states that the petitioner did not seek for cancellation of resolution passed by the Municipal council. But there was no discussion as to the petitioner's explanation that as per Section 13 A of the Tamil Nadu District Municipalities Act, the petitioner had to give effect to the resolution of the Municipal council. As per Section 22 of the Act, the petitioner being an Executive Authority is bound by the resolution of the Municipal Council and as such the petitioner cannot be held responsible for the allegation leveled against the petitioner. The further contention of the petitioner is that on account of the internal dispute between the Chairman and Vice-Chairman, the petitioner was



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made a scapegoat. The petitioner acted diligently to the best of his knowledge and the same misconduct alleged is not intentional and the same is made based on various facts. The petitioner submitted that a common order, dated 31.01.2011, made in W.P.(MD).No.13584 of 2010, this Court directed the Devakkottai Municipality to conduct fresh auction in respect of 8 shops. The petitioner preferred an appeal in W.A.Nos.356 and 357 of 2011, the Hon'ble Division Bench had initially granted an interim order of status quo, vide order, dated 09.12.2011. The writ appeal was ultimately dismissed as infructuous, vide order, dated 04.2.2013, for the reason that at the time of hearing the writ appeal, the period of tender cum auction came to an end. The Hon'ble Division Bench gave a liberty to the appellants therein to approach the civil court if their grievance is still not redressed. But, the enquiry officer has not considered the fact of filing of suit in O.S.No.68 to 72 and 100 to 102 of 2014 on the file of District Munsif Court, Devakkottai, in which interim injunction was granted. It is only on account of the interim order of the Civil Court, the petitioner was not in a position to proceed with the tender though the tender notification was issued by the petitioner. This



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aspect was not considered either by the enquiry officer or by the disciplinary authority. The petitioner further submits that in pursuance of the order passed by this Court, the petitioner issued a tender notification, dated 11.08.2014 inviting application from the eligible tenders in 03.09.2014 in the respect of the newly constructed 8 shops. The auction was scheduled to be held on 03.09.2014 under the said circumstances, the existing lessees filed in O.S.Nos.68 to 72 and 100 to 102 of 2014 on the file of the District Munsif Court, Devakkottai seeking for permanent injunction restraining the Devakottai Municipality from dispossessing them without following due process of law. In the suits, the existing lessees filed interim injunction restraining the disposal of the above suits, in respect of the above said 8 shops. In view of the interim order, the petitioner was forced to keep the auction cum tender notification, dated 11.08.2014, in abeyance.

4. Thereafter the Devakottai Municipality decided to convene a council meeting on 10.10.2014 as regards the allotment of the 8 shops in favour of the existing 8 lessees. Thereafter, the existing lessees submitted an undertaking to the



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effect that they would withdraw the suits filed against the Devakottai Municipality and they would be ready to pay the rent as fixed by the Municipality without any protest. In view of the above said undertaking and if the 8 shops are kept under lock without any use it would lead to huge monetary revenue loss, it was decided to unlock the shops. Notwithstanding existing lessees for higher rent, the council also agreed to the said increase in the rent. Thereafter, the petitioner being the Commissioner in-charge have implemented the resolution resolved by the Municipal council. The petitioner has simply implemented the resolutions of the municipality. Therefore, the petitioner prayed that he cannot be blamed for having implemented the resolutions. It is not as if the petitioner did not publish the tender notice. The petitioner also submitted that he obtained legal opinion then and there and acted accordingly. Therefore, there is no willful act on the part of the petitioner and there is no such finding by the enquiry officer.

5.The enquiry officer held that the petitioner has disobeyed the order made in W.P.No.13042 of 2010. The contention of the petitioner is that he did not



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disobey the order itself but only involved in implementing the order of the Court. The petitioner issued tender notification and placed the subjects only as per the instructions of the Chairman, that too after obtaining the opinion from the Government Pleader and has acted as per the opinion of the Government Pleader. Further, when the petitioner proceeded for auction, the learned District Munsif Court Devakottai, vide order, dated 01.09.2014, issued interim injunction restraining the Devakottai Municipality from proceeding with the tender. In such circumstances, the petitioner had no other option except to implement the resolutions of the Municipality. So, the petitioner collected lease amount that too higher amount than the existing amount. Therefore, the petitioner prayed to allow the writ petition by setting aside the impugned orders.

6. The 1st respondent has filed a counter affidavit stating that the petitioner suo moto granted lease to the existing persons. The petitioner had filed an appeal before the 1st respondent and the 1st respondent after considering his explanation and the relevant original records furnished by the 2nd respondent found that the 2nd



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respondent has not found any fresh grounds for consideration and dismissed the appeal. This Court has already passed an order in W.P.(MD)No.13584 of 2010 directing the respondent Municipality to call for tender in a transparent way. Even though a writ appeal was preferred, it was subsequently dismissed on 04.12.2013. Therefore, legal opinion was obtained from a Senior Advocate on 22.06.2012 and another opinion from Government Pleader and Standing Counsel was also obtained, which differ from each other. One opined to conduct tender and the other opined to stop the tender. The petitioner failed to seek instructions from his superiors. The petitioner has not initiated any action to lease out 8 shops thereby violating Tender Transparency Act. Moreover, when the orders of the Honourable Division Bench directed only to conduct fresh public auction by way of tender in a transparent manner. In spite of the orders passed by this Court in the writ petition as well as writ appeal directing the Devakottai Municipality to conduct a fresh tender, the petitioner failed to obey the orders. Therefore, in the enquiry, it has been held that the charges are proved, except the charges 4 and 5 are partly proved. Therefore, the respondents prayed to dismiss the writ petition.



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7. Heard Mr.H.Mohammed Imran, learned Counsel appearing for the petitioner, M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.P.Mahendran, learned Counsel appearing for the third respondent and perused the records placed before this Court.

8. It is seen from the records that this Court and the Honourable Division Bench of this Court has directed the Devakottai Municipality to conduct a fresh tender. Based on the orders, the petitioner has issued tender notification. In the meanwhile, the said lessees who were occupying the 8 shops had preferred a suit before the Civil Court and has obtained interim injunction restraining the Devakottai Municipality from conducting tender. In such circumstances, the petitioner has taken a decision to get increased lease amount from the existing lease amount. The decision of the petitioner is only based on the resolution passed by the Municipal council. Admittedly, there are different opinions. In the meanwhile, the Civil Court has granted an interim injunction. Now, the



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resolution is passed granting to continue with the said lessees itself with increased lease amount. In such circumstances, the petitioner has acted in accordance to the resolution by collecting higher lease amount and he has allowed the lessees to continue.

9. Under these circumstances, this Court is of the considered opinion that the petitioner has acted to the best of knowledge and diligently in the given circumstances. There are two different opinions and two different orders passed by the Courts. Finally, the petitioner had relied on the resolution of the Municipality and granted permission to the lessees to continue, of course with an increased lease amount. The petitioner has rightly imposed a higher amount so that the Municipality does not incur any loss. In such circumstances, there is no ill motive on the part of the petitioner attracting disciplinary proceedings. Therefore this Court is inclined to quash the impugned orders.



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S.SRIMATHY, J

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