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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 20.3.2023.

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Writ Petition No.7042 of 2023

and

W.M.P.No.7119 of 2023

Swamy Ayyappan Educational Trust,
rep. by its Trustee N.Arun,
S/o.Nallathambi
No.7/9, Renugadevi Nagar,
Musiri Taluk,
Trichy 621 211.

Petitioner

vs.

The Deputy Superintendent of
Police,
Vigilance and Anti-Corruption,
1/2, Kamatchiamman Kovil Street,
Karungalplayam,
Erode 638 003.

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondent herein to furnish the entire evaluation report of the buildings of the Trust conducted by the officials of the Public Works Department for Assets in S.No. 23 to 55 shown under heading "immovable properties of the Trust during check period" under Statement II of the Letter RC.342/2021/MISC/SL dated 01.02.2023 with reference to FIR in Salem V and AC Cr.No.17/AC/2021 dated 21.10.2021 and to grant reasonable time as stipulated under Rule 76(2) of the DVAC Manual by considering the representation dated 26.02.2023 and 28.02.2023 given by the petitioner Trust.



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For Petitioner : Mr.R.John Sathyan, Senior Counsel
for Mr.S.Senthil

For Respondents : Mr.N.S.Suganthan
Government Advocate (Crl. Side)

ORDER

The writ petition has been filed by the petitioner-Trust seeking issuance of a writ of mandamus directing the respondent herein to furnish the entire evaluation report of the buildings of the Trust conducted by the officials of the Public Works Department for Assets in S.No. 23 to 55 shown under heading "immovable properties of the Trust during check period" under Statement II of the Letter RC.342/2021/MISC/SL dated 01.02.2023 with reference to FIR in Salem V and AC Cr.No.17/AC/2021 dated 21.10.2021 and to grant reasonable time as stipulated under Para 76(2) of the DVAC Manual by considering the representation dated 26.02.2023 and 28.02.2023 given by the petitioner Trust.

2. The factual background case in a nutshell is as under:-

i) The petitioner Trust is a public charitable Trust established by the Trust Deed dated 22.9.2006 with the primary object of providing education, creating awareness and to develop economic standard of the downtrodden people.



ii) The educational institutions established and run by the Trust are MIT Polytechnic College, MIT College of Education for Women, MIT College of Arts and Science for Women, MIT Bodhi Vidyalaya CBSCE School, MIT Centre for Health Inspector, MIT School of Nursing and MIT College of Agriculture & Technology.

iii) Mr.N.Raju Mudaliyar was the Founder Trustee/Managing Trustee of the Trust and it was re-constituted from time to time and Mr.Elangovan is the present Managing Trustee of the Trust and Chairman of the Board of Trustees. Mr.E.Praveen Kumar is a Trustee and Vice Chairman of the Board of Trustees.

iv) A case in Crime No.17/AC/2021 against Mr.R.Elangovan and Mr.E.Praveen Kumar came to be registered on 21.10.2021 by the Inspector of Police, Vigilance and Anti-Corruption, Salem for the alleged offence under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act read with Section 109 IPC and Sections 13(1)(b), 12 read with Section 13(1)(b) of Prevention of Corruption Act.

v) Pursuant to the same, a notice in RC.342/2021/MISC/SL dated 1.2.2023 is issued by the respondent to the petitioner Trust giving final opportunity to account for the disproportion in the name of



the Trust in connection with Crime No.17/AC.2021 enclosing Basic Statements I to VI for the check period between 1.4.2014 and 31.3.2021.

vi) In response to the above letter, the Trust has sent a reply dated 16.2.2023 refusing the allegations and the quantum in Statements I to VI and requesting the respondent to grant time upto 20.4.2023 for submitting final explanation for which, the respondent had issued another letter dated 17.2.2023 granting extension of time for submitting the reply till 27.2.2023.

vii) The petitioner, once again issued a letter dated 26.2.2023 insisting for extension of time till 20.4.2023 for which, the respondent issued reply dated 27.2.2023 refusing the time sought for by the petitioner and granting time till 6.3.2023 alone.

viii) The petitioner has also sent a detailed representation dated 28.2.2023 requesting the respondent to provide the entire evaluation report of PWD and sought for extension of time till 20.4.2023.

ix) Having not received any response for the same, the present writ petition has been filed seeking a direction to the respondent herein to furnish the entire evaluation report of the buildings of the Trust conducted by the officials of the Public Works Department and a



reasonable time to submit their explanation.

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3. Detailed counter affidavit and additional counter affidavit have been filed by the respondent, the crux of which is as under:-

i) The petition has been filed primarily to prolong the investigation process.

ii) The petitioner Trust had earlier challenged the notice issued under Section 91 of Cr.P.C. and notices to evaluate the buildings of the Trust, by way of W.P.Nos.24785, 24788 and 25535 of 2022 and this Court, by order dated 11.10.2022, held that this court comes to the conclusion that the investigating officer, taking steps for evaluation of building, that too, in a case of disproportionate asset, cannot be objected.

iii) The evaluation of the buildings of the petitioner Trust were done only in the presence of witnesses and also in the presence of Mr.Elangovan or his representatives.

iv) Various details sought for by the respondent vide their letter in RC 342/2021/MISC/SL dated 29.8.2022 like list of donors and details of amounts paid by them during the year 2014 till date, list of persons who had given unsecured loans to the Trust, details of bank accounts of the Trust, copy of Income Tax Returns, courses



undertaken in different institutions run under the Trust and students admission details, but, the petitioner had not chosen to reply to the same though more than 6 months time had lapsed.

v) The petitioner Trust does not have a right to be afforded a chance to explain the alleged disproportionate assets to the investigating officer before filing of a charge sheet.

vi) For the final opportunity notice dated 1.2.2023, the petitioner has not taken any effort to give proper reply within the time given and instead, addressed a letter dated 16.2.2023 making some observation and requested time upto 20.4.2023.

vii) On such request, time was extended upto 27.2.2023, however, the petitioner, by its letter dated 26.2.2023, had, once again sought for time till 20.4.2023.

viii) Since the petitioner was not making any sincere effort to give a proper reply, another seven days were granted and thereby fixing the time limit till 6.3.2023 and thereby, the petitioner was given 31 days time in total for giving a reply to the notice of final opportunity, but, still, the petitioner, without choosing to furnish the explanation, had requested the evaluation report of the Executive Engineer and requested time till 20.4.2023 i.e., another 45 days.



ix) If the petitioner feels that the value quoted by the respondent against each building is higher than the actual rate incurred or if there is any dispute, the petitioner Trust has to furnish the actual rate incurred for the construction of the buildings alongwith evidence for consideration.

x) There is no provision under the Code of Criminal Procedure or under the Prevention of Corruption Act, which provides a right to the petitioner Trust to seek a copy of the Evaluation Report.

xi) The petitioner has chosen to ask for the Evaluation Report for which the petitioner is not entitled, at the fag end of the time limit given with an intention to drag the case and stall the investigation and thus, the petition is liable to be dismissed.

4. Though a larger relief is sought for in the writ petition, Mr.John Sathyan, learned Senior Counsel appearing for the petitioner would submit that the petitioner restricts the relief to one of seeking time for furnishing explanation for the disproportion in assets alleged against the petitioner.

5. Per contra, Mr.N.S.Suganthan, learned Government Advocate (Criminal Side) vehemently opposed for grant of extension of time too contending that the petitioner Trust was given time thrice, but, still,



the petitioner has not chosen to give a proper reply to the notice of final opportunity dated 1.2.2023. He would submit that initially, the notice of final opportunity dated 1.1.2023 required the petitioner to furnish their explanation on or before 17.2.2023, however, the petitioner had chosen to give a reply dated 16.2.2023 with some vague contentions and requesting extension of time till 20.4.2023 under the guise of giving final explanation. That reply was considered by the respondent and by letter dated 17.2.2023, time was extended for furnishing the explanation till 27.2.2023, he added. Further, the learned Government Advocate would submit that still not satisfied with that, the petitioner had addressed the respondent by letter dated 26.2.2023 insisting for extension of time till 20.4.2023, which was also replied by the respondent by letter dated 27.2.2023 itself and in fact granting extension of time till 6.3.2023. He would also submit that the petitioner, once again, had chosen to send a representation dated 28.2.2023 requesting the respondent to furnish a copy of the Evaluation Report while sticking on with the request for extension of time till 20.4.2023. He would submit that the attitude of the petitioner reveals the dilatory tactics to prolong and defeat the investigation process and thus, the petitioner is not entitled to any indulgence by



this court and prayed for dismissal of the writ petition.

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6. Relying on the decision in ***K.Veerasingam vs Union of India and others*** (1991) 3 SCC 655 and ***Central Bureau of Investigation (CBI) and Another vs. Thommandru Hannah Vijayalakshmi alias T.H. Vijayalakshmi and Another*** (2021) SCC OnLine SC 923, the learned Government Advocate would submit that the petitioner Trust does not have a right to be afforded a chance to explain the alleged disproportionate assets to the investigating officer before filing of a charge sheet. Relying on the decision in ***Duraimurugan vs. State*** 2013 (1) CWC 136, he would submit that the guidelines provided in the DVAC Manual are only directive in nature and not mandatory and non-compliance of procedure contemplated in manual cannot be taken advantage by the accused. The learned Government Advocate, by relying on the decision in ***Union of India and another vs. W.N.Chadha*** (1993) Supp(4) SCC 260, would contend that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

7. In reply, Mr.John Sathyan, learned Senior Counsel appearing



for the petitioner would submit that Para 76(2) of DVAC Manual stipulates provision of final opportunity to the accused officer by the investigating officer, in case of actionable material is found, asking him to explain, within a reasonable time the disproportion in assets as determined against the Accused Officer. He would also submit that the explanation sought for by the respondent relates to the transactions of a period of seven years prior to such notice involving a lot of documents and thereby, the petitioner needs to be given some reasonable time to come out with proper explanation and with documentary support, if necessary and thereby, he craves a short accommodation alone rather granting the entire relief.

8. Heard the learned counsel appearing for the parties and perused the materials available on record.

9. The petitioner Trust is facing a serious allegation of possession of disproportionate assets Rs.76,69,40,689/-. Notice of final opportunity has been issued by the respondent to the petitioner Trust on 1.2.2023 with Basic Statements I to VI calling upon the petitioner to account for such possession, on or before 17.2.2023. While making a preliminary objection for the same, by contending that the transactions relate to about seven years prior to such notice and



and not mandatory and non-compliance of procedure contemplated in manual cannot be taken advantage by the accused and that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

11. But, in the case of ***Central Bureau of Investigation (CBI) and Another vs. Thommandru Hannah Vijayalakshmi alias T.H. Vijayalakshmi and Another*** (2021) SCC OnLine SC 923, cited by the learned Government Advocate, the challenge was made to the registration of FIR without conducting a preliminary enquiry by the investigating officer, wherein, by relying on the decision in ***K.Veerasamy vs Union of India and others*** (1991) 3 SCC 655, it was held that institution of a preliminary enquiry in cases of corruption is not mandatory before the registration of an FIR under the Cr.PC, PC Act or even the CBI Manual and in case the information received by the CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the



commission of cognizable offence. Even in the case of

Duraimurugan vs. State 2013 (1) CWC 136, the prayer sought for by the accused officer was quashment of the notice of final opportunity and for a direction for re-issue of Final Opportunity Notice in a particular way. It is also true that in ***Union of India and another vs. W.N.Chadha*** (1993) Supp(4) SCC 260, it has been held that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law. But, in that case a 'letter rogatory' was challenged by the accused on the ground of opportunity not being provided and the Apex, while setting aside the order passed by the High Court which had quashed the 'letter rogatory', has held that the accused has no right at that stage to contest the investigating agency.

12. The case on hand stands entirely on a different footing. The petitioner has not at all challenged the Final Opportunity Notice or questioned the investigating process and in fact, they had restricted their prayer to one of extension of time to submit their explanation to the Final Opportunity Notice.

13. Para 76(2) of DVAC Manual, which contemplates the final



opportunity, reads as under:-

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*"(2) In cases where actionable material is found, after approval of the Final Report at the Headquarters, the Accused Officer should be given the final opportunity by the Investigating Officer, communicating to the Accused Officer, in writing and under acknowledgement, the details of total income and total expenditure during the Check Period and the likely savings at the end of the Check Period, details of the properties and pecuniary resources found possessed as also the quantum of disproportion at the end of the Check Period, as worked out in Basic Statements I to VI, asking him to explain, **within a reasonable time**, the disproportion in assets as determined against the Accused Officer. The format of the letter to be addressed to the Accused Officer in this regard will be in Proforma-28."*

14. When once, the respondent had issued the Final Opportunity Notice confronting the petitioner with some allegations, the petitioner



is left with no other option except to explain the same not in mere vague terms, but, with some basic, but, concrete proof, of course,

within a reasonable time as specified in Para 76(2) of DVAC Manual.

The strong objection made by the respondent is that it is a dilatory tactics adopted by the petitioner to protract the proceedings taking undue advantage of a guideline issued to be followed by the Investigating Officer which is only a directive in nature and not a mandatory one.

15. We can appreciate the contention of the learned Government Advocate if the petitioner challenges the Final Opportunity Notice on the ground of not being heard or not being provided with sufficient time. The petitioner seeks only a reasonable time to submit their explanation to the Final Opportunity Notice. Indisputably, the magnanimity being reflected in the terms "**within a reasonable time**" specified in Para 76(2) of DVAC Manual cannot be taken advantage by the petitioner. But, at the same time, we need to understand the **reasonableness** meant in the above provision.

16. The 5th Edition of Advanced Law Lexicon describes the terms **Reasonable time** as Reasonable time always depends on the



circumstances of the case. According to Wikipedia, it refers to a fair amount of time that is required to do something conveniently and as soon as the circumstances permit. In the case, on hand, the Final Opportunity Notice was issued by the respondent on 1.2.2023 fixing the outer limit for submitting the explanation by the petitioner till 17.2.2023 and subsequently, it was extended at the request of the petitioner twice and in total, the respondent had granted 31 days time for giving the explanation to the notice of final opportunity. But, from the beginning, the petitioner was insisting for time till 20.4.2023 i.e., about 2-1/2 months on the ground that they need to scrutinize the voluminous documents as the details sought for by the respondent relates to about 7 years prior to the notice. The persistence on the part of the petitioner in seeking a fixed time from the inception cannot be termed as dilly-dally tactics rather, it denotes the perception on their part in respect of time that could be consumed for collecting the materials to submit a proper explanation.

17. In view of above and taking into consideration the facts of the present case, this court finds it appropriate to grant time to the petitioner to submit their explanation to the Final Opportunity Notice



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till 3.4.2023. The writ petition is disposed of accordingly. No costs.

The connected Miscellaneous Petition is closed.

20.3.2022.

Index: Yes.

Internet: Yes.

To

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
1/2, Kamatchiamman Kovil Street,
Karungalplayam,
Erode 638 003.



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A.D.JAGADISH CHANDIRA, J.

ssk.

Writ Petition No.7042 of 2023 and
W.M.P.No.7119 of 2023

20.3.2023.