IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.16016 of 2023
and
W.M.P.Nos.15456, 15459, 15460 of 2023

1.V.Vimal Ravindra Raja

2.P.Srinivasan

3.V.Veluchamy

4.V.Duraipandi

5.M.Bismillah Khan ... Petitioners

v

1.State of Tamil Nadu,
Rep. by it's Principal Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St.George, Chennai – 600 009.

2.Inspector General of Registration,
Department of Registration,
Santhome High Road,
Pattinapakkam, Chennai.

3.R.Ravindranath

4.Victoria Edward Hall
Reg.No.16/1907-08
Through it's Secretary
32-B, West Veli Street,
Madurai – 625 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the notice issued by the first respondent in Letter No.4075929/M.1/2023-1 dated 15.05.2023 and quash the same and consequently, directing the 1st respondent to issue notice afresh after recalling it's order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, superseding the management committee of Victoria Edward Hall bearing Reg.No.16/1907-08, Madurai.

For Petitioners : Mr.S.Prabakaran
Senior Counsel
for Mr.S.Conscious Ilango

For Respondents : Mr.U.Bharanidharan
Additional Government Pleader
for R.1, R.2

*****

ORDER

This writ petition is filed by the petitioners challenging the notice of enquiry issued by the first respondent dated 15.05.2023.

2.The petitioners before this Court are the Management Committee members of Victoria Edward Hall Society, Madurai. According to them, the first respondent has issued the impugned notice dated 15.05.2023 for conducting enquiry on the alleged irregularities with regard to the functioning of the Society. However, even before conducting the enquiry, a Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, came to be passed, superseding the Management Committee of Victoria Edward Hall Society. Without recalling this Government Order, the impugned notice of enquiry came to be issued and therefore, they have filed this writ petition.

3.Mr.S.Prabakaran, learned Senior Counsel appearing for the petitioners submitted that the erstwhile members of the Society and some third parties have made some allegations against the then office bearers. In this regard, the first respondent has initiated proceedings under Section 34A of the Tamil Nadu Societies Registration Act and passed G.O.Ms.No.140, Registration Department, dated 14.10.2021, superseding the then Management Committee of the Society. The said Government Order was challenged by the then office bearers of the Society by filing WP(MD)Nos.18857, 18858 of 2021 and this Court, by order dated 22.08.2022, allowed the writ petitions and remitted the matter for fresh consideration, after affording due opportunity of hearing to the members of the Society.

4.Learned Senior Counsel further submitted that in the meantime, fresh election was conducted and a new set of office bearers assumed charge. They have filed a writ petition in W.P.No.7179 of 2023 forbearing the authorities from proceeding with the enquiry initiated under Section 34A of the Act without affording due opportunity to the newly elected office bearers. This Court directed the first respondent to consider the representation of the petitioners and to pass appropriate orders after affording due opportunity. However, the respondents have now claimed that they have passed final orders in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, as early as on 01.03.2023. According to the learned Senior Counsel, this Government Order was passed without affording an opportunity of hearing to the petitioners / the newly elected Management Committee Members and without recalling this Government Order, the first respondent has issued the impugned notice of enquiry, as an eyewash, to show as if they have provided due opportunity.

5.According to the learned Senior Counsel, post decisional opportunity of hearing does not sub-serve the principles of natural justice and in this regard, he has relied on the decision of the Hon'ble Supreme Court in ***H.L.Trehan & Others v. Union of India & Others***, reported in ***CDJ 1988 SC 029***, wherein, it has been held as follows:-

> *"12.It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the*

conditions of their service by the impugned circular. In our opinion, the post decisional opportunity of hearing does not sub serve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I.Shepherd v. Union of India [(1987) 4 SCC 431]. What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the Scheme, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of hearing heard."

Therefore, he prayed for appropriate orders.

6.Mr.U.Bharanidharan, learned Additional Government Pleader, took notice on behalf of the respondents 1 & 2 and submitted that this Court, by order dated 10.03.2023, in W.P.No.7179 of 2023, has directed them to pass appropriate orders on the representation of the petitioners dated 04.02.2023 after affording them due opportunity of hearing. In pursuance of the said direction, the impugned notice of enquiry dated 15.05.2023 was issued before passing orders on the representation dated 04.02.2023.

7.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8.The bone of contention of the petitioners is that the impugned notice of enquiry dated 15.05.2023 ought to have been issued after recalling the Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, in and by which, the Management Committee was superseded by the Government.

9.The Government, at the first instance, has passed G.O.Ms.No.140, Registration Department, dated 14.10.2021, superseding the previous

Management Committee of the Society. This order was challenged by the then office bearers by filing WP.(MD)Nos.18857, 18858 of 2021 and this Court, by order dated 22.08.2022, set aside the Government Order and remanded the matter for fresh consideration after affording due opportunity of hearing. Thereafter, the Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, superseding the Management Committee, was issued.

10.According to the petitioners, this Government Order came to be passed without hearing them / the newly elected Management Committee Members. In the affidavit filed in support of this writ petition, the details with regard to the Office Bearers and Management Committee for the year 2022-25 are enclosed and the same is usefully extracted as follows:-

S.No.	Name	Designation
1	P.Sudalai	President
2	D.Nallathambi	Vice President
3	I.Ismail	Secretary
4	S.Venkatesh Mohan	Treasurer
5	N.R.V.Jawaharlal	MC Member

S.No.	Name	Designation
6	N.Singaraj	MC Member
7	R.Sannasi	MC Member
8	A.Stephen	MC Member
9	A.B.Sukinae	MC Member
10	V.Veluchamy	MC Member
11	M.Bismillah Khan	MC Member
12	V.Duraipandi	MC Member
13	V.Vimal Ravindra Raja	MC Member
14	P.Srinivasan	MC Member

11.According to the petitioners, the writ petitions in WP.(MD)Nos.18857, 18858 of 2021 was filed by the then office bearers challenging G.O.Ms.No.140, Registration Department, dated 14.10.2021, wherein, this Court, by order dated 22.08.2022, remanded the matter for passing orders afresh after affording due opportunity of hearing to the elected members. It appears that the writ petition in WP.(MD)No.18857 of 2021 was filed by one I.Ismail, who is also the incumbent Secretary of the Society. The writ petition in WP.(MD)No.18858 of 2021 was filed by one P.Sudalai and 11 others. Of these 12 persons, it appears, six persons have been re-elected as the office bearers of the Society. They are P.Sudalai [incumbent President], D.Nallathambi [incumbent Vice President], I.Ismail [incumbent Secretary], S.Venkatesh Mohan [incumbent Treasurer], N.R.V.Jawaharlal and R.Sannasi [incumbent MC Members].

12.Only after hearing these members, the Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, was issued. In other words, only after hearing the incumbent President, Vice President, Secretary, Treasurer and two Management Committee Members, this Government Order was issued. The petitioners are the rest of the Management Committee Members. It is not as if G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, was passed without hearing the elected members of the Society, inasmuch as the incumbent President, Vice President, Secretary, Treasurer were given opportunity to represent the Society.

13.It is also represented before this Court that as against the Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-

1) Department, dated 01.03.2023, WP.No.9976 of 2023 is filed by the Society and pending before this Court. Similarly, yet another petition in WP(MD)No.4834 of 2023 is also filed and pending before the Madurai Bench challenging the said Government Order. Therefore, this Court is not inclined to delve into the merits of G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023.

14.The petitioners / some of the newly elected Management Committee Members have made a representation on 04.02.2023 and filed WP.No.7179 of 2023 for a mandamus. The Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department was passed on 01.03.2023. This Court, on 10.03.2023, directed the respondents to pass orders on the representation of the petitioners. This order was passed at the admission stage itself. The petitioners have suppressed the issuance of the Government Order dated 01.03.2023, when the writ petition came up for hearing on 10.03.2023. Therefore, this Court, without any reference to the Government Order dated 01.03.2023, directed the first respondent herein to pass orders on the representation of the petitioners.

15.Since the Government Order in G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023, has been passed after affording due opportunity to the then Office Bearers, who are also the incumbent President, Vice President, Secretary, Treasurer of the Society, there is no necessity for providing opportunity to each and every member of the Society in the proceedings initiated under Section 34A of the Act.

16.For the foregoing discussions, the impugned notice of enquiry dated 15.05.2023 is set aside, as it is not necessary, in view of the issuance of G.O.Ms.No.17, Commercial Tax and Registration (M-1) Department, dated 01.03.2023. Since this Government Order has already been challenged before this Court and the said writ petitions are also pending consideration, the petitioners can work out their remedy in the pending writ petitions, if so advised.

In fine, this writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

25.05.2023

Internet : Yes
Index : Yes / No
NCC : Yes / No
gk/drm

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes and Registration,
Fort St.George,
Chennai – 600 009.

2.Inspector General of Registration,
Department of Registration,
Santhome High Road,
Pattinapakkam, Chennai.

B.PUGALENDHI, J.

drm

W.P.No.16016 of 2023

25.05.2023