`BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 1923 of 2023
and
W.M.P. (MD) Nos. 1704 and 1705 of 2023

N.Ramamoorthy ... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Secretariat, Chennai-9.

2.The Deputy Registrar of Chit,
Thiruchirapalli.

3.M/s. Margadharasi Chits (P) Ltd.,
Tab Complex, 1st Floor,
41, Bharathidasan Salai,
Cantonment, Thiruchirappalli-1.

4.V.Narayana Moorthy ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order in G.O.(Ms) No. 26, commercial Taxes and Registration (G) Department dated 28.01.2022, on the file of 1st respondent and quash the same.

For Petitioner : Mr. N.Karthik Kanna

For Respondents : Mr. K.S.Selvaganesan (R1 & R2)
Additional Government Pleader
Mr. R.Devaraj (R3)

ORDER

Heard Mr. N.Karthik Kanna, Learned Counsel for the Petitioner, Mr. K.S.Selvaganesan, Learned Additional Government Pleader for the First and Second Respondents and Mr. R.Devaraj, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, viz., M/s. Margadharasi Chits (P) Limited, had been conducting chit transactions in which the Fourth Respondent, viz., V.Narayana Moorthy, joined as a subscriber in Chit Ticket No.30 in Chit Group No. TT 001 DTR for the value of Rs. 15,00,000/- per chit payable at the rate of Rs. 50,000/- per month for a period of 30 months. The Fourth Respondent participated in the 11th auction conducted by the Third Respondent and had become a successful bidder and received the prize amount after executing a promissory note as security along with

five guarantors, viz., Thiru.P.R.Vellaisamy, Thiru.A.Amalan, Thiru.P.M.Sivakumar, Thiru. P.M.Kumaran and the Petitioner herein, viz., Dr. N.Ramamoorthy. As there was default by the Fourth Respondent after the 12th installment, the Third Respondent made a claim for arbitration under Section 64 of the Chit Funds Act, 1982 (hereinafter referred to as 'the Act' for short) in which an award dated 19.06.2009 was passed in favour of the Third Respondent entitling it to recover the dues under the chit transaction from the Fourth Respondent and the guarantors including the Petitioner herein.

3. The appeal filed by the Petitioner before the First Respondent under Section 70 of the Act against the said award was dismissed by the First Respondent in G.O.(Ms) No. 26, commercial Taxes and Registration (G) Department dated 28.01.2022 stating as follows:-

> *"8. The Government examined the documentary evidences made available in respect of the chit arbitration case, viz., the award passed by the Deputy Registrar of Chits, Trichirappall, the grounds of appeal preferred by the appellant, the written claims submitted by the respondent chit company and from the*

pleading effected by both the parties to the appeal petition. During the course of inquiry, it is observed that the subscriber joined in chit and received the prize amount after executing a promissory note along with five guarantors. He entered into an agreement with the chit company to pay the monthly instalments regularly. He defaulted after certain instalments. Having received the prize amount, the defaulted prized subscriber is liable to pay the dues, which belong to general public, to the chit company and having entered into an agreement with chit company, the guarantor is equally liable to settle the amount due to the chit company. Further it has been observed from the award of Deputy Registrar of Chits, Trichirappalli that though the Third Respondent in the ARC appeared before the forum on 11.07.2006, he failed to appear for further enquiries. The First and the Sixth Respondents in the ARC failed to appear on 11.07.2006 despite publication of notice was executed. Therefore, the First, Third and Sixth Respondents in the ARC were set-exparte. On behalf of Second Respondent and Fourth Respondent (the appellant *herein) in the ARC, the counsels engaged by them filed vakalath, but did not appear for subsequent enquiries. Even the Fifth Respondent in the ARC failed to appear despite rendering substituted service by means of paper publication of notice. Therefore, the Second, Fourth and Fifth Respondents in ARC were set ex-parte. Therefore, based upon the available documents, the case was decided ex-parte on the ground of non-prosecution on the part of the defendants. So, the Chit Arbitrator rightfully passed the award for securing the legitimate amount due to the chit company.*

9. The Government after careful examination have decided to dismiss the appeal filed by the appellant, Dr. N.Ramamoorthy, Trichirappalli under Section 70 of the Chit Funds Act, 1982 before the Government against the award passed by the Deputy Registrar of Chits, Trichirappalli in ARC No. 54/2006, dated 19.06.2009 as devoid of merits and order accordingly."

4. Though the Learned Counsel for the Petitioner raised the contention that the Petitioner was not served with any notice in the arbitral proceedings

before the Second Respondent, it is borne out from the materials placed on record that after service of notice, he had entered appearance through counsel but had failed to participate in the proceedings leading to setting him *exparte* and deciding the matter.

5. In the context of the plea raised that the Petitioner had not been served with copies of the documents relied by the Third Respondent in support of the claim made against the Fourth Respondent and the Petitioner, it must be pointed out that Section 62 of the Act reads as follows:-

> "*62. Inspection of documents in Registrar's Office.—The foreman of a chit or any subscriber in a chit or the heirs or legal representatives of any foreman or subscriber may, on payment of such fees as may be prescribed :-*
>
> *(a) inspect the documents of the concerned chit kept by the Registrar; or*
>
> *(b) obtain a certified copy or an extract of any such document on record.*"

When the Petitioner could invoke the said remedy available for effectively agitating his rights, the fastening of liability on the Petitioner for the chit transaction in which he is a guarantor cannot be said to be vitiated for non-supply of the documents, particularly when there is nothing to show that the Petitioner had applied for the same either to the Second Respondent or to the Third Respondent and they had denied the same to him.

6. Learned Counsel for the Petitioner then contended that the Officer, who was holding the post of the First Respondent, viz., Secretary to Government, Commercial Taxes Department, Government of Tamil Nadu, during the personal hearing on 23.12.2020 and 24.02.2020, had been transferred to some other post and the impugned order dismissing the appeal had been signed on 04.10.2021 by another officer, meaning thereby there has been infraction of one of the basic tenets of the principles of natural justice that the authority who heard the matter should decide the same. At this juncture, reference must be made to the decision of the Ho'ble Supreme Court of India in ***Gullapalli Nageswara Rao -vs- Andhra Pradesh State Road Transport Corporation*** (AIR 1959 SC 308), where it has been held as follows:-

> *“ The second objection is that while the Act and the' Rules framed thereunder impose a duty on the State Government to*

give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

The opportunity of personal hearing afforded to the Petitioner is to enable him to establish his contention before the decision-making authority so as to facilitate that authority to have subjective satisfaction of the tenability of his claim before taking any final decision entailing adverse civil consequence to him. Such a mandatory obligation cast upon the First Respondent, in order to be meaningful, has to be judiciously exercised in a pragmatic manner and cannot be treated as an empty formality rendering the statutory requirement nugatory defeating the avowed object of the principles of natural justice that the the opportunity of prior hearing is to ensure that justice is not only done, but also seen to be done. As a consequence thereof, the impugned order stands vitiated and matter would have to be determined by the First Respondent from the stage of affording opportunity of personal hearing to the Petitioner in this case.

7. It is also reflected from the impugned order passed by the First Respondent that though there is reference to the sequence of events of the proceedings before the Second Respondent, there is apparently no discussion regarding the disputes raised by the Petitioner in the appeal while arriving at the conclusions to fasten liability on the Petitioner in this case. The Hon'ble Supreme Court of India in ***Kranti Associates (P) Ltd. -vs- Masood Ahmed Khan*** [(2010) 9 SCC 496] has succinctly explicated the necessary for reasoned orders in any decision entailing adverser civil consequences, which reads as follows:-

"47. Summarising the above discussion, this Court holds:

(a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

(b) *A quasi-judicial authority must record reasons in support of its conclusions.*

(c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

(d) *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

(f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g) *Reasons facilitate the process of judicial review by superior courts.*

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k) *If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is* *faithful to the doctrine of precedent or to principles of incrementalism.*

(l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.*

(m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)*

(n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of*

Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

It would assume significance here that the First Respondent has not disclosed in the impugned order as to whether the documents said to have been executed by the Petitioner as guarantor for the chit transaction entered by the Fourth Respondent with the Third Respondent has been examined, which is crucial for fastening liability on the Petitioner. In the absence of carrying out such exercise, it would not be possible to uphold the impugned order. At the same time, it is made clear that no view has been expressed by the Court on the factual merits of the controversy involved.

8. The upshot of the foregoing discussion is that the following order is

passed:-

(i) the impugned order in G.O.(Ms) No. 26, commercial Taxes and Registration (G) Department dated 28.01.2022 passed by the First Respondent is set aside, and the matter is remitted for fresh consideration from the stage of affording opportunity of personal hearing to the Petitioner in this case;

(ii) it shall be incumbent upon the First Respondent to immediately examine the matter including ascertaining as to whether the Petitioner would be entitled for the relief claimed in his appeal;

(iii) if it is found that any other details or supporting documents is necessary, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 15 days for the same; and

(iv) after affording full opportunity of hearing to the Petitioner and all other parties concerned following the prescribed procedure, a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment to them.

9. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

27.02.2023

NCC : Yes/No
Index : Yes/No
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Note: (i) Registry is directed to return the original copy of the impugned order under written acknowledgment after retaining a copy of the same for record.
(ii) Issue order copy by 23.06.2023.

P.D.AUDIKESAVALU,J.

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To

1.The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Secretariat, Chennai-9.

2.The Deputy Registrar of Chit,
Thiruchirapalli.

27.02.2023