



W.P(MD).No.16547 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 19.12.2023

ORDER PRONOUNCED ON : 22.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.16547 of 2022
and WMP(MD).No.11958 of 2022**

M.Ravichandran
Supervisor (Leather) Grade-III
Footwear Unit
Office of the Assistant Director of
Khadi & Village Industries
Siluvathur Road, Dindigul 624 005

....Petitioner

Vs

1.The Chief Executive Officer
Tamil Nadu Khadi & Village
Industries Board
Kuralagam, Chennai 600 104

2.The Regional Deputy Director
Khadi & Village Industries
Opposite to Railway Junction
Tiruchirapalli, Tiruchirapalli District

3.The Assistant Director
Khadi & Village Industries
Siluvathur Road, Dindigul 624 005

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, calling for the records relating to the impugned



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charge memo issued by the third respondent Assistant Director in Na.Ka.No. 1092/2019/E dated 28.06.2022 and the consequential impugned proceedings issued by the first respondent in Rc.No.5111/E4(1)/2020 dated 30.06.2022 (suspending the petitioner from service) and in Rc.No.5111/E4(1)/2020 dated 30.06.2022 (restraining the petitioner from retirement).

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
For M/s.T.Cibi Chakraborty

For Respondents : M/s.Raguvaran Gopalan

ORDER

The present writ petition has been filed by a Supervisor working in the Footwear Unit of the third respondent herein challenging the charge memo dated 28.06.2022, the suspension order and retention order dated 30.06.2022.

(A).2.The undisputed facts are as follows:

(i)The petitioner herein was initially appointed as a Supervisor (Leather) Grade-IV in the Tamil Nadu Khadi and Village Industries(hereinafter referred to as 'Board') through Employment Exchange on 20.08.1990. He was promoted as Supervisor (Leather) Grade-III on 12.01.2017. The third respondent Board received four purchase orders from Tamil Nadu State Transport Corporation, Kumbakonam Division in the year 2016 for supply of Footwear to their employees. Out of the said four orders, the products were duly sent to the Pudukkottai Region on 12.05.2016 and



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they were accepted by the said Region. When attempts were made to sent the Footwears to Devakottai Region, the third respondent Board received a communication from TNSTC Kumbakonam on 20.03.2017 to stop further supply of shoes and chappals due to poor quality.

(ii)The officials of the third respondent had approached TNSTC and negotiated the issue. Thereafter, TNSTC, Kumbakonam changed their mind and agreed to receive the Footwear for their Devakottai Region and the goods were supplied and the amount was also paid. For the despatch of the balance products, the Board officials were in continuous touch with TNSTC Kumbakonam. On 26.05.2018, TNSTC Kumbakonam has addressed a letter to the third respondent requesting them to stop further supply on the ground that the Footwears are not in good quality.

(iii)On 27.03.2019, the third respondent had addressed a communication to the Chief Executive Officer of Khadi Board explaining the circumstances that led to stopping of supply of products. In the said letter, the third respondent had pointed out that the quality of Footwear are good in nature, but due to financial constraints, TNSTC Kumbakonam had refused to accept further supply. The goods that were manufactured for TNSTC Kumbakonam were supplied to Villupuram and they have accepted the said products and have also paid the consideration.



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(iv) On 27.08.2020, another letter was addressed by the third respondent to the Chief Executive Officer of Khadi Board reiterating the said allegation as against TNSTC Kumbakonam and sought permission from him to sell them to other purchasers. Continuously communications were addressed by the Chief Executive Officer, Khadi Board to the Assistant Directors of various Khadi Boards to give priority to these stocked Footwear to be sold immediately.

(v) On 06.07.2021, a show cause notice was issued to the writ petitioner why he should not be made responsible for not taking steps to sell the entire piled-up stocks. The petitioner has submitted his detailed explanation on 30.07.2021 pointing out that he is not responsible for not selling of the piled-up stocks. He had further contended that the stocks were rejected by TNSTC Kumbakonam not based upon the poor quality, but only due to financial constraints faced by them.

(vi) On 22.12.2021, another show cause notice was issued to the writ petitioner calling upon him to explain what steps have been taken for sale of the piled-up stock of the Footwear. The petitioner has given an explanation on 24.01.2022 reiterating his stand. On 01.03.2022, an order of recovery was passed as against the writ petitioner to a tune of about Rs.8,07,325/-/. This order was challenged by the writ petitioner in WP.(MD)No.4876 of 2022 wherein an order of interim stay was granted by this Court on 18.03.2022.



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Thereafter, the order of recovery was cancelled by the second respondent on 29.06.2022.

(vii)The petitioner was issued with a charge memo on 28.06.2022 with the following charges.

(a)The petitioner is guilty of not properly verifying the quality of Footwears that were manufactured.

(b)Though an order was placed by TNSTC Kumbakonam for purchase of 39,478 pair of footwear, only 26,358 pair of footwear were manufactured. In view of non-manufacturing of 13,120 pair of footwear, the Board has incurred a loss of Rs.1,15,587/-.

(c)The petitioner had not taken any steps to recover the amount from TNSTC Devakottai and TNSTC Vilupuram to a tune of Rs.8,80,578/- .

(viii)On 30.06.2022, the petitioner was placed suspension on the ground that he had committed serious irregularities in the Footwear Unit. On the same day, the petitioner's services were retained. The petitioner was not permitted to retire. Challenging the charge memo, suspension order and the retention order, the present writ petition has been filed.

(B).3.Contentions of the learned Senior Counsel appearing for the writ petitioner are as follows:

(i)The petitioner was working as a Supervisor (Leather) Grade-III in the third respondent Board. After the receipt of purchase order from TNSTC



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Kumbakonam, the entire Footwear for four purchase orders were manufactured in entirety. A portion of the Footwear was first supplied to Pudukkottai Region and they have accepted the same without any complaint. Though TNSCTC Kumbakonam had refused to accept further supply, later they had changed their mind and accepted the products for Devakottai Region. Therefore, it is clear that the Footwear were not of a poor quality.

(ii)The learned Senior Counsel had further contended that the goods that were meant for TNSCTC Kumbakonam were later supplied to TNSCTC, Vilupuram who have received the same without any complaint. Therefore, according to the learned Senior Counsel, there was no allegation of poor quality of the products.

(iii)The learned Senior Counsel had further contended that the third respondent had issued the order impugned in the writ petition. The third respondent herein had addressed two communications to the first respondent on 27.03.2019 and 27.08.2020 explaining the circumstances under which the products were not accepted by TNSCTC Kumbakonam. Both these letters explain in detail that the supply was rejected by TNSCTC Kumbakonam only due to financial constraints, even though the quality of product is good. Hence, the present charge memo alleging that the petitioner is negligent in duty which had resulted in bad quality of products which in turn had resulted in rejection of the products by TNSCTC Kumbakonam is contrary to the facts.



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(iv)The learned Senior Counsel had further contended that the petitioner is a Supervisor, for extracting work from the employees. He cannot be held responsible for not marketing the products. Especially, when TNSSTC Kumbakonam had cancelled their orders mid-way due to financial constraints. The petitioner cannot be held responsible for the delay in marketing the products. The order of recovery that was imposed by the respondents has already been stayed by this Court. Thereafter, the petitioner has been issued with a charge memo, suspension order and retained in service. Therefore, the order of the authorities is tainted with malades.

(v)The learned Senior Counsel had further contended that a perusal of the charge memo clearly indicates that the authorities had already pre-determined the issue and with a closed mind in order to impose punishment, the charge memo has been issued. He relied upon a judgment of the Hon'ble Supreme Court reported in **(2010) 13 SCC 427 (Oryx Fisheries Private Limited Vs. Union of India and others)** to impress upon the Court that the definite conclusions have been arrived at by the authorities even in the charge memo and no purpose would be served in submitting an explanation and getting along with an enquiry. Hence, he prayed for allowing the writ petition.



(D)4.Contentions of the learned counsel appearing for the respondents are as follows:

(i)The petitioner has not made out any ground for exercising the jurisdiction under Article 226 of Constitution of India for quashing the charge memo. The petitioner is having an alternative remedy of filing an appeal and therefore, the writ petition has to be dismissed in limine.

(ii)The communication of TNSTC clearly points out that they have cancelled the order only due to poor quality of products.

(iii)The opinion expressed by the Assistant Director in his two communications addressed to the Chief Executive Officer, Khadi Board are his personal opinion and the petitioner cannot take advantage of the same. The petitioner being a Supervisor of the manufacturing Unit is solely responsible for the quality control and any quality issue would reflect upon him.

(iv)A committee was appointed to check on the Footwear only to find out the resale potential of Footwear and the committee was not directed to check on the quality. Therefore, the petitioner cannot rely upon the same to absolve himself of the liability for loss caused to Khadi Board.

(v)The petitioner has failed to carry out the remedial measure for the reasons best known to him which has resulted in loss to the Board.



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(vi)The petitioner cannot take advantage of the cancellation of the recovery order since it has been superseded by a charge memo, suspension order and the retention in service order.

(vii)The petitioner can very well place his explanation for the charge memo and he could face the enquiry instead the petitioner has chosen to challenge the charge memo after having caused severe financial loss to the Board to a tune of Rs.8,07,325/-. Hence, he prayed for dismissal of the writ petition.

5.I have considered the submissions made on either side and perused the material records.

E.Discussion:

6.The Tamil Nadu State Transport Corporation, Kumbakonam Division had placed four purchase orders to the third respondent industry for supplying Footwear to their four regions on 12.05.2016. Supply was made to Pudukkottai Region on 12.05.2016 and the same was accepted by the said Region without any complaint. Though complaints were raised before supply to Devakkottai Region, ultimately supply was also made to Devakkottai Region and they have accepted the entire order without any complaint. However on 20.03.2017, the Tamil Nadu State Transport Corporation, Kumbakonam had addressed a communication to the third respondent to stop further supply to other two regions namely Kumbakonam and Trichy on the



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ground that due to poor quality of shoes and chappals, they are seeking to stop further supply. These facts are not in dispute.

7.In view of piled-up stocks, the third respondent had addressed a communication to the first respondent on 27.03.2019 and on 27.08.2020. In both these communications, the third respondent has categorically stated that the Footwear manufactured are of good quality and TNSTC Kumbakonam had stopped supply of these products only due to financial constraints. The third respondent had further pointed out that same samples were supplied to TNSTC Vilupuram and they have accepted the same without any complaint. These two communications of the third respondent will categorically establish the fact that TNSTC Kumbakonam had stopped supply of already ordered products only due to their financial constraints, but not due to poor quality of the products. When the third respondent has taken a specific stand that the quality of the products are not poor, it is not known how they have taken a different stand while issuing the charge memo that the quality of products are so poor.

8.The first respondent herein had addressed a communication to all the Assistant Directors on 29.09.2020 requesting them to give priority to the Footwear that were manufactured by Dindigul Region for marketing the same. Originally the show cause notice issued to the writ petitioner on 06.07.2021 does not point out the poor quality of the products when it was



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manufactured. The show cause notice only calls upon the petitioner why he should not made responsible for not marketing these products.

9.On 03.11.2021, the first respondent had again addressed a communication to all the Assistant Directors to give some priority to the already manufactured Footwear after undertaking some repair works and to market the same to avoid any financial loss to the Board. Another show cause notice has been addressed to the writ petitioner on 22.12.2021 and 11.01.2022 wherein the petitioner had been called upon to show cause why he should not be held responsible for not marketing the piled-up products. In both their show cause notices, there is no allegation that the Footwear that were manufactured by Dindigul Region is of a poor quality.

10.A perusal of the communication addressed by the third respondent to the first respondent on 27.03.2019 will clearly indicate that after the supply of products were stopped by TNSTC, Kumbakonam, the same products have been supplied to TNSTC Vilupuram and they have accepted the same without any complaint. Therefore, the authorities are not right in arriving at a finding that the Footwear were of a bad quality and the petitioner is responsible for the same.

11.For the first time in the impugned charge memo dated 28.06.2022, it is alleged that the petitioner is responsible for manufacture of poor quality of Footwear. TNSTC Kumbakonam has placed orders for supplying of Footwear



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in May 2016 and the products were made ready even in the said year. TNSTC Kumbakonam has addressed a communication to the third respondent on 20.03.2017 requesting them to stop further supply citing poor quality. However, the present charge memo has been issued on 28.06.2022 alleging that the petitioner is responsible for manufacturing poor quality of Footwear. All along the authorities have contended that the Footwear is not of a bad quality but TNSTC Kumbakonam had stopped the supply only due to their financial constraints. The charge memo has been issued two days prior to the date of retirement of the writ petitioner. Therefore, this Court is of the considered view that the charge memo has been issued very belatedly that too at the fag end of his career which is not legally sustainable.

12.A perusal of the charge memo clearly indicates that the third respondent had arrived at a conclusion that the petitioner is responsible for the loss incurred by the Board in Charge No.1. Strangely in Charge No.2, it is alleged that out of 39,478 pair of footwear that were ordered by TNSTC Kumbakonam only 26,358 pair of footwear were manufactured. It is alleged that due non-manufacture of balance 13,120 pair of footwear, the Board has incurred a loss of Rs.1,15,587/-. On the one hand, the Board alleges that they are not able to sell the products due to poor quality, but on the other hand the Board alleges that due non-manufacture, the Board has incurred a loss. The 3rd charge memo relates to the fact that the petitioner has not taken any steps



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to recover the sale consideration from TNSCTC Vilupuram for supply of the products. The petitioner is held responsible both for quality of the product and also for non-recovery of the amount.

13.It is not known who else is taking care of the entire Board other than the petitioner. TNSCTC Vilupuram is a Government entity and the authorities can very well recover the same from them. Therefore, it is clear that the first and third respondents had attempted to place the entire liability upon the petitioner without initiating any proceedings as against TNSCTC Kumbakonam for stopping the supply of products in the mid-way citing a false reason.

14.The Hon'ble Supreme Court in a judgment reported in **(2010) 13 SCC 427 (Oryx Fisheries Private Limited Vs. Union of India and others)** in Paragraph Nos.27 & 28 has held as follows:

“27.It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.



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28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.”

15.A perusal of the charge memo clearly indicates that instead of narrating the charges, the third respondent had recorded a definite conclusion of the alleged guilt. Therefore, the petitioner would not be in a position to submit his explanation and face the enquiry. The charge memo is completely vitiated by unfairness and bias. Hence, the contention of the respondents that the petitioner can very well submit his explanation and face the enquiry is not sustainable in the eye of law, in view of the fact that the same would be an empty formality.

16.In view of the above said deliberations, the impugned charge memo, suspension order and the consequential retention order are set aside. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

1.The Chief Executive Officer
Tamil Nadu Khadi & Village
Industries Board
Kuralagam, Chennai 600 104

2.The Regional Deputy Director
Khadi & Village Industries
Opposite to Railway Junction
Tiruchirapalli, Tiruchirapalli District

3.The Assistant Director
Khadi & Village Industries
Siluvathur Road, Dindigul 624 005



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in
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