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W.P. No. 5 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 5 of 2018

and

W.M.P. Nos. 4, 5, 5745 and 16354 of 2018

K.C.Siva
Petitioner

...

-VS-

1. The Assistant Director,
Handloom and Textiles,
Lalbagadhur Sasthiri Street,
Periyakuppam, Tiruvallur,
Tiruvallur District.

2. The Managing Director
Pothatturpettai Annai Therasa Power Loom Weavers
Cooperative Production and Sales Society, K.H.303,
Pothatturpettai, Pallipet Taluk
Tiruvallur District.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the First Respondent in his proceedings Na.Ka.No. 1210/2016/C dated 20.12.2017 and quash the same insofar relates to the Petitioner is concerned.



W.P. No. 5 of 2018

For Petitioner : Mr. C.Prakasam
For Respondents : Mr. P.Sathish,
Additional Government Pleader (for R1)
Mr. L.P.Shanmugasundaram (for R2)

ORDER

Heard Mr. C.Prakasam, Learned Counsel for the Petitioner and Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and Mr. L.P.Shanmugasundaram, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has filed this Writ Petition challenging the Order in Na.Ka.No. 1210/2016/C dated 20.12.2017 passed by the First Respondent in surcharge proceedings fastening liability on him as President of the Co-operative Society of the Second Respondent in the exercise of powers under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short).

3. The primordial contention of Learned Counsel for the Petitioner is that



W.P. No. 5 of 2018

the impugned order has been passed in pursuance of a report of inspection of the affairs of the Co-operative Society of the Second Respondent in terms of Section 82 of the TNCS Act without supplying its copy to the Petitioner, which vitiates it. In the Counter-Affidavit filed on 28.02.2018 by the First Respondent, it has been stated as follows:-

“6. As regard the averments contained in paragraph of 5 of the affidavit, it is submitted that based on the inspection report submitted by the inspection officer, the surcharge action was initiated. It is submitted that the Petitioner had not made any written request to furnish the a copy of the inspection report to the Petitioner, during the pendency of the surcharge proceedings. The Petitioner contention that he has requested for supply of a copy of inspection report is a belated reply as he had never asked for a copy of report at any one of five visits as per the summons issued to him. It is submitted that the Petitioner, having accepted the liability for the loss caused to the Government before the inspection officer, he cannot plead that he was not received a copy of the inspection report. This averment is a time delaying tactics adopted by the Petitioner. It



W.P. No. 5 of 2018

is submitted that the surcharge order passed by the First

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Respondent is correct and legally sustainable.”

It is evident therefrom that the said inspection report has not been furnished to the Petitioner in the surcharge proceedings. It is needless to point out here that any administrative decision entailing adverse civil consequences must be made consistently with the rules of natural justice by informing the person concerned of the case against him with evidence in support thereof and after giving an opportunity of being heard for meeting or explaining such evidence.

4. It would be beneficial in this context to refer to decision of the Hon'ble Supreme Court of India in the decision in **Deepak Ananda Patil -vs- State of Maharashtra** (Order dated 04.01.2023 in Civil Appeal Nos. 88-89 of 2023), which reads as follows:-

“20. It is a well-established principle of administrative law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to respond to it. Surveying the precedents extensively, MP Jain & SN Jain's treatise on Principles of Administrative Law notes that:



“If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. **If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.**

(emphasis supplied)

21. In *T. Takano -vs- Securities and Exchange Board of*



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India [(2022) 8 SCC 162], a two judge bench of this court, of which one of us was a part (Dr D.Y. Chandrachud, J.), discussed the line of cases of this Court on the duty to disclose investigative material. The Court analyzed the ratio in *Natwar Singh -vs- Director of Enforcement* [(2010) 13 SCC 255], *Krishna Chandra Tandon -vs- Union of India* [(1974) 4 SCC 374], *Khudiram Das -vs- State of West Bengal* [(1975) 2 SCC 81], *Union of India -vs- Mohd. Ramzan Khan* [(1991) 1 SCC 588], *Managing Director, ECIL, Hyderabad -vs- B. Karunaka* [(1993) 4 SCC 727], *State Bank of Patiala -vs- SK Sharma* [(1996) 3 SCC 364], *State of Uttar Pradesh -vs- Ramesh Chandra Mangalik* [(2002) 3 SCC 443], *Kothari Filaments -vs- Commissioner Of Customs* [(2009) 2 SCC 192], and noted that:

“39. The following principles emerge from the above discussion:

(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

(ii) An *ipse dixit* of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is



WEB COPY



W.P. No. 5 of 2018

relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.”

(emphasis supplied)

23. On the issue of the impact of such non-disclosure, in *T.Takano -vs- Securities and Exchange Board of India* [(2022) 8 SCC 162] summarizing the ratio of the Constitution Bench in *Managing Director, ECIL, Hyderabad -vs- B. Karunakar* [(1993) 4 SCC 727], we noted that:

“A Constitution Bench of this Court in *Karunakar* (supra) held that the non-disclosure of the relevant information is not in itself sufficient to warrant the setting aside of the order of punishment. It was held that in order to set aside the order of punishment, the aggrieved person must be able prove that prejudice has been caused to him due to non-disclosure. To prove prejudice, he must prove that had the



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W.P. No. 5 of 2018

material been disclosed to him the outcome or the punishment would have been different. The test for the extent of disclosure and the corresponding remedy for non-disclosure is dependent on the objective that the disclosure seeks to achieve. Therefore, the impact of non-disclosure on the reliability of the verdict must also be determined vis-à-vis, the overall fairness of the proceeding. While determining the reliability of the verdict and punishment, the court must also look into the possible uses of the undisclosed information for purposes ancillary to the outcome, but that which might have impacted the verdict.”

(emphasis supplied)

5. Inasmuch as it is evident from the materials borne out of the record that the First Respondent had not supplied the materials relied against the Petitioner, the impugned order, which cannot be sustained, is set aside and the surcharge proceedings are restored to the file of the First Respondent, who shall list the matter for next hearing on 19.06.2024 for conducting enquiry in the matter after issuing due notice to the Petitioner, the Second Respondent and and all other persons concerned in that regard and if the First Respondent is not able to take



W.P. No. 5 of 2018

up the matter on the said date, the date to which it is adjourned shall be informed to the parties under written acknowledgment. It shall be ensured by the First Respondent that copies of all the documents relied against the Petitioner in the surcharge proceedings are supplied to him well in advance, that full opportunity of hearing is afforded to all parties concerned including the Petitioner and the Second Respondent following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised with reference to the evidence lead by the parties on merits and in accordance with law, uninfluenced and uninhibited by the impugned order which has been set aside, and that the decision taken is communicated to the concerned parties under written acknowledgment.

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

11.03.2024
1/9

Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 22.05.2024.



W.P. No. 5 of 2018



W.P. No. 5 of 2018

To

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Lalbagadhur Sasthiri Street
Periyakuppam, Tiruvallur
Tiruvallur District.
2. The Managing Director
Pothatturpettai Annai Therasa Power Loom
Weavers Cooperative Production
and Sales Society, K.H.303
Pothatturpettai, Pallipet Taluk
Tiruvallur District.

Copy to

K.C.Siva,
S/o. K.S.Chakkarappan,
President,
Pothatturpettai Annai Therasa Power Loom Weavers
Cooperative Production and Sales Society, K.H.303
Pothatturpettai, Pallipet Taluk,
Tiruvallur District.



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W.P. No. 5 of 2018

P.D. AUDIKESAVALU, J.

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W.P. No. 5 of 2018

11.03.2024

1/9