



W.P.No.10901 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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G.Palanisamy

.. Petitioner

Versus

The Assistant Director,
Survey and Land Records,
Udhagamandalam,
The Nilgiris District.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the respondent to consider and pass orders on representation, dated 07.03.2024 for cancelling the ex-parte minute and to conduct the fresh enquiry by following the principles of natural justice.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mrs.V.Yamuna Devi,
Special Government Pleader



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ORDER

This Writ Petition is filed for a direction to the respondent to consider the representation, dated 07.03.2024 for cancelling the *ex parte* enquiry and to give him one more opportunity.

2. The petitioner was working as a Firka Surveyor. While so, he was caught red-handed in a trap case in Crime No.04/2022 for the alleged offence under Section 7 of the *Prevention of Corruption Act, 1988*. The criminal case is pending. While so, a charge memorandum, dated 11.11.2022, containing four charges, was issued against him. The petitioner submitted his explanation. Thereafter, the Inspector, Survey and Settlement, Udhagamandalam Division was appointed as Enquiry Officer. Before the Enquiry Officer, protracted proceedings have taken place and the same have been elaborately recorded in the Final Report of the Enquiry Officer. From the report, it can be seen that the petitioner has left no stone unturned. He has made all requests which can be made by the Delinquent Officer.



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However, all the same has been complied including granting him adjournments, granting him all the copies which he has asked for. It seems that at the stage of examination of the witnesses, the petitioner remained absent and therefore, the Enquiry Officer had no other go than to submit an *ex parte* report. Thereafter, the Disciplinary Authority has issued second show-cause notice forwarding the Enquiry Report. The petitioner now once again makes a representation that he must be allowed to face the charges on merits.

3. Learned Counsel for the petitioner would submit that when the charges are serious in nature, the petitioner should be given due opportunity to contest the matter on merits. He would even submit that the petitioner would forgo his request for the appointment of a Counsel to assist him. The petitioner will examine himself or his witnesses and cross-examine the department's witnesses and take care of himself in the Enquiry. The petitioner will not further seek time. Only because of special circumstances,



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he could not appear before the Enquiry Officer on the relevant date.

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According to him, if one more opportunity is not granted, interest of justice would not be served.

4. Per *contra*, learned Special Government Pleader for the respondent submits that the Enquiry Officer has made every endeavour to make the petitioner attend the enquiry. The effort taken by the Enquiry Officer would be clear from the Enquiry Report itself. He has taken all pains to inform him through Mobile Phone messages etc., and how the petitioner has been evading and inspite of a suspension order, making it mandatory for him to stay at the headquarters to participate in the enquiry. The petitioner has been successfully protracting the enquiry one way or the other. In that view of the matter, this is not a case where this Court has to exercise its discretion in favour of the petitioner. In any event, he submits that it is for the Disciplinary Authority to consider the request and take a decision on the matter.



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

6. As rightly contested by both sides learned Counsel, the charges are serious in nature. The more serious the charge, it would be better for both sides that the Enquiry be conducted on merits. On a perusal of the Enquiry Report which has already been submitted, it is very clear that the petitioner has got all the documents. Further, this Court also views the various steps taken by the petitioner to protract the proceedings with serious concern. However, since the learned Counsel for the petitioner has undertaken that henceforth, the petitioner will co-operate with the enquiry and see that the enquiry is conducted on merits on day to day basis, this Court is inclined to grant one more opportunity to the petitioner. Further, the learned Counsel for the petitioner has also undertaken that the petitioner will not insist upon



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engaging a Counsel for the Departmental Enquiry and the petitioner will himself examine or cross-examine the witnesses during the enquiry.

7. This is not a case of complex in nature where the assistance of a Counsel would be required. It is a simple trap case and the only question to be decided is whether there is a demand and acceptance of the bribe on the part of the petitioner. Thus, even apart from the petitioner's undertaking, this Court is of the opinion that the petitioner is not entitled to the assistance of any Counsel.

8. In view thereof, in the interest of both the Delinquent Official, as well as in the public interest, since no evidence has been recorded in the Enquiry, this Writ Petition is partly allowed on the following terms :-

- (i) The Enquiry Report, dated 31.01.2024 of the Inspector of Survey and Settlement, Udthagamandalam shall stand set aside;
- (ii) The enquiry shall continue before the said officer;



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(iii) The next date of enquiry shall be on 29.04.2024. No further summons will be issued to the petitioner and the petitioner shall appear before the said authority;

(iv) The said Enquiry Officer shall continue the oral enquiry from the said date onwards;

(v) The Enquiry Officer shall conduct the enquiry on day to day basis as far as possible and in any event, expedite the enquiry and complete the same on or before 31.07.2024;

(vi) The petitioner will co-operate and participate in the enquiry and cross-examine the witnesses that may be examined on behalf of the department and will also be entitled to examine any witness on his own behalf besides examining himself;

(vii) Already, the petitioner has got all the documents and no further interim application of any nature whatsoever will be entertained on behalf of the petitioner;



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(viii) The Enquiry Officer shall complete the enquiry on or before 31.07.2024 and submit the report to the Disciplinary Authority on or before 15.08.2024. Thereafter, the Disciplinary Authority shall take further steps in the matter and depending upon the outcome of the Enquiry Report, conclude the enquiry proceedings within two months therefrom;

(ix) It is seen that even though it is a trap case, the Inspector of Police, Udhagamandalam has not completed the investigation. He shall also complete the investigation and depending upon the outcome, file a Final Report within three months from the date of receipt of a copy of this order.

(x) There shall be no order as to costs.

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Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Assistant Director,

<https://www.mhc.tn.gov.in/judis>



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WEB COM
Survey and Land Records,
Udhagamandalam,
The Nilgiris District.

2. The Inspector of Survey and Settlement,
Udhagamandalam.

3. The Inspector of Police,
Udhagamandalam.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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