



W.P. No. 18399 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM

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

W.P. No. 18399 of 2014

M/s. Kerry Indev Logistics Pvt. Ltd.

Swamy Complex

No. 81, Thambu Chetty Street

Chennai – 600001

Rep. By its Chief Financial Officer

Mr. Viswantham Gandla

... Petitioner

(Cause-title amended vide order dated 23.01.2024
in W.M.P. No. 35544 of 2023)

-VS-

State Industries Promotion Corporation
of Tamilnadu Ltd.

No. 19-A, Rukmani Lakshmipathy Road

Egmore, Chennai – 600 008

Represented by its Principal Secretary /
Chairman and Managing Director

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the Respondent bearing Ref. No. D-II/Iru/Indev/2013 dated 21.11.2013 and Ref. No. D-II/Iru/Indev Logistics /2013 dated 09.01.2014 culminating in the impugned letter bearing Ref. No. D-II/Iru/Indev/2013 dated 18.03.2014 and quash the same.



W.P. No. 18399 of 2014

For Petitioner : Mr. P.Muralidharan

For Respondent : Mrs. Sudharsana Sundar

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ORDER

Heard Mr. P.Muralidharan, Learned Counsel for the Petitioner and Mrs. Sudharsana Sundar, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent had granted a lease of the property of an extent of 19.53 acres of land situated at Plot Nos. A-11, B-7, B8 and B-12 in SIPCOT Industrial Park, Irungattukottai in favour of the Petitioner and had executed lease-deeds dated 12.04.2006, 06.02.2007 and 19.02.2007 registered Document Nos. 19239 of 2006, 3121 of 2007 and 11071 of 2007 respectively in the Office of the Sub-Registrar, Sriperumbudur. The said allotment orders and lease-deeds contained, *inter alia*, the following recitals:-

“Allotment Order Clause No. 8 and Lease-Deed Clause

No. 31:-

“The plot is allotted on the specific condition that without implementing the project, the allottee shall not assign, sub-let, transfer or part with their interest in the allotted plot either in



W.P. No. 18399 of 2014

whole or in part or in part except with the prior written consent of SIPCOT.”

Allotment Order Clause No. 19 and Lease-Deed Clause No. 42(b):-

“Failure to comply with any of the conditions of the allotment order /lease deed shall result in cancellation of allotment and resume the land under TNPPE Act.””

3. According to the Respondent, it was noticed during inspection that in violation of the aforesaid conditions, the Petitioner had sub-let certain portions of the leased land in favour of M/s. Uniworld Logistics Private Limited represented by its Managing Director, 225, 4th Block, 5th Main, Bangalore - 560034 (hereinafter referred to as 'Uniworld' for short).

4. In such circumstances, sub-leasing charges (licence fee) of Rs. 4,68,25,220/- for an extent of 1,81,072 sq. ft. was demanded by the Respondent by Notice No. D-II/Iru/Indev/2013 dated 21.11.2013 from the Petitioner to be paid within 30 days from the dates of its receipt as per particulars shown below:-



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W.P. No. 18399 of 2014

For the period from 01.04.2010 to 31.03.2011 1,81,072 sq.ft. x Rs. 5.00/- per sq. ft. x 12 months	Rs. 10,864,320.00
For the period from 01.04.2011 to 31.03.2012 1,81,072 sq.ft. x Rs. 5.25/- per sq. ft. x 12 months	Rs. 11,407,536.00
For the period from 01.04.2012 to 31.03.2013 1,81,072 sq.ft. x Rs. 5.51/- per sq. ft. x 12 months	Rs. 11,972,481.00
For the period from 01.04.2013 to 31.03.2014 1,81,072 sq.ft. x Rs. 5.79/- per sq. ft. x 12 months	Rs. 12,580,883.00
Total	Rs. 46,825,220.00

It has been claimed that sub-leasing charges at the rate of Rs. 5/- per sq. ft. per month with an increase of 5% per thereon for the subsequent years for the period from 01.04.2010 to 31.03.2014 has been made.

5. The Petitioner sent replies dated 28.11.2013 and 23.12.2013 denying the grant of any sub-lease of the property to Uniworld and it was sought to be explained that the presence of Uniworld in the leased property was in the course of the 'logistics activity' of the Petitioner with other details.

6. However, the Respondent by Proceedings No. D-II/IRU/Indev Logistics/2013 dated 09.01.2014 informed the Petitioner that its request in the letter dated 28.11.2013 has been examined in detail and it was decided to reiterate the earlier decision and the Petitioner was required to remit the sub-leasing charges demanded from it.



W.P. No. 18399 of 2014

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7. The Petitioner then sent a legal notice dated 27.01.2014 through its Advocate to the Respondent, for which the Respondent by Proceedings No. D-II/Iru/Indev/2013 dated 18.03.2014 referred to the relevant clauses in the contract to the parties and reiterated its claim for sub-leasing charges and warned that on failure to take remedial action within 90 days from the date of its receipt, the allotment of the land would be cancelled and it would be proceed to resume possession of the leased land under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975.

8. In that backdrop, this Writ Petition has been filed challenging the aforesaid Proceedings No. D-II/Iru/Indev/2013 dated 21.11.2013, Proceedings No. D-II/IRU/Indev Logistics/2013 dated 09.01.2014 and Proceedings No. D-II/Iru/Indev/2013 dated 18.03.2014 passed by the Respondent.

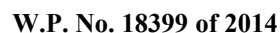
9. Learned Counsel for the Petitioner strenuously contended that the entire claim for sub-leasing charges made by the Respondent against the Petitioner is founded upon a factual misconception as if the Petitioner had sub-leased the leased land to Uniworld without even considering its explanation that the presence of Uniworld in that property was in the course of its 'logistics activity'.



W.P. No. 18399 of 2014

It is highlighted that the distinction in law between 'lease' and 'licence' has not at all been taken into account by the Respondent in arriving at that conclusion.

It has been brought to notice that after the filing of the Writ Petition, the Petitioner has filed the suit in C.S. No. 914 of 2015 before the Original Side of this Court for declaration that the Petitioner had given only the factory shed to Uniworld under leave and licence agreement dated 01.12.2008 entered between them and the warehouse agreement dated 01.12.2010 entered between them was null and void as it was never acted upon by them or there was any relationship of lessor and lessee between them, and to direct the Respondent to accord approval for the occupation of the property by Uniworld from 01.12.2008, which is said to be pending. It is further pointed out that the explanation submitted by the Petitioner on 28.11.2013 on receipt of the Demand Notice dated 21.11.2023 had not at all been considered by the Respondent when it reiterated the earlier decision in the Proceedings No. D-II/IRU/Indev Logistics/2013 dated 09.01.2014 and Proceedings No. D-II/Iru/Indev/2013 dated 18.03.2014 passed by the Respondent. It is contended that the Respondent has not shown any clause in the contract between the parties enabling to levy sub-leasing charges and the rate at which it could be claimed, and that the Circular in O.O. No. 07/12 dated 14.08.2012 reflecting the unilateral decision of the Board of Directors of the Respondent at its meeting



10. In response, Learned Counsel for the Respondent submits that overwhelming materials on record clearly show that Uniworld has been in the occupation of the property leased by the Respondent to the Petitioner, which cannot be brushed aside, and the burden shifts on the Petitioner to prove the contrary, which it has miserably failed, and cannot be wriggle out of the consequences flowing from its own wrong doing in committing breach of the terms of the contract. The calculation of the sub-leasing charges has been justified with reference to the resolution of the Board of Directors of the Respondent at its meeting on 18.07.2012 as reflected in its Office Order dated 14.08.2012, which is applicable to all the allottees of the industrial plots of the Respondent.

11. Having regard to the rival submissions made, it is apparent on perusal of the impugned order that there is no specific reference to any inspection report or other material to arrive at the conclusion that there was sub-lease of the industrial plot by the Petitioner to Uniworld. Moreover, when the Petitioner has



W.P. No. 18399 of 2014

raised a factual plea that the presence of Uniworld in the industrial plot was in the course of its 'logistics activity' amounting to licence and not any lease by way of parting with possession, it is certainly a matter that requires detailed enquiry to be conducted by the Respondent, which does not appear to have been done in this case. In any event, the conclusion arrived by the Respondent that there has been sub-lease of the property by the Petitioner to Uniworld prejudicially affects the Petitioner, either in the form of requiring to pay sub-leasing charges for the same, or face cancellation of the lease. This would obviously mean that the impugned action of the Respondent partakes the role of a quasi-judicial authority, which would imply that the Respondent ought to have disclosed the materials against the Petitioner as to how it had arrived at the conclusion that the Petitioner had sub-leased the property to Uniworld including the extent and period. It is equally trite that any administrative order which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken.

12. 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*



W.P. No. 18399 of 2014

Maharashtra (Order dated 04.01.2023 in Civil Appeal Nos. 88-89 of 2023),

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“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**



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W.P. No. 18399 of 2014

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 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*



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[(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 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 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



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W.P. No. 18399 of 2014

possible uses of the undisclosed information for purposes ancillary to the outcome, but that which might have impacted the verdict.”

(emphasis supplied)

13. It is not the case of the Respondent that before the impugned order was passed, any explanation had been called from the Petitioner after disclosing the materials against it. Such incurable flaw in decision-making by the Respondent vitiates the impugned proceedings which has to be set aside on that sole ground, leaving it open to the Respondent to appropriately deal with the matter following due process after affording full opportunity of hearing to the Petitioner and taking a reasoned decision in the matter. It is needless to add here that no view has been expressed by this Court on the merits of the controversy involved.

14. Though the suit in C.S. No. 914 of 2015 before the Original Side of this Court has already been filed by the Petitioner to determine the nature of rights of Uniworld in respect of the property leased to the Petitioner by the Respondent, it cannot be an impediment for the Respondent to fasten liability or take action against the Petitioner, which it may otherwise be entitled to do



W.P. No. 18399 of 2014

so, particularly when no prohibition of such exercise has been shown to exist.

At the same time, it is made clear that any decision taken by the Respondent against the Petitioner in this regard would be subject to the ultimate outcome of that suit in which the Respondent has also been made as a party.

15. In view of the foregoing discussion, the impugned Proceedings No. D-II/Iru/Indev/2013 dated 21.11.2013, Proceedings No. D-II/IRU/Indev Logistics/2013 dated 09.01.2014 and Proceedings No. D-II/Iru/Indev/2013 dated 18.03.2014 passed by the Respondent are set aside with the aforesaid clarifications.

In the upshot, Writ Petition is disposed on the aforesaid terms. No costs.

23.01.2024

3/3

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

Maya

To

The Principal Secretary /
Chairman and Managing Director
State Industries Promotion Corporation
of Tamilnadu Ltd.
No. 19-A, Rukmani Lakshmipathy Road
Egmore, Chennai – 600 008.



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W.P. No. 18399 of 2014

P.D. AUDIKESAVALU, J.

Maya

W.P. No. 18399 of 2014

23.01.2024

3/3