



W.A(MD)No.789 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

W.A(MD)No.789 of 2017
and
C.M.P(MD)No.5610 of 2017

1 THE DISTRICT COLLECTOR
TIRUNELVELI, TIRUNELVELI DISTRICT.

2 THE SUB COLLECTOR
CHERANMAHADEVI, TIRUNELVELI DISTRICT.

3 THE REGIONAL DEPUTY TAHSILDAR III,
OFFICE OF THE TAHSILDAR, TALUK OFFICE,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT. ... APPELLANTS/RESPONDENTS
vs.

P.BALAMURALI ... RESPONDENT/PETITIONER

PRAYER : Appeal filed under Clause XV of Letters Patent, against
the order passed in WP(MD).No.1208 of 2008, dated 22/04/2015.

For Appellants : Mr.M.Prakash
Additional Government Pleader



W.A(MD)No.789 of 2017

JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Challenging the order passed in WP(MD)No.1208 of 2008,
dated 22/04/2015, this appeal is filed.

2. While six Lorries belonging to the respondent/writ petitioner were transporting sand with valid dispatch slips issued by the Public Works Department, on 05.11.2007, the 3rd appellant seized all the six Lorries on the allegation that the same were transporting over and above the quantity of sand mentioned in the dispatch slips. Thereafter, the 2nd appellant has passed an order on 15.11.2007 imposing a fine of Rs. 25,000/- for each Lorry and as against the said order, the respondent/writ petitioner filed appeal to the District Collector/1st appellant herein and he passed an order on 08.01.2008 remanding the case to the 2nd appellant for fresh consideration with a direction to verify the quantity of sand found in the Lorries by adopting scientific method and take measurement in the presence of the respondent. On remand, the 2nd appellant sent a report to the 1st appellant on 10.01.2008 and based on the same, the 1st appellant



W.A(MD)No.789 of 2017

reversed and modified the previous adjudicatory order by a fresh order dated 31.01.2008, Challenging the said order dated 31.01.2008, the respondent filed writ petition contending that the 1st appellant based on the report dated 10.01.2008 sent by the 2nd appellant behind the back of the respondent, passed the impugned order without following the principles of natural justice and without making scientific evaluation and observed that if the respondent is aggrieved against the said order, he may file second appeal before the Director of Geology and Mining as per the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959.

3. The Writ Court observed that the 2nd appellant should have issued notice, conducted scientific evaluation in the presence of the respondent, passed an order and communicated the same to the respondent and if the respondent is aggrieved against the said order, he should have preferred an appeal before the 1st appellant, but without doing so, the 2nd appellant has submitted a report behind the back of the respondent and based on the said report, the 1st appellant has reversed his own order which is nothing but a review of his own earlier order which is not permissible in law. Citing violation of principles of natural justice on



W.A(MD)No.789 of 2017

the part of the appellants 1 and 2, the Writ Court rejected the contention of the appellants that there is alternative remedy of appeal to the respondent to challenge the impugned order before the Director of Geology and Mining. So saying, the Writ Court set aside the order impugned therein and remanded the matter back to the 2nd appellant to consider the directions given by the 1st appellant in his order dated 08.01.2008 and pass fresh orders after affording the respondent an opportunity of being heard. The Writ Court further observing that since the fine imposed on the respondent is erroneous and that the money has been lying with the appellants by means of an illegal order, directed the appellants to refund the said amount to the respondent and then consider the case of the respondent. Aggrieved by the said order, the official respondents in the writ petition are on appeal.

4. Learned counsel for the appellants contended that the excess quantity of sand transported was illegally removed from the Lorry on 06.11.2007 night and dumped in the adjoining vacant lands, ponds, bushes etc., on the road side and on the same day, a Lorry bearing registration No.KL 05 3250 was whisked away by some miscreants and it



W.A(MD)No.789 of 2017

is suspected that some of the excess sand might have been carried away in the said Lorry and in this regard, a case has also been registered in Mukkudal Police Station on 07.11.2007 in Crime No.767/07 under Section 379 IPC and therefore, conducting fresh enquiry is impractical. Learned counsel further contended that vehicles were seized on 05.11.2007 and released on 20.02.2008 and therefore, the direction of the Writ Court to hold enquiry afresh may not be possible after a lapse of 8 years and the fine was imposed based on the quantity mentioned in the mahazar recorded at the time of seizure of the vehicles which is a valid document of evidence and the quantum of sand was also calculated by volume method which is one of the scientific methods, but the Writ Court without considering those aspects, allowed the writ petition. Thus, the learned counsel would pray for setting aside the impugned order of the Writ Court and to allow the appeal.

5. We have heard the learned counsel for the appellant.

6. Perusal of record shows that when the 2nd appellant's order dated 15.11.2007 imposing a fine of Rs.25,000/- for each Lorry was



W.A(MD)No.789 of 2017

challenged before the 1st appellant, finding that no scientific or systematic measurement as to the quantum of sand in the seized Lorries was taken by the officers at the time of seizure of the vehicles and that the representation of the respondent dated 06.11.2007 was not considered by the 2nd appellant, the 1st appellant by order dated 08.01.2008, remitted the matter back to the 2nd appellant to pass fresh order after estimating the exact quantum of sand transported in the seized vehicles in a systematic and scientific manner in the presence of the respondent and also to consider the representation of the respondent dated 06.11.2007. The 1st appellant also directed the 2nd appellant to pass such final order within seven days from the date of receipt of his order dated 08.01.2008. When such being the nature of the order, the 2nd appellant ought to have complied with the direction of the 1st appellant by taking measurement through scientific method in the presence of the respondent and also considered the respondent's representation. However, without doing so, the 2nd appellant has simply forwarded a report dated 10.01.2008 and based on the same, the 1st appellant passed final order impugned in the writ petition.



W.A(MD)No.789 of 2017

7. When the matter was remanded to the 2nd appellant citing specific flaw in taking measurement and adherence to the principles of natural justice, without complying such directions of the 1st appellant, the 2nd appellant ought not to have sent a report. Even then, the 1st appellant should not have taken the matter for passing final orders and he should have again directed the 2nd appellant to comply with his earlier direction. Therefore, the order of the 1st appellant dated 31.01.2008, in our view, amounts to reviewing his own earlier order. The entire exercise by the appellants 1 and 2, as observed by the Writ Court, has been done in blatant violation of principles of natural justice and therefore, the Writ Court set aside the order impugned therein and remitted the matter back to the 2nd appellant to comply with the directions of the 1st appellant in his order dated 08.01.2008. In this aspect, we concur with the view of the Writ Court. However, we find that when the entire matter itself has again been remanded by this Court to the 2nd appellant for fresh consideration, the fine amount paid by the respondent with the appellants which is also a part of the subject matter remanded, ought not to have been directed to be refunded by the Writ Court. In this aspect alone, we differ with the view of the learned Single Judge. Record of proceedings also shows that while



W.A(MD)No.789 of 2017

the writ appeal came up for admission, this Court by order dated 28.06.2017, has granted interim stay in respect of refund of fine amount alone and therefore, the fine amount is still with the appellants.

8. Accordingly, the Writ Appeal is partly allowed and the 2nd appellant shall pass fresh order as directed by the Writ Court in letter and spirit and such an exercise shall be completed within a period of twenty weeks from the date of receipt of a copy of this judgment. Till such final order is passed, the fine amount lying with appellants shall not be refunded to the respondent and whether the fine amount should be refunded or not, is subject to the final order to be passed by the 2nd appellant. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,)

(K.K.R.K.J.,)

21.03.2024

Index :Yes / No
Neutral Citation :Yes / No
bala



W.A(MD)No.789 of 2017

To

WEB COPY

1 THE DISTRICT COLLECTOR
TIRUNELVELI, TIRUNELVELI DISTRICT.

2 THE SUB COLLECTOR
CHERANMAHADEVI, TIRUNELVELI DISTRICT.

3 THE REGIONAL DEPUTY TAHSILDAR III,
OFFICE OF THE TAHSILDAR, TALUK OFFICE,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT.



WEB COPY



W.A(MD)No.789 of 2017

V.BHAVANI SUBBAROYAN, J.

and

K.K. RAMAKRISHNAN, J.

bala

JUDGMENT MADE IN
W.A(MD)No.789 of 2017
DATED : 21.03.2024