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W.P.Nos.21590, 22396
& 22399 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2025

Pronounced on : 28.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.Nos.21590, 22396 & 22399 of 2019

and

WMP.Nos.21738 of 2019 and 7552 of 2021

W.P.No.21590 of 2019

R.Srinivasakannan

... Petitioner

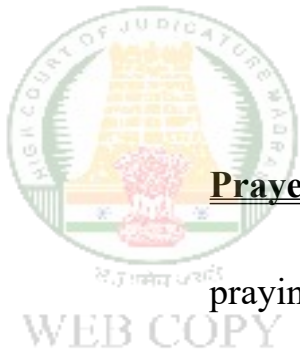
vs

1. The Chairman

Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

2. The Secretary to Government of India,
Ministry of Shipping,
No.1, Parliamentary Street,
Parivahan Bhavan, New Delhi – 1.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued first respondent No.VI/753/2016/Vig.144 dated 03.07.2019 and to quash the same, consequently, direct the respondents to exonerate the petitioner from the charges as per the finding of the Enquiry Officer and to pass orders.

W.P.Nos.22396 & 22399 of 2019

I.R.Manimegalai	... Petitioner in W.P.No.22396/2019
M.D.Malliga	... Petitioner in W.P.No.22399/2019
vs.	

1. The Chief Engineer,
Chennai Port Trust,
Rajaji Bhavan, Chennai – 600 001.
2. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.
3. The Secretary to Government of India,



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Ministry of Shipping,
No.1, Parliamentary Street,
Parivahan Bhavan, New Delhi – 1.

... Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 03.07.2019 passed by the second respondent bearing No.VI/753/2016/Vig and to quash the same, consequently direct the respondents to exonerate the petitioner from the charges as per the finding of the Enquiry Officer and to pass orders.

For Petitioners in
all W.P.Nos.

: Mr.S.Ravidran
Senior Advocate
Mr.K.V.Dhanapalan
for M/s.T.Fenn Walt & Association

For R1 & R2 in
W.P.Nos.22396 &
22399/2019 & R1

in W.P.No.21590/2019 : Mr.S.Haja Mohideen Gisthi

For R3 & R2 in
W.P.Nos.22396, 22399



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& 21590/2019

: Mr.Venkataswamy Babu
Senior Panel Counsel

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COMMON ORDER

Since the *lis* involved in all the three writ petitions is one and the same, they are taken up for hearing together and are disposed of by this common order.

2. For ease of reference, the facts as stated in W.P.No.21590 of 2019 are being referred to.

3. Heard the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondents and perused the record.

4. The petitioner(s) by the present writ petition(s) challenged the show cause notice issued by the disciplinary authority, proposing to visit him with



major penalty, in spite of the enquiry officer giving a specific finding that the charges levelled against him are not proved.

5. The petitioner(s) contended that while working as Chief Engineer of the first respondent, a notice inviting for tender (NIT) was issued for the work of *“Deepening of Eastern Side of Dr.Ambedkar Dock Basin including along side berths of Second Container Terminal, Jawahar Dock basin, berths and maintenance dredging at Entrance Chennai Port”*; that the said NIT was issued cancelling the contract awarded to M/s.Mercator Line Ltd., for the aforesaid work by invoking the Risk and Cost Clause; that the issuance of NIT in March, 2012, was for the fourth time as in response to the earlier NIT issued, on two occasions no bids were received; that pursuant to the NIT issued in March, 2012, the bids received from the intending participants were scrutinised by him, as to whether the participant is satisfying with the required eligibility criteria specified in the tender application and by scrutinising the bid submitted, the same was forwarded to



Tender Committee consisting of five Members; that the Tender Committee, on scrutinising the tenderer's credentials and other qualification criteria made recommendation to the board; and that with the approval of the board of the first respondent, the contract was awarded to the tenderer in accordance with the procedure of awarding contract.

6. It is the further case of the petitioner that the Chief Engineer, Deputy Chief Engineer or other Engineers of the first respondent were not the authorities to award contract and to fix pre-qualification criteria; that it is the Board and Chairman of the first respondent, who are competent to decide the eligibility criteria and that it is the Board which has the authority to approve/sanction for issuance of tender notification and that the tender submitted would be opened only with the approval of the chairman.

7. Petitioner further contended that in respect of the said work as the NITs issued earlier on two occasions did not elicit any response from the



intending bidders, the same were cancelled by the Board and on the third occasion the tender was awarded to M/s.Mercator Line Ltd.; that as said tenderer, failed to execute the work, the first respondent cancelled the said contract awarded to M/s.Mercator Line Ltd., and invoked the Risk and Cost Clause thereunder; that thereafter the subject NIT was issued; that since, the subject NIT is a re-tender, the petitioner cannot alter any of the terms of tender and was only required to check the documents submitted by the tenderer as to whether, the same are in order, the tenderer meeting the eligibility criteria specified and to forward the same to the scrutiny of the Tender Committee.

8. It is the further case of the petitioner(s) that it is the Tender Committee consisting of five Members by scrutinising the Tenders and with the approval of the Board, accepted the tender submitted by M/s.ASR Dredging Services Private Limited and awarded the contract to the said firm on 26.07.2012, whereunder, the contractor was to complete the tendered



work within a period of six months i.e., by 04.03.2013; that as per the tender condition, though the contractor was required to commence and complete the work as per the time period prescribed in the contract and also by submitting/furnishing bank guarantees, security deposit, the contractor did not commence the work and commenced the work only on 15.10.2012, after being granted extension by the first respondent Board and its Chairman; that the contractor not only did not complete the work within six months time, as per the contract period but took 45 months to complete the same, by obtaining periodic extensions from the first respondent Board.

9. It is the further case of the petitioner that though the first respondent Board and its Chairman granted extension of time to complete the work awarded to the contractor from time to time, disciplinary proceeding has been initiated against the petitioner under the first respondent's Employees (Conduct) Regulations, 1987 (for short

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Regulations) and the petitioner was visited with a charge memo dated 23.12.2016, containing eight articles of charge in relation to alleged violation that had occurred during the month of May i.e., inviting NIT and processing of the application submitted by the intending bidders resulting in the contract being awarded to M/s. ASR Dredging Private Limited.

10. The petitioner(s) contended that the respondents, by the charge memo issued, alleged he having violated Regulation 3(1) (i), 3(1)(ii) i.e., not maintained devotion to duty, Regulation 4(5) -Acting in a manner prejudicial to the interests of the board, Regulation 4(9) – Neglect of work or negligence in the performance of duty including malingering or slowing down of work.

11. The petitioner also contended that he having retired from service on 31.12.2012, he could not have been held responsible for the delay in execution of contract by the contractor, or he is responsible in selection of



the said contract for being issued with the charge memo at the first instance, more particularly not being in service beyond three months, after the commencement of work by the contractor and having retired from service even before the expiry of contractual period for completion of the aforesaid work, specified in the contract.

12. Petitioner(s) further contended that the contents of the articles of charges as issued under the charge memo dated 23.12.2016, are based on assumptions and presumptions, without any evidence; that the first respondent, on issuing the aforementioned charge memo, appointed Deputy Chairman of the first respondent as Enquiry Officer, who conducted enquiry into the articles of charge; that before the Enquiry Officer, number of witnesses on both the sides were examined and various documents produced by the Presenting Officer on behalf of the first respondent; and that the Enquiry Officer by considering the material evidence, submitted the detailed enquiry report, on each of the charges levelled against the petitioner(s) and



held that none of the charges against the charge sheeted/delinquent officer – petitioner is proved and in fact, also held that the some of the charges are factually not correct.

13. Petitioner(s) further contended that on the Enquiry Officer submitting his report, the first respondent, without assigning any reason to disagree with the enquiry report and also without recording specific finding, as to how the finding of the enquiry officer is incorrect, for which, the delinquent officer – petitioner is required to submit his explanation, by merely stating that the enquiry officer did not take into consideration, the submissions of the Presenting Officer and the available documentary evidence, as the reason for disagreement, by the proceedings dated 03.07.2019 had called upon the petitioner(s) to submit written submissions within 15 days from the date of receipt of the memorandum, as to why the petitioner should not be visited with major penalty under the Regulations of the respondent Corporation.



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14. The petitioner further contended that since, the first respondent, by the impugned proceedings issued, did not record specific finding, as to which submission of the Presenting Officer or the document presented by the respondent was not considered the Enquiry Officer, on the basis of which the first respondent seeks to disagree with the Enquiry Officer's report whereby it was held that the charges are not proved, it would not be possible for the petitioner/delinquent officer to give a reply. It is thus, contended that the action of the disciplinary authority amounts to the authority approaching the issue in a pre-determined manner, which action it is contended as illegal and without jurisdiction.

15. It is also further contention of the petitioner that the impugned notice is issued without jurisdiction, as in the case of the petitioner, it is only the Central Government, which can award the punishment of major penalty as per Chennai Port Trust Employees (Classification, Control & Appeal)



Regulations 1988, (hereinafter referred as Appeal Regulation) and thus, the impugned proceeding issued being contrary to the Regulations, is without jurisdiction and is liable to be set aside.

16. It is further contended by the petitioner(s) that in W.P.Nos.22396 & 22399 of 2019 that since, the Chief Engineer is the authority who had initiated disciplinary action under charge memo dated 14.02.2017 it is only the said authority, who can record disagreement note, if he is not satisfied with the report of the Enquiry Officer as per the Appeal Regulation not the Chairman.

17. On behalf of the petitioner(s) in the aforesaid two Writ Petitions it is contended that since, the disagreement note is issued under the signature of the Chairman, the same would take away their right of appeal, in the event of the Disciplinary Authority passing an order as per the Regulation 10 of the Appeal Regulation.



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18. On behalf of the petitioner(s), it is also contended that the entire action initiated by the first respondent is premeditated, as the said authority in respect of another employee of the first respondent in relation to the same subject matter, had already adjudicated the issue by visiting him with punishment *vide* order dated 05.09.2019 and thus, even, if the petitioner(s) submit their explanation the same would not be considered in correct and proper perspective; and thus, there is an apprehension of bias against the petitioner(s).

19. It is further contended by the petitioner(s) that the first respondent, while seeking to visit the petitioner with major penalty alleging negligence, causing loss to the first respondent and not maintaining integrity in issuing of NIT in the month of March, 2012 and also awarding contract in the month of July, 2012, has issued charge memo, after a lapse of four years i.e., after the petitioner retiring from the service of the first respondent, which action is



contrary to the Regulation 56 (2) (b) of CPT (Pension Regulation, 1987) (for short Pension Regulation). Thus, the initiation of proceedings under the charge memo dated 23.12.2016, alleging the petitioner(s) having acted in violation of the Regulations in relation to award of contract under NIT issued in March, 2012, resulting in conclusion of contract in July 2012 is being beyond the period of four years is barred by limitation prescribed under Pension Regulation and thus, the impugned notice dated 03.07.2019 disagreeing with the report of the Enquiry Officer without recording reasons is violative of principles of natural justice and thus, the petitioner(s) is entitled to approach this Court by the present writ petition.

20. In support of the aforesaid contentions, reliance is placed on the following decision of the Apex Court: (i) ***(2006) 9 SCC 440 (La V Nigam Vs. Chairman & MD, ITI Ltd and another)***, (ii) ***Union of India & Anr-Vs- Kunisetty, reported in (2006) 12 SCC 28)***, (iii) ***Siemens Ltd – Vs- State of Maharashtra & others reported in (CDJ 2006 SC 1088)***, (iv)



K.Sadhasivam Vs. The Principal District Judge (2025 SCC Online) (Mad)

62996 and (v) W.P.No.22698 of 2017 dated 27.02.2020 (M/s. ASR

Dredging Services Private Limited Vs. M/s. Chennai Port Trust)

21. In addition the petitioner(s) also placed reliance on the following Regulation(s) of the petitioner.

(i) Chennai Port Trust Employees (Conduct) Regulation, 1987.(Regulation)

(ii) Chennai Port Trust Employees (Classification, Control & Appeal) Regulations, 1988.(Appeal Regulation)

(iii) Chennai Port Trust (Pension) Regulation, 1987. (Pension Regulation)

22. Counter affidavit on behalf of the respondent is filed.

23. The respondent by the counter affidavit mainly contended that the present writ petition is not maintainable, as the same is filed against the



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show cause notice and no prejudice is caused to the petitioner(s), if they are called upon to file an explanation, which would be considered by the disciplinary authority.

24. The respondent, by the counter affidavit, further contended that the Ministry of Shipping and Central Vigilance Commission had forwarded a report for investigation and reporting into various matters, including the case pertaining to irregularities in award of subject contract to M/s.ASR Dredging Services Private Limited for carrying out the work as per NIT issued; and that on scrutiny of the subject file, the first respondent having noted serious lapse in preparation of estimate, award and execution of the contract, found seven employees of the first respondent as being involved which *inter alia* includes the petitioner(s) and submitted investigation report to CVC.



25. It is further contended that on the basis of the report, CVC in its first stage advise had directed to initiate disciplinary proceedings for major penalty against the seven officials involved in the process of award and execution of contract and insofar as one of the official who was involved in the process of awarding contract having retired in May, 2012, the CVC recorded its dissatisfaction, as the event took place four years back, before initiating disciplinary action, the first respondent issued memorandum of charge to the other officials involved in the process of award and execution of the contract of the work under NIT.

26. It is further contended that the first respondent, after issuing of article of charges appointed Deputy Chairman as Enquiry Officer and DCME as Presenting Officer to conduct enquiry and submit a report; that though the Enquiry Officer submitted his report in respect of all the charge sheeted officers on different dates including the petitioner, stating that the charges against the charge sheeted officials are not proved; that the



Disciplinary Authority (Chairman) on a perusal of the enquiry report and the available documentary evidences not being in agreement with the reports of the Enquiry Officer, had conveyed his proposed decision of imposing penalty to the charge sheeted officials by the impugned notice.

27. By the counter affidavit, it is contended by the respondent that as the disciplinary proceedings against the charge sheeted officials including the petitioner are initiated by invoking Regulation 12 of Appeal Regulation r/w. Regulation 56 Pension Regulations, the first respondent is the competent authority to award punishment and it is for the said reason, the petitioner has been issued with the impugned proceedings.

28. It is further contended by the respondent that the first respondent along with a disagreement note forwarded the Enquiry Officer's report to the



petitioner as per Regulation 13 of the Appeal Regulations; and that the petitioner without submitting/furnishing written submission has approached this Court by filing the present writ petition.

29. It is also further contended that on account of the charges levelled against the petitioner under Regulation in relation to award of contract and execution of contract, continued till his superannuation on 31.12.2012 and ultimately, the work having been completed at a later date, the memorandum of charges as issued to him on 23.12.2016 is within a period of four years from the date of petitioner's superannuation; that the first respondent, after going through the report of the Enquiry Officer, by independently applying his mind to the finding recorded therein, had disagreed with the Enquiry Officer and issued impugned show cause notice to the petitioner to file his written submissions.



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30. By the counter affidavit, it is also contended that as the petitioner did not fix pre-qualification criteria properly and also did not do proper verification of the documents during the stage of evaluation, resulted in contract being awarded to an ineligible contractor i.e., M/s. ARS Dredging Pvt. Ltd., who took 45 months from the date of award of contract to complete the work, whereas, as per the terms of the contract the work should have been completed within six months, resulting in great loss and also led to too many disputes. Thus, the petitioner(s) cannot claim of the impugned show cause notice having been issued beyond the period of four years or that he having retired immediately after award of contract in respect of which proceedings are initiated having occurred before 4 years and he is not being in service during the execution of work under the contract.

31. By the counter affidavit, the respondent also denied the issue being approached in a premeditated manner.



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32. On behalf of the respondent, it is further contended that though the Board and the first respondent had accorded approval for the issuance of NIT and the finalisation of tender in favour of M/s.ASR Dredging Services Private Limited, a duty is cast on the officials of the first respondent like the petitioner, who had failed to discharge their duties and as such, the initiation of action against the delinquent officers including the petitioner is in accordance with the regulations.

33. On behalf of the respondent at the conclusion of the arguments a brief written clarification note dated 27.11.2025 has been furnished with regard to the appointment of the Enquiry Officer, regarding the appointment of Disciplinary Authority in the case of Retired Employees, Appellate Remedy Available to the Charged Officer, Scope of Functions Discharged by Mr.Cyril George, the Deputy Chairman and Enquiry Officer and Legality of Conducting Common Proceedings.



34. In support of the aforesaid submission reliance is placed on the following judgments:

- 1) *State of Uttar Pradesh Vs. Brahm Datt Sharma and another, reported in (1987) 2 SCC 179.*
- 2) *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kmar and others, reported in (1996) 1 SCC 327.*
- 3) *Ulagappa and others Vs. Divisional Commissioner, Mysore, reported in (2001) 10 SCC 639.*
- 4) *Special Director and another Vs. Mohd. Ghulam Ghouse and another, reported in (2004) 3 SCC 440.*
- 5) *Malladi Drugs and Pharama Limited Vs. Union of India and others, reported in (2020) 12 SCC 808.*
- 6) *Union of India and others Vs. Coastal Container Transporters Association, reported in Civil Appeal No.2276 of 2019 (Arising out of SLP.(C) No.25699 of 2018).*



7) *Commissioner of Central Excise, Haldia Vs. Krishna Was Pvt.*

Ltd, reported in (2020) 12 SCC 572.

8) *Vivek Pharmachem (India) Ltd Vs. State of Rajasthan, reported*

in 2020 SCC Online Raj 1465.

9) *The Mylapore Club Vs. The Joint Commissioner and another, in*

Writ Petition No.471 of 2022 dated 03.02.2022.

10) *Reena Chachda Vs. The State of Madhya Pradesh and others,*

in Writ Petition No.24495 of 2023 dated 09.10.2023.

11) *Viswaat Chemicals Ltd and another Vs. Union of India,*

reported in (2025) 137 GSTR 588:2024 SCC Online Bom 3355: (2024) 91

GSTL 114.

12) *G.Kalaichelvi Vs. The Director and another, in W.P.No.18296 of*

2023 dated 11.12.2024.

13) *The State of Jharkhand and other Vs. Rukma Kesh Mishra, in*

Civil Appeal No... of 2025 (Arising out of SLP (C) No.19223 of 2024).



14) ***Giriraj Enterprises Vs. Municipal Corporation of Delhi, in***

W.P.(C) 9024/2025, CM APPL.38419/2025 & CM APPL.38420/2025.

35. Contending as above, the first respondent seeks for dismissal of the writ petition.

36. I have taken note of the respective contentions urged.

37. At the outset, it is to be noted that present Writ Petition(s) are filed against the show cause notice issued by the first respondent by which the petitioner was called upon to file a written statement within 15 days. The respondents contended that since, the impugned proceedings is only the show cause notice to which the petitioner(s) can submit their explanation and no prejudice is caused and thus, this Court should not entertain the present Writ Petition, it becomes imperative to decide as to in what circumstances the Writ Court can entertain challenge to show cause notice.



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40. Keeping aforesaid settled position of law, this Court proceeds to examine as to whether the petitioner had made out a case for this Court to exercise its discretionary power to quash the impugned proceedings by which the petitioner was called upon to file their written submission within 15 days on the Disciplinary Authority-the first respondent having disagreed with the enquiry report submitted by the Enquiry Officer.

41. The petitioner in the present case was issued with a charge memo dated 23.12.2016 alleging that he having contravened to Regulations, 3(1)(i), 3(1)(ii), 4(5) & 4(9) of the Regulations, in relation to a work for which NIT was issued in the month of March, 2012, pursuant to which the contract having been entered into with the successful Tenderor in the month of July, 2012.

42. The charge memo dated 23.12.2016 containing 8 articles of charge had alleged that the petitioner(s) acted negligently and acted in manner



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prejudicial to the interest of the first respondent and as a result of which, the contract came to be awarded to an ineligible contractor, who did not complete the work awarded to him, within the time and delayed the completion of the said work awarded by 39 months beyond the period of 6 months specified in the contract and on account of the same loss having occurred to the first respondent.

43. Thus, the incident in respect of which the impugned proceedings is issued, occurred in respect of award of contract to an ineligible Tenderer, pursuant to NIT issued in March, 2012. Thus, the incident of alleging the negligence on the part of the petitioner is relatable to the period from the date of issuance of NIT March, 2012, till the date of entering into contract by the first respondent, which admittedly took place in the month of July, 2012. By taking the date of entering into the contract by the first respondent with the contractor as the date of giving raise to cause of action for the respondent to initiate the disciplinary action against the petitioner, the respondents ought to



have initiated the disciplinary action within a period of four years from the said date, as per regulation 56 of Pension Regulations which reads as under:

“56. Right to withhold or Withdraw Pension:

...The Chairman reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Board, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or negligence during his service, including service rendered on re-employment after retirement.

(i) Provided further that:

Such departmental proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceedings under the regulation and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employees had continued in service:

(ii) Such departmental proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment.

(b) Shall not be in respect of an event which took place not more than four years before the institution of such proceedings and...”

44. In the facts of the present case, after the first respondent entering into the contract with the successful Tenderor namely M/s.ASR Dredging Services



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Pvt., Ltd., the petitioner on attaining the age of superannuation had retired from service on 31.12.2012 and was not even re-employed by the first respondent.

Since, the respondents allege negligence on part of the petitioner in evaluating as to whether the contractor fulfilling the pre-qualification criteria and failed to cause proper verification of the documents submitted which events, had occurred prior to entering into the contract by the first respondent with the selected contractors on 26.07.2012, the event in respect of which the charge memo or memorandum of charge as issued on 23.12.2016 is clearly beyond the period of four years as specified in Regulation and also after the petitioner having retired from service on 31.12.2012.

45. Though on behalf of the respondent, it is contended that on account of award of contract due to improper evaluation of the contractor by the petitioner and as the work under the contract was in progress as on the date of the petitioner attaining the age of superannuation on 31.12.2012 and the memorandum of charge having been issued on 23.12.2016 the same being



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within the period specified in Regulation 56 of the Regulation, it is to be noted that sub-clause (b) of Clause (2) of Regulation 56 uses the words “in respect of an event which took place not more than four years before”.

46. Thus, the event “giving rise to initiation of disciplinary proceedings is the evaluation of pre-qualification criteria and verification of documents submitted by the successful Tenderer, which events had taken place before July, 2012, when the first respondent had entered into contract with the so called ineligible contractor. Thus, the claim of the respondent that since, the petitioner had attained the age of superannuation on 31.12.2012 and the disciplinary proceedings having been initiated on 23.12.2016 the same being within the time, cannot be countenanced.



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47. Though on behalf of the respondent it is contended that the breach having occurred on 04.03.2013 when the contractor, who was selected on account of the petitioners not evaluating the capabilities of the contractor properly and resulting in incapable agency being awarded with the contract, thus, the petitioner(s) having not maintained devotion to duty, acting in a manner prejudicial to the interest of the Port Trust and neglect of work/negligence in performance of duty resulting in slowing down work, as noted herein above, the petitioners are not connected with the performance of the contract by the contractor and even going by the allegation in the charge memo, the petitioners are being charged with not evaluating the eligibility criteria of the contractor properly, resulting in the contract being awarded on 26.07.2012. Thus, the period of four years has to be reckoned from the said date and not from the date when the contractor had committed a breach.

48. As evident from the documents placed before this Court by the respondent, the contractor having committed breach of the contract terms in the



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initial stage itself by causing delay of 40 days in commencing the work, the breach had occurred on the said date and if at all, the respondent intended to initiate any action, the same should have been done within four years from the said date. Since, the petitioners were issued with the charge memo on 23.12.2016 much after the occurrence of 1st breach, the respondent cannot claim that the cause of action having arisen on 04.03.2013 on expiry of the contract term specified in the agreement.

49. Further, the first respondent on initiating the disciplinary proceedings and by issuing a memorandum of charge dated 23.12.2016, appointed the Deputy Chairman of the first respondent as an Enquiry Officer. The Enquiry Officer conducted enquiry into the articles of charge by which the petitioner(s) were charged with under the memorandum of charge and considering the documents produced and the statements of witnesses examined on behalf of the respondent and also the delinquent, submitted a detailed report on articles of charge, viz., finding on each of the articles of charge, holding that the charges



levelled against the petitioner(s) are not proved and some of the charges are
factually incorrect.

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50. The Disciplinary Authority however, not agreeing with the said enquiry report submitted, sought to proceed with the disciplinary action and issued the impugned proceedings by which the petitioner(s) were called upon to file the written statement within 15 days. As per Appeal Regulations, in particular Regulation 13(2), if disciplinary authority disagrees with the finding of the Enquiry Officer in respect of article of charge, it is mandatory for the said Authority to record its reasons for such disagreement and record its own findings on such charge.

51. In the facts of the present case, since, the disciplinary authority on receipt of the enquiry report whereby the Enquiry Officer had held that the articles of charge levelled against the petitioner(s) under the memorandum of charge dated 23.12.2016 as not proved, disagreeing with the said findings of



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the Enquiry Authority was required to record his reasons for such disagreement and record his own findings thereon. However, a reading of the impugned proceedings by which the first respondent had called upon the petitioner(s) to file the written submission to the proposed action of imposition of major penalty does not show of the first respondent either recording its own reasons for his disagreement with the findings of the Enquiry Officer or his findings on the articles of charge.

52. On the other hand, a perusal of the impugned proceedings only goes to show that the first respondent in the disagreement note merely stating that the Enquiry Officer had not taken into consideration the submission of the presenting Officer and available documentary evidence completely without specifying as to which submission of the presenting Officer has not been dealt with or which of the available documentary evidence as placed on record has not been taken into consideration completely by the Investigating Officer for the first respondent to record his disagreement.



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53. The Hon'ble Apex Court in the case of ***S.P.Malhotra Vs. Punjab***

National Bank and Ors reported in **2013 (7) SCC 251** had held as under:

“...As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer...”

54. The Hon'ble Apex Court in the case of ***Durga Prasad Vs. Govt. of***

NCT of Delhi and Ors reported in **2025 SCC Online SC 897** had held that:

“...There can be no cavil to the existence of power with the Disciplinary Authority to disagree with the opinion of the Inquiry Officer. But, in the event of disagreement, he has to give brief reasons for his disagreement and provide an opportunity to the employee to respond to such disagreement note before forming its own opinion with regard to imposition of punishment on the delinquent. In the instant case, the note issued by the Disciplinary Authority



was more an expression of opinion regarding the appellant being guilty than a note of dissent with the findings returned by the Inquiry Officer...”

55. In the facts of the present case, as noted herein above in the impugned proceedings, no reasons are recorded either in the disagreement note or in the findings of the disciplinary authority.

56. Thus, the impugned proceedings as issued is to be held as not being in consonance with Sub Clause (2) of Regulation 13 of the Appeal Regulations.

57. Further, as per Regulation (2) (d) read with Regulation 10 of the Appeal Regulations, the penalties i.e., minor and major penalties can be imposed only by the authority as specified in Schedule-1 of the Appeal Regulations. Since, the petitioner at the time of occurrence of the event was working as Chief Engineer of the first respondent and having been appointed to the aforesaid post under Section 24 of the Major Port Act, vide Office order No.12/2001 dated 31st October, 2011, the power to impose penalty is

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conferred only on the authority as specified at Sl.No.1 of Schedule-I of the
Appeal Regulations.

58. As per the aforesaid Schedule in respect of the post covered by Clause (a) of Sub-Section (1) of Section 24 of the Major Port Trust Act, 1963, the Chairman is conferred with the power to impose minor penalty as specified in Regulation 8 (i) 1, 2 & 4, while Central Government is conferred with the power to impose all penalties specified under Regulation 8 of the Appeal Regulations. Since, by the impugned proceedings the first respondent seeks to visit the petitioner with a major penalty and having called the petitioner to file his written submissions to the aforesaid proposal within 15 days, which power the said Authority is lacking as per the Schedule-I of the appeal Regulations, the impugned proceedings as issued would have to be held as issued by an Authority, who is not competent to initiate the said proceedings, and lacking on authority and thus, would have



to be held as without jurisdiction. On this ground also, the impugned proceedings as issued to the petitioner(s) cannot be sustained.

59. Insofar as the petitioners in W.P.Nos.22396 & 22399 of 2019 are concerned, since, it is stated that they are Class III employees of the respondent, the Authority who can initiate the disciplinary action as per Schedule-I of Appeal Regulations is the Head of the Department. The Chief Engineer being the Head of the Department and also having issued memorandum of charge to the petitioners on 14.02.2017 and the Enquiry Officer who is in the rank of the Deputy Chairman having been appointed to conduct enquiry into the articles of charge and submitting report, it is only the Disciplinary Authority, who could have disagreed with the report and not the Chairman, who is neither the Disciplinary Authority nor had issued the charge memo or the subject charge memo having been made over to him to



be dealt along with the charge memo issued to the petitioner in the Writ

Petition No.21590/2019 being the Chief Engineer.

60. Insofar as the written clarification submitted by the respondent at the end of hearing that as per Regulation 23 of the Appeal Regulations expressly enable the institution of the joint /common enquiry where multiple officials are involved on the same set of allegations irrespective cadre or hierarchical position of cadre, firstly, it is to be noted that the said Regulation deals with the Appellate Authority and not with the Disciplinary Authorities, as specified in Regulation 10 of the Appeal Regulations. Since, it is not with Disciplinary Authority but the Chairman who had recorded disagreement note in case of the petitioner(s) who are Class III Employees and the said Authority not being the Authority mentioned in the Schedule competent to impose penalty and in as much this Court has not found any specific exemption having been obtained or any amendment being made to the Regulation 10 of the Schedule, the initiation of proceedings against the



petitioners in the aforementioned Writ Petitions by the Chairman would have to be held as without jurisdiction and thus, is liable to be quashed.

61. Further it is to be noted that in case of Class III employees, if the Chairman is conferred with the power to initiate disciplinary action, the same would result in their right of appeal provided under the Regulation 22, the Authority mentioned in the Schedule I being made nugatory and redundant. It is for the reason that as per the Schedule the Appellate Authority is Deputy Chairman, who is below the Chairman, thereby frustrating the right of appeal of Class III employees. On this ground also the impugned proceedings is liable to be held as without jurisdiction.

62. Though on behalf of the respondent it is contended that since, the impugned proceedings is only a show cause notice and no prejudice would be caused to the petitioner by submitting explanation/written submission and



instead rushed to this Court by filing the present Writ Petitions; and that the Disciplinary Authority is not approaching the issue with pre-determined mind, a reading of counter affidavit filed on behalf of the respondent would indicate otherwise.

63. The respondent by the counter affidavit had stated that the complaint has been forwarded by the Ministry of Shipping and CVC to cause investigation and report, the Authority having initiated action by issuing a memorandum of charge containing 8 articles of charge, that by itself is sufficient to hold that the present disciplinary proceedings is not initiated by the first respondent exercising an independent mind, but is being guided by the directions of CVC. Since, the first respondent having not formed opinion on his own as to the involvement of the petitioner(s) in commission of the alleged/violation, it is a foregone conclusion that any explanation submitted by the petitioner would be of no avail, as the outcome of the proceedings is a foregone conclusion.



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64. Further, from the documents placed on record by the respondent, it is noticed that a complaint was lodged by an employee of the 1st respondent working as Assistant Superintendent, Finance Department with CVC on 23.05.2016 on various incidents in the 1st respondent and one of the incidents complained related to non completion of capital dredging work by the contractor and the said contractor out sourcing the dredging vessels from outside contrary to agreement terms. It is this complaint as forwarded by CVC to 1st respondent under the cover of letter dated 01.08.2016 to cause investigation and submit report, which has triggered the subsequent action by the respondent issuing notice to petitioner(s) and others. However, neither in the complaint lodged or the CVC letter mentioned that the names of the petitioner(s) as responsible.

65. Thus, the initiation of disciplinary action firstly by issuing memorandum of charge containing articles of charge; appointing an Enquiry



Officer, who after conducting a detailed enquiry having submitted the report stating that the charges are not proved; and secondly, the first respondent being in disagreement with the said enquiry report and deciding to proceed with the disciplinary action, it is evident that the same is pursuant to the 1st stage advise issued by the CVC to initiate the disciplinary proceedings, the subject proceedings having been initiated, *lends credence* to the claim of the petitioner of the action being pre-determined and premeditated.

66. Further, as the first respondent did not initiate the disciplinary action on its own during currency of the contract awarded to the contractor and extended with the concurrence of the 1st respondent and as admitted in the counter affidavit, the proceedings having been initiated pursuant to CVC 1st stage of advice, it cannot be said that the respondent would take any independent decision. The fact of the Enquiry Officer appointed to enquire into the articles of charges levelled against the petitioner under the cover of charge memo having submitted the detailed report, stating that the charges



have not been proved and the chairman disagreeing with the said report by merely stating that the Enquiry Officer did not consider the documents and the submissions of the Presenting Officer for his disagreement with the enquiry report, itself goes to show what is in store for the petitioner(s).

67. The Hon'ble Apex Court in the case of ***Nagaraj Shivarao Karjagi Vs. Syndicate bank, Head Office, Manipal and Another***, reported in (1991) 3 SCC 219, dealing with the advise of the CVC and its effect had observed as hereunder:

“15...they might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission...”

68. Thus, the initiation of action in present case by the first respondent would have to be held as suffering with the procedural bias and failure to apply independent mind.



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69. The Hon'ble Apex Court in the case of *Vijay Rajmohan Vs. State*

Represented by the Inspector, reported in **2023 (1) SCC 329** had held that where proceedings initiated particularly in quasi judicial suffers from procedural bias, the same cannot be sustained.

70. It may not be out of place to note that in respect of the same transaction/contract, the first respondent having initiated the disciplinary proceedings against one of the officials working as Assistant Engineer involved in the process of award and execution of contract, having adjudicated the aforesaid proceedings by his order dated 05.09.2019 and awarding the punishment of reduction of pension payable to the concerned officials by 10% for a period of two years would also go to show that the outcome of present disciplinary proceedings is already pre-decided and no useful purpose would be served by directing the petitioner to submit explanation in the hope of the first respondent deciding the issue with open



mind. Thus, the claim of the respondent by the counter affidavit that if the petitioner(s) submit explanation, the first respondent would decide the same on merits in accordance with law is only on paper and intended for consumption of this Court and would in fact serve no useful purpose. [See: **Union of India Vs. Sanjay Jethi - (2013) 16 SCC 116**].

71. Now turning to the memorandum of charge as issued to the petitioner(s) containing 8 articles of charge is concerned, the respondent on one hand alleged due to actions and neglect on part of the petitioner(s) has resulted in slow down of work and loss of business, however on the other hand continued to get the work executed with the same contractor by granting extension of time periodically for nearly four years beyond the original contract period of only of six months.



72. The document as placed by the respondent before this Court to impress upon the Court that delay having occurred on account of the action of the petitioner(s) and for the said reason disciplinary proceedings are initiated, the first respondent while on one hand alleging that due to the actions of petitioner(s) contract came to be awarded to an ineligible person, on the other hand granted extension of time by accepting the explanation submitted by the contractor with regard to completion of work and got the work executed.

73. Further, it is not the case of the first respondent that the contractor with whom the first respondent is entered into the contract, did not have capabilities to perform the contract itself.

74. The first respondent having accepted the explanation of the contractor for non-timely completion of the work, cannot now turn around



and blame its own employee(s) as responsible for not evaluating the capabilities of the contractor properly.

75. It is not shown to this Court that the first respondent at least till 2014 having taken any action against the contractor for non-timely completion of the work; and on the other hand, the record as placed before this Court and also submission of the respondent that since, heavy equipment was placed at the port for the aforesaid the work, the respondent did not resort to terminating the contract awarded to the contractor even though delay had occurred, only goes to show that the respondent is blowing hot and cold to suit its convenience viz., initiating disciplinary action against its present and past employees, while on the other hand accepting the explanation and granting extension of time to the contractor periodically.



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76. Since, the respondent except invoking LD clause, did not take any steps to terminate the contract though issued a show cause notice dated 05.02.2014 and also invoking Risk and Cost Clause of the agreement, however having not taken any further action and having accepted the explanation of the contractor, in the considered view of this Court the respondent cannot be allowed to initiate action against the petitioner(s) whose role in the entire process was limited to scrutinising the tender application submitted by the contractor as to whether, the same meeting criteria prescribed in NIT and forwarding the same to the tender committee consisting 5 members, which in turn made a recommendation to the board who ultimately took the decision to award the said contract.

77. Since, it is the board which had taken the decision to award the contract to the so called ineligible contractor, nothing prevented the board from terminating the contract at the first breach i.e., when the contractor could not commence the work in terms of the contract and sought extension



of time. Not only did the first respondent Board did not take any action, on the other hand, it continued its bonhomie with the contractor, till the work awarded under the contract got completed and only after the lapse of more than four years from entering into the contract, have initiated disciplinary action against its own officials under the memorandum of charge dated 23.12.2016 and 14.02.2017 which action in the considered view of this Court is intended only to cover their own omissions and commissions from being examined by CVC.

78. Though on behalf of the respondent by placing before this Court record relating to tampering resorted by the contractor with regard to the statement that it had completed a similar project of the specified cubic meter, it was sought to be contended that on account of the petitioner herein having not verified the said certificate furnished by the contractor the contract came to be awarded to an ineligible entity, it is to be noted that the best the petitioner could have done at the relevant point of time was to seek



confirmation from the concerned Authority, who had issued the aforesaid certificate i.e., as Indian Naval Academy, Ezhimala, Kannur. On the petitioner addressing a communication and the said Authority having confirmed of having issued the said certificate, there was no reason for the petitioner to doubt the correctness or otherwise of the said certificate, more particularly when the terms and condition does not provide for any physical verification.

79. Further, going by the respondent's own admission that of having come to know of the contractor having tampered with the certificate furnished along with his tender document and on the basis of the said certificate having secured the contract, still did not take steps to terminate the contract, and continued to get the work executed under the contract through the same contractor. This also goes to show that the first respondent had waived deficiency of the contractor. The first respondent having waived the deficiency found with the contractor, cannot use the same deficiency to



punish its own employee(s) like the petitioner by initiating disciplinary action.

80. Another important aspects which should not be lost sight of, in the present case is that, the NIT issued in the month of March, 2012, is not issued for the 1st time but it is a re-tendered work for the 4th time, under which bids were invited for the aforesaid work, particularly after terminating the contract awarded to M/s.Mercator Line Ltd earlier, due to non performance by the said contractor. The first respondent while terminating the contract with M/s.Mercator Line Ltd., had invoked Risk and Cost Clause contained therein. Since, the respondent having invoked the Risk and Cost Clause, would be required to get the same work done through the alternate contractor.

81. Thus, if the petitioner had resorted to any alteration in tender conditions while re-tendering the same work for which the contract awarded



to M/s.Mercator Line Ltd was cancelled, the respondent would not be in a position to make any claims on the earlier contractor invoking Risk and Cost Clause. It is for this reason re-tendered work was issued on the same terms as issued earlier and for the said reason this Court is of the view that the petitioner(s) cannot be held responsible.

82. Though on behalf of the respondent it is contended that the petitioner in W.P.No.21590/2019 is responsible for issuing Tender in the present case as well as on earlier occasion which was secured by M/s.Mercator Line Ltd., did not evaluate the time frame correctly, no material is placed before this Court to show that the tender conditions have been varied by the petitioner from those as issued in the 1st and 2nd occasion to hold the petitioner as responsible for the said omission.

83. Thus, this Court is of the view that the respondents could not allege that the petitioner having not properly evaluated the tender conditions



or the time period properly thereby failing to perform the duties in an efficient manner and thus being negligent.

84. Though on behalf of the respondent, various decisions of the Hon'ble Apex Court, this Court, Bombay High Court, Madhya Pradesh and Rajasthan High Courts have been referred to, it is noted that there is no difficulty with regard to the acceptance of the principles laid down therein. In all the aforesaid cases, the matters arose under the Finance Act, or other fiscal enactment wherein the Hon'ble Apex Court had consistently held that the Court's interference at the show cause notice stage should be minimal. The said principle has also been drawn into service matters. However, in case of service matters, where charge memo or show cause is issued by the Authority who lacked authority, without jurisdiction or issue abuse of process of law or the same is premeditated or is intended only to harass the employee and on the Court being satisfied, can entertain the Writ Petition under Article 226 of the Constitution of India and quash the charge



memo/show cause notice and thus, there is no absolute bar Perse. [See (i)

Siemens Ltd., V. State of Maharashtra & Ors - (2006) 12 SCC 33 and (ii)

Union of India & another Vs. Vicco Laboratories - (2007) 13 SCC 270]

85. As noted herein above though in normal circumstances, a Writ Petition against the show cause notice is not to be entertained, however, taking into consideration the aspects as discussed above and the mitigating circumstances, this Court is of the view that it is an exceptional case wherein this Court can exercise its discretion under Article 226 of the Constitution of India in entertaining the present Writ Petitions, as the impugned proceedings issued by first respondent, as has noted herein above is without jurisdiction, suffers from procedural bias, barred by limitation and also the process is used in illegal manner only to satisfy the objection raised by the CVC. Thus, this Court has no hesitation to hold the entire action resorted by the first respondent is vitiated and suffers from malice in law.



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86. Accordingly, the Writ Petitions are allowed and the impugned proceedings dated 03.07.2019 as issued by the 1st respondent in each of the Writ Petitions is set aside. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

28.11.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

dh/dna



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To

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1. The Chief Engineer,
Chennai Port Trust,
Rajaji Bhavan, Chennai – 600 001.
2. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.
3. The Secretary to Government of India,
Ministry of Shipping,
No.1, Parliamentary Street,
Parivahan Bhavan, New Delhi – 1.



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T. VINOD KUMAR, J.

dh/dna

**Pre-Delivery Order in
W.P.Nos.21590, 22396 &
22399 of 2019
and
WMP.Nos.21738 of 2019 and
7552 of 2021**



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28.11.2025