IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2025

Pronounced on : 28.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.34050 of 2019
and
W.M.P.Nos.14595 of 2024 and 34650 of 2019

S.Mahesh ... Petitioner

vs

1. The Principal Secretary to Government
   Department of Commercial Taxes & Registration
   Fort St. George, Chennai – 600 009.

2. The Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   Office of the Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   'Ezhilagam', Chetput,
   Chennai – 600 005.

3. Sri.R.Sankaranarayanan
   The Deputy Commissioner (CT),

Inquiry Officer,
Tirupur Zone – 1,
Erode Division,
Tirupur – 1. … Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Charge Memo vide CD2/31108/2016-I, dated 03.06.2019 issued by the second respondent herein and quash the same as improper and barred under the principles of 'Double Jeopardy' and forbear the respondents 2 & 3, from proceeding with the allegations contained in the impugned Charge Memo, as well as the earlier Charge Memo No.CD2/31108/2016, dated 12.12.2017 and pass orders.

For Petitioner : Mr.V.Radhakrishnan
Senior Advocate
for Mr.S.Kadarkarai

For Respondents : Mr.C.Harsharan
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional

Government Pleader for the respondents and perused the records.

2. The case of the petitioner in brief is that he was issued with a charge memo dated 12.12.2017 containing three articles of charge that; on submitting explanation denying the articles of charge, the Enquiry Officer, without following the procedure for conducting enquiry, had recorded his statement whereby he had put forth his defence; and that the Enquiry Officer taking note of his defence, did not pass any order.

3. Petitioner contends that the disciplinary authority on coming to know of his defence in the disciplinary action initiated against him, have sought an opinion from the Directorate of Vigilance and Anti-Corruption on the basis of who’s directions disciplinary action was initiated; and that Vigilance and Anti-

Corruption Department taking note of the article of charge framed against the petitioner, had opined that the said articles of charge are not properly framed and advised the respondents to issue fresh articles of charge.

4. It is the further case of the petitioner that on the Vigilance Authorities providing the respondents with the new articles of charge, the respondent in supersession of charge memo dated 12.12.2017, had issued the impugned charge memo dated 03.06.2019; and that the petitioner had submitted his explanation to the same on 09.07.2019.

5. It is the further case of the petitioner that on the petitioner submitting his explanation, the Disciplinary Authority appointed the same Enquiry Officer as appointed under the first charge memo dated 12.12.2017 to conduct enquiry and submit report to the charge memo dated 03.06.2019.

6. The petitioner contended that while under the first charge memo

dated 12.12.2017 issued to the petitioner, only one person, who is said to have video recorded the petitioner demanding bribe for granting registration under the provisions of TNVAT Act, is shown as witness, in the second charge memo issued on 03.06.2019, eight persons including the person whose name was mentioned in the first charge memo are shown as witnesses. Thus, the respondents have sought to improvise the charge that was issued to the petitioner.

7. It is also contended that in the charge memo dated 03.06.2019, in the article of charge-1, it was claimed that the petitioner had instructed the proprietor of Tvl.Rudra Oils, Mallur, Salem, to hand over the money to Thiru.Meeran/private individual, while in the article of charge issued under the first charge memo dated 12.12.2017, it was stated that the petitioner had instructed M/s.Rudra Oils, to hand over the money to Veerannan, Office Assistant of the petitioner's office; and that the change of the name of the person mentioned in the article of charge from one mentioned in the charge memo, is on account of statement recorded by the

Enquiry Officer appointed under the first charge memo on 17.10.2018, wherein the petitioner had specifically stated that there is no Office Assistant in the office, to whom the petitioner could have directed to make the payment as mentioned in the article of charge.

8. The petitioner contended that since, the respondents having noticed weakness of their case as set out in the first charge memo issued, in order to cover up their omissions, have issued the subsequent charge memo dated 03.06.2019 in supersession of the first charge memo, noting therein that certain lapses were noticed, which in fact is pursuant to the matter being referred to Vigilance Authorities and they having issued fresh draft article of charge and as such, the same is not independent exercise of mind by the respondents.

9. It is the further case of the petitioner that the charge memo dated 03.06.2019 as issued, is only upon the matter being referred for the advice the Vigilance Authority and said fact would be evident from para 4 of G.O.(D)

No.397 dated 07.12.2018, wherein, it is stated that the charge memo issued to petitioner and two others are not in order and the investigation Authority who's advice is sought having furnished draft charge memo for consideration and appropriate action.

10. It is thus contended that since, the Disciplinary Authority did not exercise his independent mind and is guided by the Vigilance and Anti-corruption Authorities, in issuing charge memo dated 03.06.2019, the said proceeding is vitiated.

11. Contending as above, reliance is placed on the following decisions:

(i) ***1971 (2) SCC 102*** in the case of ***K.R.Deb Vs. The Collector of Central Excise, Shillong.***

(ii) ***(1989) 2 SCC 505*** in the case of ***the State of U.P and others Vs. Maharaja Dharmander Prasad Singh***

(iii) ***(1991) 3 SCC 219*** in the case of ***Nagaraj Shivrao Karjagi Vs. Syndicate Bank, Head Officer, Manipal and another***

(iv) ***(1997) 11 SCC 444*** in the case of ***Satyendra Chandra Jain Vs. Punjab National Bank and others.***

(v) ***(2006) 12 SCC 28*** in the case of ***Union of India and another Vs. Kunisetty Satyanarayana***

12. Per contra, learned Additional Government Pleader appearing for the respondents would submit that the disciplinary proceedings against the petitioner were initiated pursuant to sting operation undertaken by the person named as first witness in both charge sheets i.e., charge sheet dated 12.12.2017 and 03.06.2019, when he had approached the petitioner to obtain the registration under the provisions of TNVAT Act for his business and petitioner having demanded for payment of bribe.

13. On behalf of the respondents, it is further contended that there is no

major variation in the articles of charge framed under both the charge memos; and that change of name of the person mentioned in the article of charge No.1 is concerned, since, the disciplinary proceedings was initiated on the basis of audio and video recordings made by the first witness the name of the person to whom the petitioner had directed to hand over the cash was mentioned wrongly, and it is for the said reason, in the subsequent charge memo, the correct name has been mentioned.

14. Insofar as the addition of witnesses to the list of witnesses mentioned in the charge memo, it is contended that since, the Disciplinary Authority can ask the Enquiry Officer to record further evidence including the examination of important witnesses, who are not available at the time of enquiry or for some other reason and in order to avoid such a situation, the respondents in supersession of the earlier charge memo dated 12.12.2017, issued a new charge memo dated 03.06.2019, including all the details of witnesses and also correcting

other discrepancies, which were noticed.

15. On behalf of the respondents, it is also contended that taking advice of the Vigilance Authority is only an internal procedure and since, there is no major change in article of charge either by alteration or addition, the petitioner cannot claim any prejudice being caused on account of issuance of charge memo dated 03.06.2019.

16. On behalf of the respondent, it is also further contended that since the impugned proceeding is only a charge memo, no prejudice is caused to the petitioner by participating enquiry proceeding and that, the petitioner would have every opportunity to prove his innocence by cross-examining the witnesses on behalf of the Department and also by producing witnesses on his behalf, the Enquiry Officer would submit his report as to charges are proved or not and based on the report further action would be taken. Thus, the challenge is premature.

17. Contending as above, respondents also placed reliance on the

decision of the Apex Court reported in ***1971 (2) SCC 102*** [***K.R.Deb Vs. The Collector of Central Excise, Shillong]*** as relied upon by the learned counsel for the petitioner.

18. I have taken note of the respective submissions as urged.

19. The short point that falls for consideration in the present writ petition is that as to whether the respondents could have issued second charge memo dated 03.09.2019, in supersession of the charge memo dated 12.12.2017, after the proceedings have commenced and after the statement of the petitioner is recorded by the Enquiry Officer, therein.

20. While the petitioner alleged that the charge memo dated 03.06.2019 is issued changing the name of the person mentioned in the article of charge – 1 and also the addition of witnesses in Annexure -IV of the charge memo, is pursuant to his statement given on 17.10.2018 and to cover up their omissions, a comparison of articles of charge as issued to the petitioner under the charge memo

dated 12.12.2017 with that of charge memo dated 03.06.2019, would show that the aforesaid disciplinary proceedings initiated against the petitioner is for demanding and accepting illegal gratification for discharging the official duty and thus, induce the public servant to indulge in corrupt activities and the delinquent officer/petitioner having acted with dishonesty and lack of integrity in the discharge of official duty in a manner unbecoming of a Government Servant, violation of Rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules, 1973.

21. Since, the charges in both the charge memos predominantly being one and the same, it cannot be said that prejudice is caused to the petitioner, on account of issuance of charge memo dated 03.06.2019. However, taking note of the fact that the Enquiry Officer having commenced his proceedings under the charge memo dated 12.12.2017, the respondents could not have issued the charge memo dated 03.06.2019, in supersession of the earlier proceedings as stated in

G.O.No.397.

22. The Apex Court in the case of the ***K.R.Deb Vs. The Collector of Central Excise, Shillong*** reported in ***1971 (2) SCC 102,*** considering Rule 15 (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1957, having held that there can only be one enquiry, the respondents could not have issued the second charge memo dated 03.06.2019. Thus, the impugned proceedings would have to be held as vitiated and bad in law.

23. However, taking note of the fact that since there is no major differentiation in articles of charge as issued to the petitioner under charge memo dated 12.12.2017 and 03.06.2019, the objection of the petitioner to the addition of witnesses in Annexure – IV to the charge memo or, change of name of the person mentioned in Article of charge – 1 is concerned, the Hon'ble Apex Court, in the decision relied upon by the petitioner himself, had made clear that the

Disciplinary Authority may ask the Enquiry Officer to record further evidence or the Disciplinary Authority has independent powers to reconsider the evidence itself and come to its own conclusion and observed as under:

> "*12. It seems to us that Rule 15, on the fact of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.*"

24. Since, the respondents claim that the witnesses mentioned in Annexure – IV to charge sheet dated 03.06.2019 are important witnesses, it is open for the Disciplinary Authority to ask the Enquiry Officer to record further

evidence of the said witnesses. The recording of further evidences of witnesses on behalf of the Disciplinary Authority, would automatically confer the right on the petitioner to cross-examine the said witnesses. Thus, the petitioner cannot claim that the respondents cannot be allowed to proceed with the charge memo dated 12.12.2017.

25. The learned Senior Counsel appearing on behalf of the petitioner fairly submitted that he is only assailing the action of the respondents in issuing charge memo dated 03.06.2019; and that if this Court restrains the respondent from proceeding with the said charge memo dated 03.06.2019, and directs to proceed on the basis of the charge memo dated 12.12.2017, the petitioner would cooperate by participating in the enquiry proceedings before the Enquiry Officer.

26. The aforesaid submissions made by the learned Senior Counsel appearing on behalf of the petitioner is placed on record. In view of the conclusion arrived at as above, this Court is of the view that while the respondents cannot be

allowed to initiate disciplinary action against the petitioner, on the basis of the charge memo dated 03.06.2019, however are to permitted to proceed with the Enquiry, on the basis of the charge memo dated 12.12.2017, from the point where it was stopped by the Enquiry Officer by completing the enquiry and submitting report. Accordingly, the charge memo dated 03.06.2019, is set aside and the respondents are directed to take further action on the basis of the charge memo dated 12.12.2017 in accordance with law.

Accordingly, the Writ Petition is disposed off as directed above. Consequently, connected Miscellaneous Petitions are closed. No orders as to costs.

28.11.2025

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

dh

To

1. The Principal Secretary to Government
   Department of Commercial Taxes & Registration
   Fort St. George, Chennai – 600 009.

2. The Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   Office of the Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   'Ezhilagam', Chetput,
   Chennai – 600 005.

3. Sri.R.Sankaranarayanan
   The Deputy Commissioner (CT),
   Inquiry Officer,
   Tirupur Zone – 1,
   Erode Division, Tirupur – 1.

T. VINOD KUMAR, J.

dh

Pre-delivery order made in
W.P.No.34050 of 2019

28.11.2025