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W.P.No.33294 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

**WP No. 33294 of 2017 &
WMP Nos.36725 to 36727 of 2017**

M/s.VAK Engineering Pvt., Ltd.
Rep. by its Director, Rajesh Malhotra,
No.294, Thambu Chetty Street,
Chennai-600 001.

..Petitioner

v.

1.The Presiding Officer,
Minor Inam Tribunal (Principal Sub Judge
Chengalpet) Chengalpet.

2.The Assistant Settlement Officer,
Thiruvannamalai, Sambuvarayar District.

3.L.Ameer

G.L.Ahamed (Died)

4.Mrs.Zubaidhakhaton (Deceased)

5.P.Jagannathan,

6.K.M.Narayanan,

D.Abdul Majeed (Died)

7.K.P.Ramalingam,

Kaneez Fathima (Died)

Fathima Bibi (Died)



8.A.M.Ahamed Kabir

9.A.M.Nazar Ahamed

10.A.M.Mohamed Basheer

11.A.M.Mumtaz Zulaikha

12.A.M.Mehrun Zeleikha

08 to 12 are residing at No.6, Secretariate colony, Adambakkam, Chennai-600 016

(Respondents 8 to 12 have been brought on records as LR's of the deceased Abdul Majeed vide order of this court dated 14.03.1997 in CTP.Nos.8 to 10 of 1997)

13.Srila Sri Srimath Devasigamani
Arunasala, Paramachariya Swamigal Madam,
Rep. by Kundrakudi Athina Karthar,
Mylapore.

14.The District Collector,
Office of the District Collector, Kanchipuram
Kanchipuram District.

15.Fazlullah Khan,

16.Niamathullah Khan,
(R15 & R16 are substituted as LR's of the deceased R4 vide order dated 10.11.2025 made in WMP.No.8261 of 2017 in WP.No.33294 of 2017 by VLNJ)

..Respondents

Calling for the records in connection with the impugned order passed in MICMA No.28 of 1993 pronounced on 12.6.2015 and quash the same.

For Petitioner : Mr. Aswin Prasanna



For Respondents : R1-Tribunal

Mr.R.Ramanlal,
assisted by
Mrs.Meera Arumugam,
Additional Government Pleader for R2 & R14

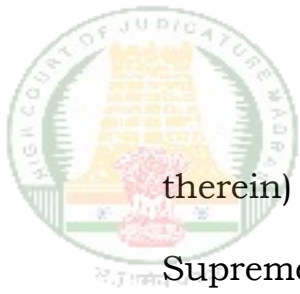
Mr. M.J.Jaseem Mohamed for R15 & R16

ORDER

Heard Mr.Aswin Prasanna for the writ petitioner, Mr.Ramanlal for the respondents 2 and 14 and Mr.M.J.Jassem Mohamed for the respondents 15 and 16.

2. The writ petition challenges the order passed by the first respondent in MICMA No.28 of 1993 dated 12.06.2015 whereby the appeal filed by the petitioner came to be dismissed by the first respondent. Though several grounds have been raised on the merits of the claim, I am not inclined to go through the same in this proceedings. This is for the following reasons:-

3. The matter came up before the first respondent pursuant to an order passed by this court in STA.No.2 of 1996 dated 23.12.2009. By that order, this court, sitting as a special Tribunal, had set aside the earlier order passed by the 1st respondent and had remanded the matter to it for fresh disposal. On the matter being taken up before the first respondent, the counsel representing the writ petitioner (appellant



therein) had reported “no instructions”. Following the dictums of the Supreme Court in **Malkiat Singh and another Vs. Joginder Singh and others, (1998) 2 SCC 206** and **Tahil Ram Issardas Sadarangani and Others Vs. Ramchand Issardas Sadarangani and another, 1993 Supp (3) SCC 256**, noticing the appellant was not before the Court, the Court ordered notice to the appellant / writ petitioner.

4. The notice was issued on 13.04.2015, fixing the date of hearing on 27.04.2015. On 29.04.2015, the court recorded that the acknowledgement cover had not yet been received, and adjourned the matter to 03.06.2015. On 03.06.2015, the appeal was adjourned further to 05.06.2015. In the meantime, the cover, was however returned to the court with an endorsement “left”.

5. On 05.06.2015, the first respondent heard the counsel for the respondents, namely, the Kundrakudi Adheenam as well as the respondents herein and reserved orders in the appeal. The Court further received written arguments filed by the private respondents herein. Thereafter, it dismissed the appeal on merits. Challenging the same, the present writ petition.



6. In order to satisfy myself, I summoned the records from the file of the 1st respondent. A perusal of the notes paper, which has been sent along with the records, vouchsafes the averments made in the writ affidavit. Without hearing the writ petitioner, the appeal came to be dismissed on merits on 12.06.2015.

7. The records shows that on 13.04.2015, summons had been issued by the court to the writ petitioner in D.No.420/2015. It had been returned by the postal authorities on 15.04.2015. The court had the option, either to dismiss the appeal for default, or issue fresh notice to the writ petitioner. Instead of doing so, the 1st respondent heard the arguments of the respondents alone, and had rendered a lengthy judgment, on the merits of the case, running into several pages dismissing the appeal.

8. First, I find a contradiction in the very impugned order itself. In the first portion of the judgment, the learned Judge has recorded that he heard Mr.S.Thankaswamy and Mr.R.Subramaniam for the appellant. Whereas, in page No.6 of the impugned order, he has recorded that there is no representation for the appellant and that he heard the respondents' side arguments alone. The contradiction is obvious. The learned Tribunal has recorded in one portion as if the appellant has argued and in other portion of the judgment, he



recorded that the respondents 2 to 15 and the counsel for the 16th respondent Kunnakudi Adhinam alone were heard.

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9. Secondly, the procedure followed by the 1st respondent is also way off the mark. The following endorsements made in the 1st respondent proceedings are extracted for ready reference:-

"05.11.2013 For clarification

Call on 21.11.2013

21.11.2013 For clarification

Call on 18.12.2013

18.12.2013 For clarification

Jo M CL reposted to 06.01.2014

06.01.2014 For clarification

For clarification by counsels call on 28.01.2014.

28.01.2014 For clarification

For clarification by counsels 14.02.2014.

14.02.2014 For clarification

For clarification by counsels 07.03.2014.

07.03.2014 For clarification by counsel

For clarification by counsels – 04.04.2014.

04.04.2014 For clarification by counsels.

At request call on 07.04.2014.



07.04.2014

For clarification by counsels.

For clarification by counsels call on 27.06.2014.

27.06.2014

For clarification by counsels.

25.07.2014.

25.07.2014

For clarification by counsels.

C/o 26.08.2014.

26.08.2014

For clarification by counsels.

For clarification 07.10.2014.

07.10.2014

For clarification by counsels.

C/o 27.11.2014.

27.11.2014

Call on 09.01.2015.

09.01.2015

For clarification by counsels, call on 26.02.2015.

26.02.2015

For clarification by counsels, call on 12.03.2015.

12.03.2015

For clarification by counsels. Call on 13.03.2015.

13.03.2015

For clarification

call on 19.03.2015.

19.03.2015

For clarification

call on 26.03.2015.



26.03.2015

For clarification

call on 01.04.2015.

01.04.2015

For clarification

C/o 09.04.2015.

09.04.2015

For clarification. No instructions for the Appellants and court notice may be taken to the Appellant.

Issue Final Notice to Appellants by Court RPAD.

Call on 27.04.2015.

27.04.2015

D.No.420 dt: 13.04.2015.

C/o 29.04.2015.

29.04.2015

Ack. Not yet ret'd.

Cover ret'd as left.

C/o. 03.06.2015.

03.06.2015

Call on 05.06.2015.

05.06.2015

No representation for appellant. Respondents side present. As per High Court direction Mr.OMB counsel for Adeenam



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submitted, the argument and reported that there is no change in the stand in granting patta by Settlement officer. Respondents side written argument filed. Ex.P19 to P21 marked. Argument closed. Call on 12.06.2015 for orders.

12.06.2015

Perused records. Order pronounced vide separate sheet.

12.06.2015

Perused Records. Order Pronounced. On considering the entire case records and argument of the respondents and on the basis of the observation made by the Hon'ble High Court, Madras and this Court conclude that the claim of the appellant is not proved and the patta granted by the Izaradar is genuine and also the Izaradar had the competence to issue such pattas.

And thereby there is no doubt as to the genuineness of the claim of the respondents. Hence the orders issued by the Assistant Settlement Officer dated 09.09.1993 deserves to be confirmed by ordering for issue of patta in favour of the respondents.

In the result, the Minor Inam CMA is dismissed with cost."



10. Having recorded that the appellant counsel was not present to dispose of the appeal on merits, is a serious error as will be discussed later. This was compounded by the fact that the documents had been received in the appeal without following any procedure or without notice to the appellant.

11. A statutory appeal ought not to be dealt with in a manner in which it has been done by the 1st respondent. If the appellant had not appeared, despite the service of notice, the court could have proceeded further and dismissed the appeal for default. No finger would be pointed at the 1st respondent. In this case, notice that was issued by the Court had not been served. Still, the learned Judge, without dismissing the appeal for default, had heard the respondents alone and has passed the order on merits.

12. Of the three institutions under the Constitution, if at all a body should strictly adhere to the principles of natural justice, it is the judiciary. At the very least, the first respondent was required to hear the appellant. If the appellant shows a recalcitrant attitude and does not place its submissions, the only option left is to dismiss the appeal for default. In such a case, if a restoration application had been filed, the 1st respondent could have recorded the reasons and dismissed that



application too. Instead, the 1st respondent had gone into the merits of the case.

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13. Playing football with one side of the goal left undefended is no game at all. Such a game cannot be treated as a fair one. Hence, on the ground of violation of principles of natural justice, and on the serious lapse in procedure, this court recognises the need to interfere with the impugned order dated 12.06.2015 in MICMA No.28 of 1993 on the file of the 1st respondent.

14. At this point of dictation, Mr.M.J.Jaseem Mohamed raised a preliminary objection that the petitioner has an alternate remedy by way of an appeal invoking the Special Tribunal Appeal before this court.

15. I should point out that, despite the existence of an alternate remedy, it still remains a matter of discretion for this court to entertain a writ petition under Article 226 of the Constitution of India. This writ petition had been entertained by this court as early as on 20.12.2017. Thereafter, the matter had been heard by several Judges and finally, it was listed before me for final disposal. It is a time-honoured practice of this Court not to dismiss writ petitions on the grounds of availability of alternate remedy, once rule nisi is issued.



16. In addition, the plea of the petitioner is one of violation of principles of natural justice. The records reveal such a violation. The Supreme Court has consistently held across several judgments, that where there has been a violation of principles of natural justice, a writ petition is certainly entertainable, even when an alternate remedy exists.

17. Mr.M.J.Jaseem Mohamed relies upon a judgment of the Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada & others v. M/s.Glaxo Smith Kline Consumer Health Care Limited, Civil Appeal No.2413 of 2020*** dated 06.05.2020. He places particular reliance on paragraph 15 of the said judgment.

18. A perusal of the judgment shows that the Supreme Court has laid down, that the existence of an alternate remedy by way of an appeal, does not curtail the jurisdiction of the High Court under Articles 226 or Article 227 of the Constitution of India. It further held that a writ petition is maintainable, even if the statutory provision for appeal exists, if the order is without jurisdiction or passed in excess of jurisdiction – by overstepping or crossing the limits of jurisdiction, including flagrant disregard of law and rules of procedure, or in violation of principles of natural justice.



19. I have concluded that the order passed by the first respondent without hearing the petitioner and going into the merits of the case without hearing the appellant, is the first flagrant violation of the procedure. Passing an order on merits without hearing the appellant's side cannot but be termed as disregard to applicable law and procedure. This is in addition to the an utter violation of principles of natural justice. This view taken by me found acceptance, even as per the judgment cited by Mr.M.J.Jaseem Mohamed.

20. I should refer to a couple of judgments of the Supreme Court on the aspects of procedure. The Supreme Court in **Abdur Rahman and others Vs. Athifa Begum and others, (1996) 6 SCC 62**, held that even a High Court while hearing a civil appeal, is not entitled to dismiss the appeal on merits in the absence of the appellant's counsel. The Court emphasised that the Code of Civil Procedure explicitly forbids dismissal of an appeal on merits. Such view was taken since the appellant has an opportunity to show "**sufficient cause**" for his absence under Order XLI Rule 19 of the Code of Civil Procedure.

21. Subsequently, in **Ghanshyam Dass Gupta Vs. Makhan Lal, (2012) 8 SCC 745**, the Supreme Court pointed out that, explanation to Rule 17(1) of Order XLI had been included only in order



to resolve conflicting views of several High Courts. One set of judgments held that the High Court could go into the merits of the case in the absence of the counsel for appellant. The other set of judgments held that such a procedure is impermissible. The Supreme Court took a view that a High Court can not go into the merits of the case, if there is no appearance on behalf of the appellant. Having held so, the Supreme Court emphasised the view held in **Abdur Rahman's** case, cited *supra*.

22. Referring to these two judgments, in **Sri. Prabodh Ch. Das and another Vs. Mahamaya Das and others, Civil Appeal No.9407 of 2019** dated 13.12.2019, the Supreme Court approved the view in **Ghanshyam Dass Gupta's** case, cited *supra*, and declared that if the appellant does not appear, the Court may, if it deems fit, dismiss the appeal for default of appearance, but it does not have the power to dismiss the appeal on merits.

23. All these judgments, after having come to the conclusion that the appellate Court does not have the power to go into the merits of the case, in case the appellant or his counsel is absent, set aside the order and remitted the same for fresh disposal to the file of the appellate Court. I will respectfully apply the aforesaid verdicts to the facts of the present case.



24. In view of the above, the impugned order is set aside. MICMA.No.28 of 1993 stands restored on the file of the 1st respondent. The 1st respondent shall issue notice to the parties, as well as to the respective counsel, namely, Mr.Aswin Prasanna, Mr.M.J.Jaseem Mohamed and to the learned counsel for the 16th respondent. The Government Pleader, who appeared for the respondents 2 and 14, will also be put on notice. Once the services are complete, the learned Judge shall take up the appeal and dispose of the same within two months from the date on when the parties are put on notice.

25. The fear of Mr.M.J.Jaseem Mohamed that the matter has been prolonged for decades is a justified one. The court need not wait for the appellant or the respondents, in case they fail to appear and make their submissions, despite issuance of notice. If the appellant fails to appear, the 1st respondent may dismiss the appeal for default.

26. Mr.Jaseem Mohamed seeks for an interim order pending the appeal. As the appeal is restored on to the file of the 1st respondent, the interim order that was prevailing, during the course of that proceeding, shall continue. The writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.



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Note to Registry: Records sent by the 1st respondent / learned Principal Subordinate Judge shall be returned forthwith in order to enable the court to implement the direction given in this order.

V.LAKSHMINARAYANAN, J.

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To

- 1.The Presiding Officer,
Minor Inam Tribunal (Principal Sub
Judge Chengalpet) Chengalpet.
- 2.The Assistant Settlement Offic
Thiruvannamalai, Sambuvarayar District.
- 3.The District Collector,
Office of the District Collector,
Kanchipuram Kanchipuram District.

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