

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2005

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.3431 OF 1998

Thulukanam,
S/o. Raghavan

.. Petitioner

Vs.

1. Collector,
Kancheepuram,
Kancheepuram District.

2. Deputy Registrar
(Public Distribution Scheme)
Kancheepuram District
at Kancheepuram.

3. President Vadamanipakkam
Primary Agricultural
Co-operative Bank

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.J.R.K. Bhavanantham

For Respondents : Mr.P.S. Jayakumar
RR1 & 2 Government Advocate

O R D E R

Heard the learned counsels appearing for the parties.

2. In the present writ petition, the petitioner has prayed for issuance of writ of certiorarified mandamus to quash the impugned order in reference No.Na.Ka.4357/95 Public Distribution No.2. dated 18.10.1997 issued by the second respondent, which has been intimated by the third respondent as per the order dated 6.3.1998.

3. The brief facts are as follows :-

The petitioner was appointed as a salesman in Vadamanipakkam Co-operative Service Society. Subsequently the said Society was incorporated as GC 2349 Vadamanipakkam Primary agricultural Co-operative Bank. The petitioner was working in Orathi Fair Price Shop, which comes under the control of the third respondent. Subsequently, after conducting some inspection, it was found that rice has been sold at a price higher than the one fixed by the Government. The second respondent by Ref.No.Na.Ka.4357/95 dated 18.10.1997 directed to take disciplinary action against the Special Officer and the Secretary for having advised the salesman (the present petitioner) to sell the rice at a higher price. He further directed to suspend the salesman temporarily and recover double the amount of the sales, i.e., Rs.82,080/-. As per the aforesaid direction, the present third respondent issued letter dated 6.3.1998 placing the present petitioner under suspension with effect from 6.3.1998. This latter communication, which is obviously based on the direction given by the second respondent, is being challenged.

4. It is not disputed that an interim order of stay was passed by this Court and subsequently, the interim stay has been made final. It is therefore not disputed that the petitioner is continuing as such without being suspended.

5. Learned counsel for the petitioner has submitted that admittedly rice was sold at a higher price on the basis of the direction issued by the Secretary of the Vadamanipakkam Primary Agricultural Co-operative Bank. This is apparent from the reply dated 4.2.1998, sent by the Secretary addressed to the Deputy Registrar (Co-operative Societies), Maduranthagam. It is also apparent from the order issued by the present Respondent No.2, wherein in paragraph 2 it has been clearly indicated that disciplinary action may be taken against the Special Officer and the Secretary for having "advised the salesman to sell the rice for one Rupee more per Kilo instead of selling the rice for the price determined from 1-4-95 to 13-5-95 by the Government." In other words, the present petitioner was sought to be suspended for having followed the instructions issued by his superior officer. The suspension order is passed only on the direction issued by the second respondent. In view of the admitted fact that action of the present petitioner was based on the direction of the superior officer, the suspension order, so far as the petitioner is concerned, appears to be arbitrary.

6. It is no doubt true that ordinarily an order of suspension passed in contemplation of the departmental proceedings should not be interfered with by Court of law and more so while exercising jurisdiction under Article 226 of the Constitution of India. However, in the present case, apart from the fact that such suspension order has remained stayed for all these years, in the

face of the admitted fact that the alleged delinquency was on the basis of the direction of the superior officer, it would be rather unjust either suspend or even to initiate any action against the present petitioner. Moreover, in paragraph 3 of the impugned direction issued by the second respondent, a further direction has been issued for recovery of the double the amount of the sales. It is rather surprising that even before a departmental proceeding has been started, penalty itself has been suggested by the second respondent. In such view of the matter, the direction contained in paragraph 3 of the impugned direction dated 18.10.1997, issued by the second respondent to suspend the petitioner and to recover certain amount, cannot be sustained and liable to be quashed.

7. Learned counsel for the respondents has submitted that the petitioner need not have rushed to the High Court against the order of suspension as he could have filed an appeal against the impugned order and since alternative remedy is available, the writ petition should not be entertained.

8. Even though such a contention may prima facie appears to be attractive, in the facts and circumstances of the present case, such a submission cannot be accepted. Ordinarily, when alternative remedy is available, the High Court should not entertain the matter under Article 226. However, this rule is subject to certain well known exceptions. In the present case, as already pointed out, the order itself appears to be wholly arbitrary so far as the petitioner is concerned. Moreover, the writ petition was filed in the year 1998 and has remained pending for more than six years and it would be highly unjust to drive the petitioner to pursue his so called appellate remedy and directing the petitioner at this stage to pursue the alternative remedy will encourage multiplicity of proceedings.

9. Having regard to all these aspects, the writ petition is allowed and the direction contained in paragraph 3 of the impugned direction dated 18.10.1997, issued by the second respondent, is quashed. However, it is made clear that quashing of such a direction would not stand in the way of initiating any departmental proceeding against the petitioner for any other delinquency. There would be no order as to costs.
dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Collector,
Kancheepuram,
Kancheepuram District.

2. Deputy Registrar
(Public Distribution Scheme)
Kancheepuram District
at Kancheepuram.

3. President Vadamanipakkam
Primary Agricultural
Co-operative Bank

+ 1 cc to Mr.J.R.K.Bhavananthan, Advocate in SR 3993

+ 1 cc to Government Pleader in SR 3817

PSI (CO)
SR/4.2.2005

ORDER IN
WP.NO.3431 of 1998



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