
(2010) 02 MAD CK 0181

In the Madras High Court

Case No : Writ Appeal (MD) No. 38 of 2010 and M.P. (MD) No. 1 of 2010

M. Ingaci

APPELLANT

Vs

The Commissioner, Devekottai Municipality and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 LW 785 : (2010) WritLR 340

Hon'ble Judges : Prabha Sridevan, J;B. Rajendran, J

Bench : Division Bench

Advocate : D. Sadiq Raja, for the Appellant; R. Janakiramulu, Spl. Govt. Pleader for Respondents 2 to 4, M.C. Swamy, for Respondent 1 and J. Anand Kumar, for Respondent 5, for the Respondent

Judgement

Prabha Sridevan, J.—The Writ Petition of the writ Petitioner/Appellant was allowed but yet, he is aggrieved. According to him, certain factors were not taken note of, by the learned single Judge, which has resulted in directions being issued to the first Respondent.

2. The Appellant is running a cement sales shop. It is evident from the typedset of papers that he is not allowed one moment of peace because of the fifth Respondent.

3. The fifth Respondent filed several Writ Petitions and finally, by order dated 17.3.2007 in Writ Petition (MD) No. 10799 of 2006, he was severely reprimanded by the Division Bench. Perhaps, sensing the mood of the Court, the fifth Respondent, who was the Petitioner there sought permission to withdraw the Writ Petition. While dismissing the Writ Petition as withdrawn, the Division Bench observed as follows:

2. Accordingly, the Writ Petition is dismissed as withdrawn. Considering the facts and circumstances of the case, we are of the clear view that the present Writ Petition is frivolous and vexatious one and the same has been filed by abuse of

due process of law. In our opinion, this is the fit case where the Petitioner should be mulcted with heavy cost for filing such frivolous petition under the grab of public interest litigation. However, in view of the request made by the learned Counsel for the Petitioner, we only observe that the Petitioner should desist from filing such frivolous and vexatious petition under the grab of public interest litigation. We make it clear that if the Petitioner continues to file such frivolous and vexatious petition in future, the same would be viewed seriously and appropriate action would be taken against the Petitioner. No costs.

The word "Petitioner" in the above extracts actually, refers to the fifth Respondent herein.

4. Thereafter, the Commissioner of Devakottai Municipality/1st Respondent issued a letter in Na. Ka. No. 91/2008/H1, dated 9.4.2008 stating that on 17.7.2009 the Tamil Nadu Pollution Control Board had inspected the shop in person and found that around the cement godown, there were vacant sites and in one portion alone, there was the house of the fifth Respondent and that the fifth Respondent had made complaints. But on personal inspection, it was found that the writ Appellant herein had put up a barricade to prevent the dust from floating over to the complainant's house and the Commissioner/first Respondent also specifically recorded that only when unloading the cement, there was a slight emission of dust and no one is affected thereby.

5. Notwithstanding the reprimand of the Division Bench that was cited earlier, the fifth Respondent again filed Writ Petition (MD) No. 9066 of 2008 and that was disposed of directing the Sub-Collector to consider the representation of the Petitioner.

6. By obtaining the seemingly innocuous order "to consider" the fifth Respondent, achieved his object, which he could not achieve in his earlier attempts which met with dismissal.

7. In A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, , it was observed as follows:

13. Learned Counsel for the Respondents made an alternative submission that the relief granted to the Respondents may be sustained on the reasoning adopted by the learned Single Judge. He submitted that having regard to the order in WP No. 30220 of 1997 which had attained finality, the Corporation had no choice but to consider the cases of the Respondents for absorption by treating them as casual labour employed by the Corporation. This takes us to the effect of the orders dated 5-11-1991 and 17-3-1998 made in the earlier writ petitions, directing the Corporation to "consider" the cases of the Respondents.

14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with

law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to "consider" the claim/case/representation of the Petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to "consider" and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to "consider", in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs "consideration" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to "consider" afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous Petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/ absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the Petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved Petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.

8. Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities to "consider". In the aforesaid situation, if the learned Judge, before directing the authorities to consider, had heard the Petitioner herein, then the order of the Division Bench reprimanding the 5th Respondent would have been brought to the notice of the learned Single Judge. Some time, we also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed by an authority superior to the one to whom we issue directions. Obviously, when the order is not complied with, since it cannot be complied with because of the hierarchy discipline, the officer has to face the contempt. All these can be avoided if we only bear in mind the guidelines given in the above case by the Supreme Court before we direct the Respondent

to "consider and pass orders".

9. In this case, we are closing the writ appeal giving liberty to the Appellant to raise all the objections and grounds in the writ petition he has already filed. But, yet we felt that it was very vital and important to consider the duty of the Court when a request is made by the Bar to give a direction to "consider". In this case, it is the apparently harmless order directing the Respondents to consider, which gave the leverage to the 5th Respondent to proceed in his usual course notwithstanding the warning given by the Division Bench, which we have extracted earlier.

10. On 13.1.2009, a notice was issued by the Commissioner to the Petitioner asking him to show cause why criminal proceedings should not be initiated against him. A copy of this notice was marked to the fifth Respondent herein. This makes it abundantly clear at whose instance, this complaint was taken on file. On 17.4.2009 another order was passed wherein the Appellant herein was directed to operate his shop through eastern door and to close down northern door and other directions. Against this order, the Writ Petition was filed. The order passed therein is under challenge.

11. An Advocate Commissioner was appointed by this Court and a detailed report had also been filed by him, a copy of which is enclosed in the typedset of papers. The Advocate Commissioner's report deals with in detail regarding physical aspects of the property. It appears that pursuant to the direction passed by the learned single Judge, an order has been passed.

12. Learned Counsel for the Appellant submitted that the Pollution Control Board had given its report and no opportunity was given to him and this order has been passed without any opportunity and arbitrarily and that the same has been challenged in W.P. (MD) No. 723 of 2010. Since order has been passed and it is now separately challenged in the Writ Petition, we do not think any orders need be passed in this Writ Appeal.

13. We are closing this Writ Appeal not because we find the grievance of the Appellant has no substance but only because of the subsequent events. It is open to the writ Appellant to bring to the notice of this Court which hears W.P. (MD) No. 723 of 2010 all the grounds available viz., the details set out in the Advocate Commissioner's report and the contradictions that are pointed out between the earlier order and the subsequent order, the order of the Division Bench dated 07.3.2007 in W.P. (MD) No. 10799 of 2006 and the fact that the Pollution Control Board had not given any opportunity. We have not given our decision on merits but we had to narrate the facts that led to our closing the appeal. The closing of this Writ Appeal is not to be construed as rejection of the other grounds that are raised in this Writ Appeal and it will not in any way prejudice the writ Appellant, while pursuing his remedy in W.P. (MD) No. 723 of 2010.

14. With the above observation, the Writ Appeal is closed. Connected

Miscellaneous Petition is closed. No costs.