

(2015) 03 MAD CK 0181

In the Madras High Court

Case No : Writ Petition (MD) No. 10845 of 2011, M.P. (MD) No. 4 of 2011, W.P. (MD) No. 4507 of 2014, M.P. (MD) Nos. 1, 2, 4 of 2014, Cont. P (MD) No. 408 of 2014 in M.P (MD) No. 2 of 2014 in W.P. (MD) No. 4507 of 2014

M. Meena and Others

APPELLANT

Vs

The District Collector, Karur District and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 03 MAD CK 0181

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : G.R. Swaminathan for S. Suresh, for the Appellant; M. Rajarajan, Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandra Babu, J.—W.P(MD)No. 10845 of 2011 is filed challenging the order of promotion dated 23.08.2011, issued in favour of the fifth respondent, who is the petitioner in W.P(MD)No. 4507 of 2014.

2. W.P(MD)No. 4507 of 2014 is filed by the fifth respondent in W.P(MD)No. 10845 of 2011, challenging the order of reversion passed by the Executive Officer, Punjai Pugalur Town Panchayat, Karur District, dated 25.02.2014.

3. Contempt Petition No. 408 of 2014 is filed complaining that the interim order of stay granted in M.P(MD)No. 2 of 2014 in W.P(MD)No. 4507 of 2014, has been violated.

4. For the sake of convenience, the names of the respective writ petitioners are referred to in this order instead of referring their ranks.

5. M.Palanisamy, was given promotion to the post of Sanitary Supervisor through proceedings dated 23.08.2011, by the Executive Officer, Punjai Pugalur Town

Panchayat. The said promotion is challenged by M.Meena in W.P(MD)No,10845 of 2011 on the ground that the said M.Palanisamy, was not holding the post falling under the feeder category to get promoted to the post of Sanitary Supervisor. Admittedly, M.Palanisamy, was holding the post of Tank Operator which is not the feeder category. However during the pendency of the above writ petition filed by M.Meena, challenging the promotion of M.Palanisamy, the Executive Officer of Punjai Pugalur Town Panchayat, reverted M.Palanisamy, from the post of Sanitary Supervisor by passing an order dated 23.08.2011. The said order is challenged by M.Palanisamy in W.P.(MD)No. 4507 of 2014, mainly on the ground that the same came to be passed in violation of principles of natural justice, as admittedly, M.Palanisamy, was not heard before reverting him.

6. The learned Counsel appearing for M.Palanisamy, contended that once the order of promotion is issued to him, he cannot be reverted without affording an opportunity of hearing and therefore, such order cannot be sustained on the ground of violation of principles of natural justice.

7. He further contended that it is not necessary that promotion to the post of Sanitary Supervisor has to be made only from such of those feeder categories and on the other hand, several promotions were made to the said post from and among other persons who were holding the posts other than the feeder category.

8. Per contra, Mr.G.R. Swaminathan, learned Counsel appearing for M.Meena, submitted that the very promotion given to M.Palanisamy, is against the statutory rules and therefore, there is no necessity to issue notice to him, as issuance of such notice is only an empty formality which need not be observed only for the sake of following the principles of natural justice.

9. He further pointed out that this Court while disposing of earlier writ petition in W.P(MD)No. 9865 of 2011 filed by M.Meena, observed that the respondents shall not make any appointment contrary to the statutory rules governing the appointment of Public Health Maistry or Sanitary Maistry. Therefore, he contended that the reversion order is rightly passed which need not be interfered with, even on the ground of violation of principles of natural justice.

10. He relied upon the decisions of this Court in A. Nallusamy Vs. The District Collector and Others, to contend that issuance of notice to the petitioner before passing an order of reversion would be only an useless formality.

11. Mr.T.S. Mohamed Mohideen, learned Additional Government Pleader appearing for the respondents 1 and 2 in W.P(MD)No. 4507 of 2014 submitted, based on the counter affidavit filed by the Executive Officer, that the promotion to the post of Sanitary Supervisor or Sanitary Maistry will have to be made from the feeder categories and such feeder categories, being Public Health Workers, Sanitary workers Scavengers, Sweepers and Thottis, promotion given to M.Palanisamy, was against the statutory rules and therefore, the said promotion was rightly reverted.

12. Heard the learned Counsel on either side and perused the materials available on record.

13. The dispute between the parties herein is in respect of promotion to the post of Sanitary Supervisor. There is no dispute to the fact that such promotion is governed by the statutory rules, namely the Tamil Nadu Town Panchayat Establishment Rules, 1988. Under the said Rules, it is contemplated that appointment to the post of Public Health Maistry or Sanitary Maistry, which is now called as Sanitary Supervisor, will be made by promotion from Category-2 of Class II and by direct recruitment. Therefore, it is evident that if a promotion to the said post is to be made, the same has to be made only from the person belonging to Category 2 of Class II.

14. Who are all the persons under Category 2 are referred to in the said Rule itself and they are Sanitary workers, Scavenger, Sweeper and Thotti. Admittedly, M.Palanisamy was not holding any of those feeder category posts. He was only working as a Tank Operator which has not nothing to do with those feeder category posts. Therefore, when he is not a person holding any one of the feeder category post, promoting him to the post of Sanitary Supervisor is certainly contrary to the Rules and therefore, there is no doubt that granting of such promotion was illegal as the same was done not only against the statutory Rules but also against the specific direction issued by this Court in the earlier writ petition filed by M.Meena in W.P.(MD)No. 9865 of 2011 dated 30.08.2011 to the effect that the respondents shall not make any appointment contrary to the statutory Rules governing the appointment of Public Health Maistry or Sanitary Maistry.

15. No doubt, that the impugned promotion in respect of M.Palanisamy was made before the above said order passed by this Court in the earlier writ petition. However, that does not mean that such promotion can be made against the statutory Rules.

16. It is brought to the notice of this court that several persons who were holding the posts other than the feeder categories as stated supra, were promoted to the post of Sanitary Supervisor. In my considered view, if any such promotions were made against the statutory Rules, such cannot be relied on to apply Article 14 of the Constitution of India as equality is a positive concept and the same cannot be applied when the authorities have acted contrary to the Rules in the case of the others. At this juncture it is useful to refer to the decision of the Apex Court in the matter of State of Bihar Vs. Upendra Narayan Singh and Others, wherein paragraph 67 reads as follows:

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of higher or superior court

for repeating or multiplying the same irregularity or illegality or for passing wrong order- Chandigarh Administration and another Vs. Jagjit Singh and another, ; Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, ; Union of India (Railway Board) and others Vs. J.V. Subhaiah and others etc. etc., ; Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, ; State of Haryana and Others Vs. Ram Kumar Mann, ; M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, Style (Dress Land) Vs UT. Chandigarh; State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, ; Union of India (UOI) and Another Vs. International Trading Co. and Another, ; and Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, . Further, the Honourable Supreme Court in Bondu Ramaswamy Vs. Bangalore Development Authority and Others, , wherein the Hon"ble Supreme Court, at paragraph 144, has held as follows:

144.The fact that an Authority has extended favours illegally in the case of several persons cannot be a ground for courts to issue a mandamus directing repetition thereof, by applying the principle of equality. Article 14 guarantees equality before law and not equality in subverting law nor equality in securing illegal benefits. Therefore, it is crystal clear that the promotion made in favour of M.Palanisamy, is illegal and the same can not be sustained even on the contention that such promotions were made, in some cases, not from the feeder category.

17. Rightly the Executive Officer, cancelled the promotion by reverting M.Palanisamy and by passing the impugned order in W.P(MD)No. 4507 of 2014.

18. Now, the question arises for consideration is as to whether such order passed without affording an opportunity of hearing to the said M.Palanisamy, needs any interference on the ground of violation of principles of natural justice.

19. As rightly pointed out by Mr.G.R. Swaminathan, learned Counsel appearing for the petitioner in W.P(MD)No. 10845 of 2011, issuance of notice and calling upon M.Palanichamy, to give his explanation, is not going to serve any purpose as there is no possibility of taking a different view, other than the one already taken in the present impugned order, in view of the fact that the very promotion itself was against the statutory Rules. In Aligarh Muslim University and Others Vs. Mansoor Ali Khan, it has been held as follows:

21. As pointed recently in M.C. Mehta v. Union of India, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v.Government of Andhra Pradesh, it is not necessary to quash the order merely because of violation of principles of natural justice.

(emphasis supplied)

20. In *A. Nallusamy Vs. The District Collector and Others*, it has been held as follows:

12. The Hon'ble Supreme Court has held that the principles of natural justice cannot be put in a straitjacket formula. The said principle has to be applied on a case to case basis and depends upon the facts and circumstances of each case. The law has developed over the years and the Hon'ble Supreme Court in several decisions has propounded the "useless formality theory". By such interpretation, the Hon'ble Supreme Court has held that it has to be seen as to whether any purpose would be served by directing notice or opportunity to be given and if it is found that no such purpose would be served, the authority cannot be faulted for taking an action without affording of hearing or an opportunity. The case on hand is one such issue where the District Collector as the Head of the administration in the particular District has exercised his powers in cancelling such permission keeping in mind the public interest involved in the matter. 21. In another decision of the Honourable Division Bench of this Court, wherein I was a party, made in *Om Metal India Projects Ltd. Vs Union of India, rep. by its Secretary Ministry of Commerce and Industry, SFZ Section, Udyog Bhavan, Nw Delhi-110 011 and others* reported in *Om Metal Infra Projects Ltd. Vs. Union of India*--> , the very same issue regarding the violation of principles of natural justice has been considered and it was observed at paragraphs 35 to 37 as follows:

35. Question (vi): Whether the impugned actions have violated the principles of natural justice and whether following of such principle is warranted under the facts and circumstances of the present case?

It is well settled that application of the principles of natural justice is not a straight-jacket formula to be applied in each and every case. Certainly, facts and circumstances of each case should be gone into to decide as to whether such principle needs to be applied or not. The purpose of applying such principle is to put the affected person on notice and to get his views or explanation as to why such proposed action cannot be taken. If the person so affected, on receipt of notice gives explanation and satisfies the authority that the proposed action cannot be taken and/or it is not at all warranted, then the authority who is competent to take action, can take a view or decision based on such explanation. Therefore, it is crystal clear that such explanation or objection to be given by the affected person, must have a bearing on the decision to be taken by the authority concerned. In other words, such objection or explanation must be in a position to make the authority concerned to take a different view also, other than the one proposed already. To put it in a nut-shell, there must be two views possible, one in favour and the other against the noticee. Only under such circumstances, the requirement of issuing notice and following the principles of natural justice arises. If no other view is possible or the explanation or objection to be made by such person cannot alter or have any bearing on the decision to be taken, there is no need to issue such notice. In those cases, issuance of notice would be only an empty formality.

36. In this connection, it is useful to refer the decision of the Honourable Supreme Court reported wherein, in paragraphs 26 to 28, it has been observed as follows:

26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily, in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put any straightjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

(Emphasis supplied)

37. Going by the facts and circumstances of the present case, as discussed supra, it would undoubtedly show that there is no necessity for issuing notice to the appellants, as the fact remains that the selectee, namely the Puducherry Government has decided to abandon the project itself. It is needless to say that establishing SEZ is the economic policy of a Government, with which Court cannot interfere.

22. Considering the above aspects of the matter and finding that no other view is possible other than the one already taken in the impugned order, I find that the impugned order of reversion passed against M.Palanisamy need not be interfered with simply for the reason that the same came to be passed without hearing the petitioner. Certainly the "useless formality theory" will have to be applied in this case to sustain the order of reversion.

23. In the result, (i)W.P(MD)No. 4507 of 2014 is dismissed. No costs. (ii) Since promotion given to M.Palanisamy, is cancelled by way of passing the reversion order, no further order is necessary in W.P(MD)No. 10845 of 2011 and accordingly, the same is dismissed as infructuous. No costs. (iii) Since both the writ petitions are finally taken up and decided nothing survives in the contempt petition to be adjudicated upon further. Accordingly, the Contempt Petition No. 408 of 2014 is closed. (iv) Consequently, all the connected Miscellaneous

petitions are dismissed.