(2006) 02 MAD CK 0241

In the Madras High Court

Case No : Writ Petition No''s. 26426 and 26427 of 2005

N. Mani — APPELLANT

Vs

The Commissioner, Villupuram Municipality — RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Citation : (2006) 1 CTC 632 : (2006) WritLR 616

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M.S. Soundararajan, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—In these writ petitions, petitioner challenges the show cause notices dated 25.10.2000 and 25.9.2000 respectively.

2. Petitioner was appointed as Bill Collector in the year 1963 in the respondent Municipality and was promoted as Junior Assistant in the year 1971, then as Assistant in 1984 and further promoted as Revenue Inspector on 13.4.1989. He retired on 31.10.2000. The impugned show cause notices have been issued calling for from the petitioner to show cause as to why the loss suffered by the Municipality on account of the failure to discharge his official duty to collect the arrears towards property tax and lease amount should not be recovered from him. The said show cause notices are challenged on the ground of jurisdictional issue relying upon the earlier orders of the State Administrative Tribunal in O.A. No. 3503 of 1996 dated 28.11.1996 and O.A. No. 47 61 of 1992 dated 19.12.1997. In the said orders the Tribunal considered a similar issue and held that the Revenue Officers in the Local Bodies cannot be made liable for the time barred arrears of tax dues and no recovery has to be made from them. The Tribunal had come to such a conclusion by placing reliance on paragraph 3 of G.O.Ms. No. 1881 R.D.& L.A. Department, dated 14.9.1981, wherein it is stated that the responsibility to take proceedings to recover the tax before they become

time barred, vests with the Commissioner and the Revenue Officers are not responsible for the tax arrears having become time barred and that the only duty of the Revenue Officers is to report about the tax arrears. The said order was passed by the Tribunal relying the decision of this Court reported in 1988 Writ Law Reporter 38 V. Nagarajan v. Commissioner, Salem Municipality, Salem, wherein this Court considered a similar issue and following an earlier decision in W.P. Nos. 3364 to 3369 of 1976 dated 23.11.1976 held as under,

...The respondent in the present case seemed to have acted against the petitioner under the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, but withheld recovery process on account of stay by the Government. Now, by virtue of the Government vacating the stay, the process of recovery from the salary of the petitioner is being set in motion by the present order of the respondent. It is only in that context a writ of Mandamus is being asked for by the petitioner, to forbear the respondent from recovering from the salary of the petitioner, the time-barred profession taxes. Basically, there are no grounds at all to pin down the liability on the petitioner, as now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ratio of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account....

3. The above said position is also made clear from the communication of the Director of Municipal Administration, Chepauk, Chennai-5, addressed to All Regional Directors of Municipal Administration, in Roc. No. 75380/96/R1 dated 3.12.1996, which reads as under,

The Municipal Employees Associations are demanding cancellation of recovery orders for time barred arrears among other things. In the meeting convened on 8.7.1994 in the chambers of Secretary, Municipal Administration and Water Supply Department to discuss with the office bearers of the Rural Development and Municipal Employees Association Federation the following decision was taken on the above demand.

The Director of Municipal Administration has already granted time upto 3.9.1994. Time barred arrears need not be recovered from the DCRG etc., from the retired employees.

2. To pursue further action in this regard, Government considered that proposal to write off time barred arrears due to Municipalities may be taken up after the elections to the Municipalities and after all the Municipal Councils pass necessary resolutions in this regard, Government have now called for a consolidated report in this regard, in the letter cited.

3. Hence, I request you to instruct all the Municipal Commissioners within your jurisdiction to place the matter before the Municipal Council and to send a detailed report along with the copy of the resolution, in duplicate. After getting the same, I request you to send a consolidated report to this office, along with

copies of resolution passed by the Municipal Councils, so as to send a report to Government. As the matter involves the long-standing demand of the Municipal Employees, I request you to expedite your report.

Sd/- V. Pitchai, For Director.

4. In view of the decision of this Court cited supra and in the light of the communication dated 3.12.1996 extracted above, both the writ petitions are allowed and the impugned show cause notices dated 25.1 0.2000 and 25.9.2000 are set aside. No costs.