(1988) 01 MAD CK 0064

In the Madras High Court

V. Nagarajan APPELLANT

Vs

Commr., Salem Municipality RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Citation : (1988) 1 LW 478 : (1988) 1 MLJ 247

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—The petitioner is a Bill Collector of the respondent. He is being penalised and is being called upon to pay the profession taxes, on the ground, he allowed their collection and recovery from the tax payers to become time-barred. The view of this Court with regard to liability of the Bill Collector of a Municipality to recoup it on the allegation of his failure to collect the taxes and allowing them to become time barred, has been expressed by Mohan, J., in A. Selvaraj and Ors. v. The Commissioner, Tiruvarur Municipality W. Ps. 3364 to 3369 of 1976, order dt. 23.11.1976, saying:

Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time-barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time-barred for recovery, that liability cannot be passed on to the Bill Collector.

The above view has been followed by V. Ramaswami, J. as he then was, in S. Nagarajan v. Commissioner of Ramanathapuram Municipality W.P. 3221 of 1977, order dt. 29.2.1980 by Padmanabhan, J. in S. Nagarajan v. Commissioner, Ramanathapuram Municipality W.P. 3911 of 1977, order, dt. 28.4.1980 and by me in S. Srinivasan and Ors. v. The Special Officer, Tiruvallur Municipality W.P.

Nos. 3421 to 3426 of 1978, order, dt. 4.2.1981. My attention has not been drawn to any pronouncement of this Court, taking a contrary view. 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 is 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. In view of this, this writ petition so far as the petitioner is concerned, is allowed. No costs.