(2011) 10 MAD CK 0059

Madras High Court

Case No: Writ Petition No"s. 1310 of 2011 and M.P. No"s. 1 and 1 of 2011

V.G. Manoharan	APPELLANT
Vs	
The Managing Director, Tamil Nadu Civil Supplies Corporation Ltd., No. 42, Thambusamy Road, Kilpauk, Chennai-600 010	RESPONDENT

Date of Decision: Oct. 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 309
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 16

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The two petitioners were working as Assistant Quality Inspectors in the respondent Tamil Nadu Civil Supplies Corporation (for short TNCSC). Both petitioners have come forward to challenge the show cause notices dated 14.12.2010 and 23.12.2010 issued to them by the respondent purporting to exercise his power of review over the final order passed by the disciplinary authority in the matter of punishment given to the first writ petition dated 29.9.1997 and for the second petitioner, dated 23.2.2010.

2. The first writ petition when it came up for admission on 22.1.2011, after ordering private notice to the respondent, an interim stay was granted for a limited period and it

was extended from time to time. In the second writ petition, when it came up on 28.1.2011, after ordering private notice, an interim stay was granted. On notice from this court, the respondent has filed a counter affidavit, dated 25.2.2011 in each of the writ petition.

3. In the first impugned show cause notice, the respondent who is the Managing Director of the TNCSC Limited, informed the petitioner that the punishment of censure given by the Regional Manager was inadequate and for the proven charges, he has to be given different punishment. Therefore by exercise of his soot power of revision in terms of Chapter V Regulation 13(2) of the TNCSC Service Regulation 1989, he was asked to show cause as to why the punishment should not be enhanced. In the second writ petition, the Managing Director had passed a similar order asking him to show cause as to why punishment of censure should not be enhanced.

4. Instead of giving an explanation to the show cause notices, the petitioners have rushed to this court challenging the show cause notices. In normal circumstance, no writ petition can be entertained on a mere show cause notice as the petitioners will have an opportunity of explaining the circumstance under which the Managing Director should not exercise his power or that he lacked such power.

5. However, the learned Senior Counsel Mr. R. Muthukumarasamy, contended that the exercise of suo motu power is totally without jurisdiction and that the writ petition can be entertained in such cases. He referred to a judgment of this court in A. Thangavelu Vs. The Tamil Nadu Civil Supplies Corporation Limited reported in 1998 (I) CTC 283, wherein in analyzing Rule 36(1)(3) of the TNCS Service Rules, this court held that the Managing Director can exercise his suo motu power of review only within 6 months from the date of the order and not beyond that period. This was on the ground that under Rule 36(1)(3), the suo motu review can be done only within six months. The said matter was taken on appeal to the division bench by the respondent TNCSC (since reported in 1999 Writ L.R. 180). The division bench by judgment dated 8.1.1998 while declining to interfere with the order of the learned Judge, in paragraph 6 held as follows:

6....Though we could appreciate the submissions of the learned Senior counsel for the appellant-Corporation about the need for the authorities higher than the Appellate Authority to exercise the powers of review envisaged in the rules, unfortunately for the Corporation, the language of the rule as it stands does not and cannot be claimed to come to the rescue of the learned senior counsel. The provisions contained in Rule 36 of the Tamilnadu Civil Services (Classification, Control and Appeal) Rules, while providing for the power of review, purports to classify the power also by adopting a division of class of officers, who can exercise such power with reference to class of service and also with reference to whom such power could be exercised. In so doing, the powers envisaged in favour of the State Government or the head of the department directly under the State Government are concerned, the exercise in our view, is relatable and confined to the case of Government servants serving in a Department or the office under the control of

such head of the department or departments and not to all or every other class or category of service, which does not belong to such category. Consequently, in respect of those employees serving in the Corporation, who are not Government servants serving in a department or office under the control of such department or departments, the Chairman-cum-Managing Director cannot claim to exercise the power of review and it is only the Appellate Authority, who falls under the category envisaged under the third limb of the said rule could alone exercise the power conferred subject to the limitation imposed therein.....

But in this case the division bench did not realize that the Government servants who are in deputation are not covered by the TNCSC rules but by the rules framed under Article 309 of the Constitution. In their cases, by Rule 16 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules only the Government can take any action and not the Managing Director of the Corporation. Any proceedings initiated by the borrower will have to be remitted to the Government for further action. This fact was not brought to the notice of the division bench.

6. He also referred to another judgment of the another learned Judge in K.Jayakumar Vs. The Registrar of Cooperative Societies, Kilpauk, Chennai-10 and others reported in 2010 (1) CWC 748 for the very same proposition. He also referred to an another judgment of this court in G. Nagendran Vs. Secretary to Government, Cooperation Food and Consumer Protection Department, Secretariat, Chennai-9 and others reported in (2010) 2 MLJ 170, wherein it was held that the Managing Director being the appellate authority has to exercise his power only within six months and not beyond that. In the present case, since the order of penalty was given in the first writ petition on 29.9.1997 and in the second writ petition on 23.2.2010, there is no scope for the respondent Managing Director to initiate proceedings beyond six months.

7. In the counter affidavit filed by the respondent it was stated that earlier when a writ petition was filed by V.G. Manoharan in W.P.No.14613 of 1998, this court by an order dated 29.4.2008 referred the matter for a decision by a division bench. Hence the matter was dealt with by the division bench presided by P.K. Misra, J (as he then was) and the writ petition was allowed by an order dated 13.8.2008 and the show cause notice was quashed on the ground of non application of mind. But on the question of suo motu power of review, it was held that no time period can be fixed for the Managing Director to review the order. In paragraphs 8 to 10, it was held as follows: 8.Since the learned single Judge had primarily referred the matter to the Division Bench on the question relating to limitation, it would be appropriate to deal with such aspect before considering other aspects.

9. So far as the question of limitation is concerned, the Regulations as such do not contemplate any period of limitation for initiating the review proceedings. Merely because the Regulations are silent on this aspect, it cannot be assumed that the provisions contained in the Tamil Nadu Civil Service (Discipline and Appeal) Rules ipso facto

applicable in the absence of any specific provision to that effect either in that Rules or in the absence of any provision in the Regulations. Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, does not apply to the employees of the TNCSC in respect of the departmental proceedings, by its own stream. There is nothing in the Regulations to show that in the absence of any specific provision, the Tamil Nadu Civil Services (Discipline and Appeal) Rules would be applicable.

10. The amendment to Regulation 13, by which the power to review was incorporated, was brought into effect from 13.3.1993 and the show cause notice was issued thereafter on 28.8.1998. Since no period has been prescribed, one may conclude that such power is to be exercised within a reasonable period. That, however, does not mean that the period prescribed under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is ipso facto applicable. What would be the reasonable period would depend upon the facts and circumstances of a particular case and it would not be advisable to lay down a specific period for the above aspect. Accordingly, the contention relating to the limitation is not acceptable.

(Emphasis added)

8. It must be noted that the Board had made amendments to the service Regulation 13 which is found in Chapter V by its 209th Board Meeting held on 27.11.1992 and the amendment reads as follows:

1. Notwithstanding anything contained in these regulations the Board may review its own orders or any other orders of the officers of the Corporation, in respect of the cases relating to the cadres of Manager and above cadres, provided no such review shall be detrimental to the interest of the employee without giving him an opportunity to show cause against such action.

2. Notwithstanding anything contained in these regulation the Chairman cum Managing Director may review any orders of the Officers of the Corporation in respect of the cases relating to the cadres below the level of Managers, provided no such review shall be detrimental to the interest of the employee without giving him an opportunity to show cause against such action.

9. Therefore, it must be noted that in the light of the subsequent decision of the division bench, reliance placed upon A. Thangavelu''s case (cited supra) cannot have any force. It was also stated in paragraph 10 of the counter affidavit that there is power of delegation by the Board of Directors to the Managing Director. The said paragraph will be usefully extracted below:

10....Further as per the delegation of powers as resolved by the Board of Directors which was communicated vide Circular No.J15/83737/96, dated 08.10.1996 the Managing Director has got powers to review any orders passed by the subordinate officers of the respondent Corporation. The powers as delegated by the Board of Directors and

communicated in Circular No.J15/83737/1996, dated 08.10.1996 is as follows:

Wherever the words ''Chairman and Managing Director'' or ''Managing Director'' appear separately in the delegation of powers it may be read as ''Chairman and Managing Director'' or ''Managing Director''.

Moreover at present, the Managing Director is the full time officer/head of the respondent''s organization as there is no full time chairman. Therefore the Managing Director has got all powers delegated to the Chairman cum Managing Director.

Further, no time limit has been fixed in the said Rule to review the order.

10. Mr. S. Sethuraman, learned Additional Advocate General-1 had stated that in the light of the subsequent judgment of the division bench in V.G. Manoharan''s case, (who is again a petitioner in W.P.No.1310 of 2011 himself), there is no question of the petitioner re-agitating the entire issue all over again. Conscious of the fact, the learned Senior counsel Mr. R. Muthukumarasamy, had stated that Tamil Nadu Civil Supplies Corporation had amended the service regulations in its Board meeting on 30.12.2005, in which it was stated that for the matters not covered in the service rules, the rule applicable to the Tamil Nadu Government Service from time to time will apply unless the Board decides otherwise. Therefore, for persons like the petitioner, the rules applicable to the Government service will apply. Hence the judgment in A. Thangavelu''s case interpreting a similar rule found in the Government service, i.e., the Managing Director being an appellate authority can exercise the power within six months will apply. The case of the first writ petitioner V.G. Manoharan has to be rejected as he is bound by the earlier judgment passed by the division bench. He cannot have second round of litigation once again raising the similar issue which was foreclosed by the division bench.

11. The amendment pointed out by the learned Senior counsel dated 30.12.2005 to Rule 10A in Chapter I has no relevance to the case on hand as the matter relating to suo motu revision and it covered by Rule 36 which had been upheld by this court in V.G. Manoharan''s case itself. In this context, it is necessary to refer to a judgment of the Supreme Court in Union of India (UOI) and Others Vs. Vikrambhai Maganbhai Chaudhari, , wherein the Supreme Court while analyzing the Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, dealt with the limitation prescribed for the appellate authority and also the fact that the other authorities do not have any limitation for suo motu review. It was held that if there is a power of delegation, then the delegatory power must also include the limitation. In paragraphs 10 to 13 of the judgment of the Supreme Court, it was held as follows:

10.As rightly observed by the Tribunal, the above sub-rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in sub-clauses (i) to (iv), sub-clause (v) refers to a period of six months from the date of the order proposed to be revised. Since the order was passed by exercising

power under sub-clause (vi), we have to see whether in the notification specifying an authority a time-limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under sub-clause (v). According to the learned ASG, there is no need to specify the period in the notification authorising the authority concerned to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

11. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months from the date of the order proposed to be revised. This is clear from sub-clause (v) of sub-rule (1) of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1)(vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time-limit has been prescribed in the notification.

12. We have already pointed out that no period has been mentioned in the notification. The argument that even in the absence of a specific period in the notification in view of Clause (v), the other authority can also exercise such power, cannot be accepted. To put it clear, sub-clause (v) applies to the appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-clause (vi). There must be a specified period and the power can be exercised only within the period so prescribed.

13. Inasmuch as the Notification dated 29-5-2001 has not specified any time-limit within which the power under Rule 29(1)(vi) is exercisable by the authority specified, we are of the view that such notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the special application of the appellants and quashing the notification on the ground that it did not specify the time-limit.# But, in the present case, as already pointed out, the resolution dated 13.3.1993 does not fix any time limit except it provides for show cause notice before passing an order. It is only in case where the power of delegation also specifies limitation should be prescribed for exercise of power, then any delegation without prescription of limitation will be invalid. In the light of the above, the petitioners have not made out any case for interfering with the show cause notices.

12. Lastly, Mr. R. Muthukumarasamy, learned Senior Counsel pointed out that in respect of other Assistant Quality Inspectors, who were similarly placed, they got away with the orders of this court and if the petitioners alone were singled out and it will create discrimination. Such an argument cannot be accepted as an argument based on law. Even assuming that the order of this court was given effect to with certain conditions, that will not give room for passing orders contrary to the rules framed by the Corporation. Once the rule is interpreted in accordance with the well laid principles by the legal

interpretation, the fact that some other persons have got benefit will not result in any discrimination.

13. In this context, it is necessary to refer to a judgment of he Supreme Court in Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, and in paragraph 26, the Supreme Court had observed as follows:

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a #pick-and-choose# method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

14. Hence there is no case made out for interfering with the impugned show cause notices. Accordingly, both writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.