

(2010) 04 MAD CK 0357

Madras High Court

Case No: Writ Petition No. 13186 of 2007

K. Gunasekaran

APPELLANT

Vs

The Senior Regional Manager,
Tamil Nadu Civil Supplies
Corporation Ltd., Tiruvarur
Region

RESPONDENT

Date of Decision: April 8, 2010

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: V. Sanjeevi, for the Appellant; P. Ramachandran, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent of the Learned Counsel on either side, this writ petition is taken up for final disposal. Respondent has filed counter affidavit and they are ready with the matter.

2. Challenging the recovery order and the relieving order, both dated 22.03.2007 passed by the Respondent herein, the Petitioner has filed this writ petition.

3. When the matter is taken up for hearing, Learned Counsel for the Petitioner submits that he is not pressing the adjudication of this matter insofar as the relief sought in respect of the relieving order dated 22.03.2007 is concerned and he requests this Court to decide the matter only in respect of the recovery order dated 22.03.2007.

4. The case of the Petitioner is that he joined the service of Tamil Nadu Civil Supplies Corporation Limited as Seasonal Bill Clerk in the composite Thanjavur Region, Mannargudi Sub Region in February 1987. He was continuously employed as Bill

Clerk in various District Purchase Centres in Mannargudi Sub-Region. Thereafter, the Respondent herein posted him as Bill Clerk in the Direct Purchase Centre (DPC) at Vattar, Mannargudi Taluk, Thiruvarur on 03.09.2006.

5. It is the further case of the Petitioner that on 02.03.2007, the Vigilance Cell (Head Office) of the Tamil Nadu Civil Supplies Corporation Limited, hereinafter called the "Corporation" found excess of 3% over and above the allowable refractions for damaged, discoloured, sprouted and weeviled grains (DDS) and excess of 3% for immature shrunken and shriveled grains (ISS). The Vigilance Cell took check sample only in two bags out of 77 bags of paddy (ADT 38). One bag of paddy weighed 35 Kgs. The whole weight of 77 bags of paddy is 2 Tonnes 695 Kgs (26 quintals and 95 Kgs). The value of whole quantity (77 bags) of paddy is about Rs. 16,000/- only. According to the Petitioner, recovery can be made for the entire quantity of paddy with reference to the percentage of refraction if at all, can be Rs. 2,961.36.

6. The Petitioner would contend that the recovery of Rs. 18,865.75 is without any basis, illegal and unsustainable and it has been passed without any notice to the Petitioner and without conducting any enquiry. Therefore, the order of recovery is violative of the principles of natural justice.

7. In the counter filed by the Respondent, it is stated that the Petitioner has filed the writ petition challenging the recovery order and the relieving order dated 22.03.2007. He submitted that the Petitioner was appointed as a Sea-sonsal Bill Clerk in the year 1987 in Thanjavur Region and he was posted as Bill Clerk at the Direct Purchase Centre at Vattar, Mannargudi Taluk, Tiruvarur. On 02.03.2007, the Vigilance Cell attached to the Respondent Corporation made a surprise inspection at the Direct Purchase Centre (DPC) and found that the Petitioner who was in-charge of the DPCE has purchased sub-standard paddy. Hence, the inspection team obtained samples from the paddy purchased from the ryots in the DPC in lots and it was analysed in the presence of the Petitioner and excess refraction was noticed in the quality of paddy purchased, i.e. the refraction was over and above the norms prescribed by the refraction as pointed by the Vigilance Cell.

7a. In the value of excess refraction as noticed in the terms of organic, inorganic, damages, immature and admixture of lower varieties of paddy were worked out to the tune of Rs. 18,856.75 and a shortage of 37.900 grams of jute amounting to Rs. 1,137/- and shortage of 49 gunny bags valued at Rs. 1,102.50 totalling to Rs. 21,096.25 were calculated. The Respondent issued an order dated 22.03.2007 ordering recovery of Rs. 21,096.25 from the Petitioner. The norms prescribed by the Respondent Corporation with regard to the refraction damages, etc. is as follows:

1.	Organic	1.0%
2.	Inorganic	1.0%

3.	Damaged, Discolour and Sprouted (DDS)	3.0%
4.	Immature, Shrivelled, Shrunkened	3.0%
5.	Admixture	7.0%
6.	Mixture	17.0%

7b. The Respondent has further submitted that paddy is purchased from the ryots during Ku-ruvai and Samba Season every year and they are brought into the Direct Purchase Centre where they mixed in a lot. A lot contains paddy purchased from different ryots and mingled all in one. Paddy samples at the ratio of 100 grams per heap of paddy from 4 or 5 places are taken. Therefore, the Petitioner's contention that the paddy samples were taken only from two bags cannot be sustained. Further, it is stated that the recovery was ordered not only from the 77 bags, but also from the samples collected from 22 heaps of paddy and further samples were taken from 8 heaps of paddy from the DPC, Pamani, wherein 360 bags of paddy were procured by the Petitioner.

7c. It is also the case of the Respondent that the Petitioner was given adequate training for purchasing grains and paddy and he underwent such training prior to his joining as Seasonal Bill Clerk at Direct Purchase Centre, Vattar. Even then the Petitioner has ignored the guidelines of the Respondent and purchased sub-standard paddy and consequently caused huge loss to the Corporation. It is further stated by the Respondent that whenever a Seasonal Bill Clerk is recruited by the Respondent Corporation, an undertaking is obtained from him and one such undertaking was obtained from the Petitioner. According to the Respondent, the recovery can be made on the basis of the undertaking given by the Petitioner and it is legal. The Petitioner is in-charge of the DPC as a representative of the Government and has a direct link with the ryots. The Petitioner is well aware that he is answerable to the Respondent Corporation for all the acts he exercises as a Seasonal Bill Clerk and any mistake he commits would amount to huge monetary loss to the Corporation. Hence, the first Respondent has relieved the Petitioner from the post of Seasonal Bill Clerk, by the impugned order.

8. The foremost contention of the Learned Counsel for the Petitioner is that the order of recovery passed by the Respondent is without any basis and no notice was issued to the Petitioner before passing the impugned order of recovery, calling upon him to explain as to why such refraction has been made. He would further contend that the impugned order was passed without even affording an opportunity of hearing to the Petitioner and without holding any enquiry.

9. Per contra, Learned Counsel appearing for the Respondent Corporation would contend that the norms prescribed by the Corporation have to be adhered to by the Seasonal Bill Clerk, who is in charge of the DPC and the Petitioner, though aware of the norms prescribed, purchased sub-standard quality of paddy, which has been

taken note of by the Vigilance Cell during inspection, consequently leading to the passing of the impugned order.

10. Heard Mr. V. Sanjeevi, Learned Counsel for the Petitioner and Mr. P. Ramachandran, Learned Counsel for the Respondent Corporation and perused the impugned order and the material documents annexed in the typed set of papers.

11. It is seen that the Petitioner was posted as Bill Clerk in the Direct Purchase Centre (DPC) at Vattar, Mannargudi Taluk, Thiru-varur on 03.09.2006 and during the inspection by the Vigilance Cell on 02.03.2007, excess of 3% over and above the allowable refractions for damaged, discoloured, sprouted and weeviled grains (DDS) and excess of 3% for immature, shrunken and shriveled grains (ISS) were noticed. The Respondent has calculated the percentage of refraction and the value of paddy, jute and gunnies was taken into account, thereby the amount of loss was calculated at Rs. 21,096/- and accordingly, the Respondent has proceeded to recover the said amount from the Petitioner, to which effect the impugned order has been passed.

12. Undoubtedly, the Respondent is duty bound to check up whether the quantity of paddy has been procured as per the norms prescribed and whether there is procurement of any sub-standard quality of paddy in excess of the allowable refractions and proceed in accordance with law. In this case, it is clear from the averments that the Respondent has not given any notice to the Petitioner and has not conducted any enquiry before passing the impugned order of recovery. It is a settled law that whenever the order of recovery is passed against a person, he must be put on notice calling upon to explain as to why such an order of recovery could not be made against him and if such a notice is not issued and an opportunity of hearing is not given, it is in violation of the principles of natural justice and the rules and procedures. Therefore, before passing the order of recovery, the authority has to follow necessary procedures and at least a notice should be given to him to explain his position.

13. In the absence of non-issuance of any notice and an opportunity of hearing to the Petitioner, the order impugned in this petition cannot be sustained and accordingly, the same is set aside. However, the Respondent is at liberty to proceed with by following the rules and procedures contemplated and after issuing notice and giving an opportunity of hearing to the Petitioner in accordance with law.

This writ petition is allowed with the above direction. No costs. Consequently, connected M.P. Nos. 1 and 2 of 2007 are closed.