

W.A.No.1652 of 2021
and
C.M.P.No.10405 of 2021

PUSHPA SATHYANARAYANA,J.
AND
KRISHNAN RAMASAMY,J.

[Order of the Court was made by **PUSHPA SATHYANARAYANA, J.**]

Mr.R.Neelagandan, learned State Government Counsel appearing for the respondents 2 to 4.

2. The challenge in this intra-Court Appeal is to a direction given by the learned Single Judge on 06.07.2021, wherein, during the hearing of the Writ Petitions, a doubt was raised, for which, the learned Government Counsel, who appeared before the Court, was not ready with the facts. Therefore, the learned Single Judge had directly questioned and interacted with the State Tax Officer, the appellant herein, who was present before the Court. Since the said Officer could not give the correct answer to the question posed by the learned Single Judge as to whether the general tax exemption for sale of Intra-Ocular lenses within the State, was granted or not, the learned Single Judge felt that the Officer was giving evasive

answers and suppressing the vital facts regarding the collection of sales tax for Intra-Ocular lenses. Hence, the Writ Court had issued a direction to the Commissioner of Commercial Taxes to suspend the said Officer with immediate effect by initiating disciplinary proceedings under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The said order dated 06.07.2021 is now challenged by the said Officer by taking leave of this Court.

3. The learned State Government Counsel appearing for the respondents 2 to 4 produced a copy of the common interim order dated 08.07.2021 passed in W.P.No4355 of 2008 etc., wherein, it was reported before the learned Single Judge that pursuant to the direction given by this Court on 06.07.2021, a suspension proceedings dated 07.07.2021, was issued to the State Tax Officer/appellant herein keeping him under suspension.

4. The learned counsel appearing for the appellant placed his reliance on a decision of a Division Bench of this Court, dated 26.04.2018 in W.A.No.1811 of 2017, wherein, in paragraph 9, it has been held as

follows:

"9. We have considered the rival submissions. We find much force in the submissions of Mr. Govarthan, learned counsel appearing for the appellant. Having concluded that the appellant had issued patta to the 1st respondent in respect of the lands in question on 27.07.2015 de-hors the communication dated 26.05.2015 issued by the District Revenue Office, Chennai Corporation, the learned Single Judge was justified in directing action to be taken against the appellant, but, we find it difficult to subscribe to the entire directions issued by the learned Single Judge. We are of the considered opinion that while it is open to this Court to direct disciplinary proceedings against the erring officials, this Court cannot go ahead and issue directions to place the erring official under suspension, to direct the disciplinary action to be conducted on a day-to-day basis and also suggest the nature of punishment to be imposed by the disciplinary Authority. Whether an erring official is to be placed on suspension or not pending enquiry, the time frame for the conclusion of the disciplinary proceedings and punishment to be imposed if the erring official is found guilty by the Disciplinary Authority are all within the domain of the Disciplinary Authority. May be that this Court has got a power of judicial review on such actions, but, at the same time this Court exercising power under Article 226 cannot issue directions as to how the disciplinary enquiry should be proceeded with and also suggest the ultimate punishment to be imposed after the conclusion of the disciplinary proceedings. This Court does not have the advantage of the evidence that is to be let in, in the disciplinary proceedings and the nature of the delinquency etc., Therefore, we are in entire agreement with the

submissions of Mr.Govarthan, learned counsel for the appellant to the extent that the learned Single Judge ought not to have issued directions for suspension, manner in which the disciplinary proceedings are to be conducted and the ultimate punishment that is to be imposed on the delinquent official. We however, find it difficult to accept the submissions of Mr.Govarthan, that this Court should not have ordered initiation of disciplinary proceedings at all."

5. However, in the above case, the Division Bench had directed the authorities to initiate disciplinary proceedings against the appellant therein for the misconduct alleged. The other directions of the learned Single Judge regarding suspension and how the disciplinary proceedings should be conducted, were et aside therein.

6. The learned counsel appearing for the appellant has also cited yet another decision rendered by the Hon'ble Supreme Court reported in Civil Appeal No.2320 of 2021 ***[THE STATE OF UTTAR PRADESH AND OTHERS -VS- DR.MANOJ KUMAR SHARMA]***, wherein, it has been held in paragraphs 17, 18 and 19 as follows:

"17. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

18. The public officers of the Executive are also performing their duties as the third limb of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.

19. This Court in a judgment reported as Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.⁴ observed that judges must know their limits. They must have modesty and humility, and not behave like emperors. The legislature, the executive and the judiciary all have their own broad spheres of operation. It is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction. This Court held as under:

"19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State the legislature, the executive and the Judiciary must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

"When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

(emphasis supplied)

We fully agree with the view expressed above. Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian Judiciary today, since very often it is rightly criticised for "overreach" and encroachment into the domain of the other two organs."

7. In view of the above, we are of the opinion that the order of the learned Single Judge has to be stayed, status-quo ante.

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8. Notice to the respondent-1, returnable by 09.08.2021. Private notice is also permitted.

9. Post the appeal on 09.08.2021.

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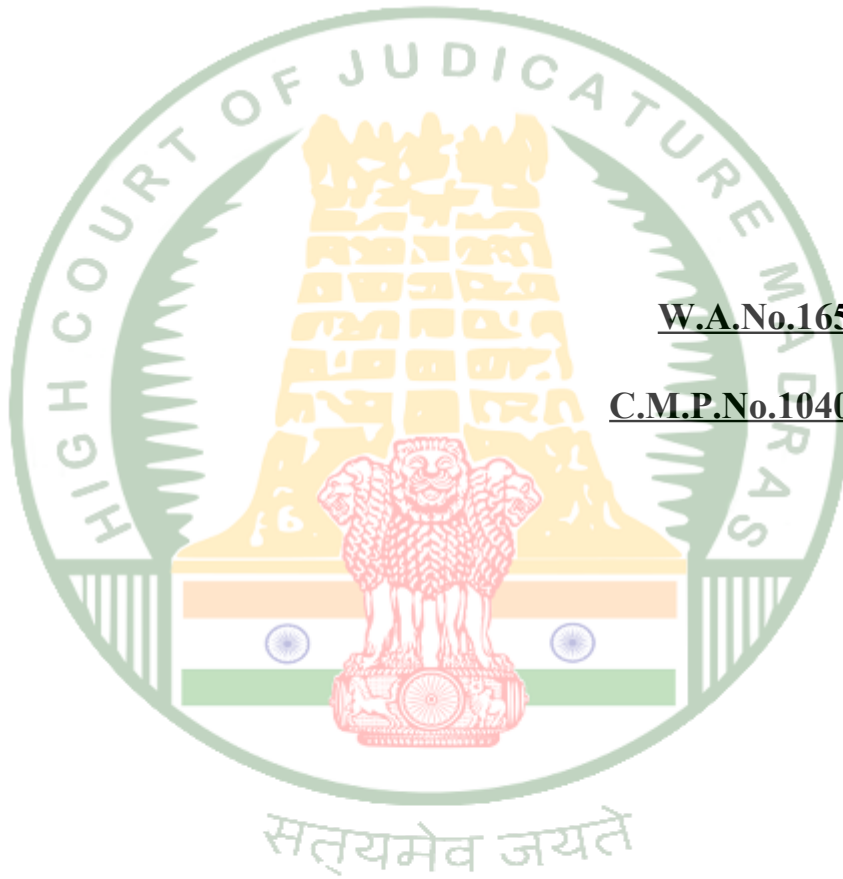
(P.S.N.J.)

(K.R.J.)

12.07.2021

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