

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**WRIT PETITION No.10660 of 2020**

**Between:**

K.V.Jagadishwar Rao, S/o (late) K.Rama Murthy, Aged about 59 years, Presently working as Deputy Commissioner of State Tax (LTU) & (int), O/o JC(ST), Vizianagaram, R/o H.No.124, Street No.300, M.S.N.Colony, Vizianagaram, Andhra Pradesh.

**... Petitioner.**

**AND**

1. The State of Andhra Pradesh, represented by its Special Chief Secretary, Revenue Department (Vigilance-II) Department, Secretariat Buildings, Amaravathi, Guntur District, Andhra Pradesh.
2. The Commissioner of Commercial Taxes (Presently the Chief Commissioner of State Tax), State of Andhra Pradesh, Amaravathi, Guntur District, Andhra Pradesh.
3. The Department Promotion Committee, Government of Andhra Pradesh, Rep. by its Chairman-cum-the Special Chief Secretary (E.F.S & T) Department, Government of A.P. Secretariat Buildings, Amaravathi, Guntur District, Andhra Pradesh.

**... Respondents.**

DATE OF ORDER PRONOUNCED : 20.08.2020

SUBMITTED FOR APPROVAL:

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

**LALITHA KANNEGANTI, J**

**\* THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**+ WRIT PETITION No.10660 of 2020**

**% 20.08.2020**

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**... Respondents.**

**! Counsel for Petitioner : Sri R.N.Hemendranath Reddy**

**^ Counsel for Respondents : Govt. Pleader for Services-I**

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) (2013) 6 SCC 530**
- 2) (2006) 3 SCC 674**
- 3) 1952 All. E.R. 567**

This Court made the following:

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI****WRIT PETITION No.10660 of 2020****ORDER:**

The writ petition is filed under Article 226 of the Constitution of India questioning the action of 1<sup>st</sup> respondent in issuing Memo No.REV03-17030/1/2020/D SEC-CCT (Revenue Commercial Tax-1) Department dated 27.05.2020 rejecting / denying the petitioner's promotion to the post of Joint Commissioner of State Tax.

2. Heard Sri R.N.Hemendranath Reddy, learned counsel for the petitioner and the learned Government Pleader for Services-I appearing on behalf of the respondents.

3. It is the specific case of the petitioner that initially the petitioner has filed W.P.No.8268 of 2020 before this Court questioning the action of 1<sup>st</sup> respondent in issuing G.O.Ms.No.113 Revenue (CT.1) Department dated 20.04.2020 by deferring the petitioner's promotion to the Post of Joint Commissioner of State Tax. The contention of the petitioner in that writ petition was that the petitioner was working as Deputy Commissioner of State Tax (LTU) & (int), O/o JC (ST), Vizianagaram. The petitioner earlier worked in Hyderabad and after bifurcation, he was allotted to the State of Andhra Pradesh and he is due for retirement on 30.06.2020. A disciplinary enquiry was initiated against the petitioner and 3 others vide G.O.Ms.No.466 dated 02.11.2016 and G.O.Rt.No.1074 dated 02.11.2016 on the ground of granting irregular refunds in the case of M/s Gayathri Projects Limited, Basheerbagh, Hyderabad during the year 2005-06 to 2009-10

resulting loss to the Government. The 1<sup>st</sup> respondent being the disciplinary authority in exercise of powers conferred under Sub Rule (1) & (2) of Rule 24 of A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 has directed initiation of disciplinary action against the petitioner and others and directed the Special Chief Secretary to the Government, Revenue Department to function as disciplinary authority.

4. It is stated that though G.O.Ms.No.466 and G.O.Rt.No.1074 are dated 02.11.2016, the same are served on the petitioner on 29.03.2018 i.e. after more than 17 months. Questioning the same, he filed O.A.No.756 of 2018 on the file of A.P. Administrative Tribunal at Hyderabad and the same was dismissed at the admission stage on 23.04.2018 on the ground that it was premature one. Questioning the said order, the petitioner approached this Court by filing W.P.No.16392 of 2018, wherein an interim order was passed suspending the G.O.Ms.No.466 and G.O.Rt.No.1074 dated 02.11.2016 and even till today, the said interim order is in force and the writ petition is pending consideration.

5. The petitioner has urged several grounds on initiation of disciplinary proceedings and relied upon the judgment of the Hon'ble Apex Court. It is also stated that some of the officers of Commercial Tax Department in identical set of facts have challenged the initiation of disciplinary proceedings in W.P.No.18842 of 2017 and batch, wherein the Court has stayed all further proceedings initiated therein and they are still in force. It is stated that the disciplinary proceedings are mechanically issued

without considering the unblemished service record and without there being any basis, subjecting the petitioner to severe humiliation and mental agony. Initiation of disciplinary proceedings itself is bad and without jurisdiction. It is stated by the petitioner that when the disciplinary proceedings are suspended by an interim order, the petitioner's case should have been considered positively instead of deferring same, in view of his retirement on 30.06.2020. An interim prayer was sought by the petitioner to direct the respondents to grant/give promotion to the petitioner to the post of Joint Commissioner of State Tax pending disposal of the writ petition.

6. A Coordinate Bench of this Court by order dated 28.04.2020 in W.P.No.8268 of 2020 passed the following order:

“This Court finds that there is a case made out on behalf of the petitioner. Therefore, without interdicting the whole procedure, this Court is of the opinion that the interest of justice would be served if one post of the Joint Commissioner of Sales Tax is kept pending for a period of two weeks from today to enable the learned Government Pleader to get appropriate instructions and also to file affidavit of the respondents. Hence, list the matter after one week for hearing”.

Later, when the matter came up on 13.05.2020, another learned Judge of this Court has passed the following order:

“Notice before admission.

Heard both the counsel.

Learned counsel for the petitioner submits that as per the orders granted by this Court in the earlier writ petition No.16392 of 2018, as per the seniority, the case of the petitioner was considered for promotion and included in the list of promotions and deferred only on the ground of disciplinary proceedings, which were pending against him.

Even the Government Pleader has submitted that they have filed counter and vacate stay petition in writ petition No.16392 of 2018 and seriously pursuing the matter for disposal.

In view of the submissions made by the petitioner and the urgency explained, and in view of the stay granted by the Hon'ble Court in W.P.No.16392 of 2018, without going into the merits of the case, there shall be interim direction to the respondents to consider the case of the petitioner and effect the promotion to the post of Joint Commissioner of Sales Tax expeditiously, within a period of two weeks from today.

Post after Summer Vacation, 2020.”

7. The respondents have issued the impugned Memo No.REV03-17030/1/2020/D SEC-CCT (Revenue Commercial Tax-1) Department dated 27.05.2020 rejecting / denying the petitioner's promotion to the post of Joint Commissioner of State Tax. It was mentioned in the said memo that:

“Government has considered the direction of the Hon'ble High Court and duly examined the matter in compliance with orders dated 13.05.2020 passed by the Hon'ble High Court on merits. Keeping in view of the facts in issue and duly applying principles of natural justice as also after considering the opinion of the Convener Department i.e. GAD as well after due examination of the position explained in the preceding paras, the case of Sri K.V.Jagadiswara Rao has been considered on merits. Further Government has examined the seriousness of the offence, duly considering action taken in similar cases, in light of General Administration Department advice and after due examination arrive at the following consideration:

- (i) That the petitioner is involved in the serious offence which resulted in unlawful gain to a tune of Rs.7.29 crores to the dealer;
- (ii) That in the light of the GAD advice matter needs to be considered, considering the grave misconduct done in public interest.

Therefore, after due consideration of the case of Sri K.V.Jagadiswara Rao after due examination on merits is considered in compliance with the orders of Hon'ble High Court and his request for

effecting promotion to the post of Joint Commissioner of State Tax is considered not feasible.”

8. The said memo dated 27.05.2020 is impugned in the present writ petition.

9. Learned counsel for the petitioner would submit that despite the order passed by this Court giving positive direction to promote the petitioner, the respondents have issued the impugned memo in blatant violation of the orders of this Court in W.P.No.8268 of 2020, which clearly shows the audacity of the respondents. Learned counsel would submit that he is taking steps to file a contempt case before this Court. But as the petitioner cannot ask for the relief sought in this writ petition in the contempt case, he is constrained to file this writ petition. The date of filing of the writ petition is 31.05.2020, but as there is every likelihood of respondents issuing the proceedings at any moment, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India. It is submitted that respondent have taken considerable time to effect the promotion till the petitioner is retired from service.

10. Learned Government Pleader appearing on behalf of the respondents filed a detailed counter running into 45 paragraphs explaining the action taken by them against the petitioner and series of events that have taken place from the day the petitioner was suspended and it was stated by the learned government pleader that the case of the other persons who were suspended was also not considered in view of the pending proceedings. Though all of them are in the zone of consideration, their names

were included in the panels but promotions were deferred till finalisation of the charge memos. In the same manner, petitioner's case is also differed.

11. Learned Government Pleader further submits that the order passed by this court in W.P No 8268 of 2020 dated 13.05.2020 was considered by the Government and duly examined the matter in strict compliance of the same. Keeping in view the facts and issues, and duly applying the principles of natural justice, after considering the opinion of the convenor department has come to the conclusion that as the petitioner was involved in the serious offence which resulted in loss to the government to a tune of Rs.7,29,00,000/- and considering the advice of the GID felt that affecting the promotion to the post of Joint Commissioner of State Tax not feasible and accordingly issued the impugned memo dated 27.05.2020.

12. The order impugned in the writ petition is passed by the respondents either they have not understood the order in its true perspective or they wanted to sit in appeal over the orders passed by this Court. The learned Judge while passing the order has categorically observed that taking into consideration the orders passed in W.P.No.1639 of 2018 a direction is given to the respondents to consider the case of the petitioner and effect the promotion to the post of Joint Commissioner of State tax expeditiously within a period of two weeks from the date of the order. The direction issued by the learned judge on the face of it is a positive order directing the respondents to effect the promotion. If the learned Judge passed the order directing the respondents to

consider the case of the petitioner and pass orders, then it can be understood that the respondents have complied with the order of the Court. But in the case on hand a positive direction was given to the respondent not only to consider but also to effect the promotion. The words 'consider' was scrutinized by the Hon'ble Supreme Court in **Chairman Life Insurance Corporation of India & Ors v. A Masilamani**<sup>1</sup> and held thus:

"19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order."

13. In fact before the Hon'ble Supreme Court in **APSRTC Vs. G.Srinivas Reddy**<sup>2</sup>, the word "Consider" fell for consideration and the Hon'ble Supreme Court observed thus:

13. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to consider:, it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner/s in the writ petitions.

13.1) Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to

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<sup>1</sup> (2013) 6 SCC 530

<sup>2</sup> (2006) 3 SCC 674

exercising appellate power, but require the authority to consider : and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

13.2) The High Courts also direct authorities to consider : , in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to consider : and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs consideration : without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to consider : afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

13.3) Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to consider : the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to consider : the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

14. In the aforesaid judgment, the Hon'ble Apex Court has dealt with the word 'consider' in such an intrinsic manner that there should be intense application of mind. But in this case the Court has not only asked them to consider but to effect the promotion where no discretion is left to the authorities.

15. In **Hadkinson Vs. Hadkinson**<sup>3</sup>, the Court of appeal held:

“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

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<sup>3</sup> 1952 All. E.R. 567

"A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null and void - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of an order which was null and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.

Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt

16. Unfortunately the respondents have interpreted the order in the manner convenient to them. The administration of justice will solely depend upon the execution of the orders of the Court. This is a clear violation of orders of this Court. When an order is passed by the Court, the respondents are duty bound to implement. If the respondents are not in a position to implement the orders of the court they ought to have filed a vacate petition and brought the facts to the notice of the Court. But instead of doing so, they have interpreted the order in their own way and rejected the case of the petitioner, which is uncalled for and in clear violation of the orders of the Court. In fact, a serious view has to be taken with the conduct of the respondents and it is a fit case for initiating *suo-moto* contempt proceedings. However, as the petitioner is taking steps to initiate contempt proceedings, this Court is not dealing with the same. By the time the interim order dated 13.05.2020 is passed by the Court, the respondents have already filed the counter with the very same averments that are filed in this case. It is very unfortunate that the respondents having passed an order in

clear violation of the order passed by this Court, still come up with a counter before this Court stating that they have complied with the order.

17. This Court is of the considered opinion that the respondents failed to understand and implement the orders passed by this Court dated 13.05.2020. Hence, the writ petition is allowed and the Memo No. REV03-17030/1/2020/D SEC-CCT (Revenue Commercial Tax-1) Department dated 27.05.2020 is set aside. The respondents are directed to implement the orders passed by this Court in W.P.No.8268 of 2020 dated 13.05.2020 within one week from the date of receipt of a copy of this order. No costs.

As a sequel, all the pending miscellaneous applications are closed.

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**LALITHA KANNEGANTI, J**

20<sup>th</sup> August, 2020

**Note:** LR copy to be marked  
B/O  
PVD

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**WRIT PETITION No.10660 of 2020**

20<sup>th</sup> August, 2020

PVD