

In the High Court of Judicature at Madras

Dated : 02.3.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition Nos.30004, 30618, 32111, 32112 and 32397 of 2014 and
Contempt Petition No.3211 of 2014 and all connected pending MPs

Excel Engineering Enterprises, rep.
by its Proprietor G.Kumaresan ...Petitioner in all
the WPs & Cont.P.

Vs

1.The District Forest Officer, Thirupattur
Forest Division, Thirupattur,
Vellore District.

...R1 in WP.30004/
2014; R3 in WP.
30618/2014, R4 in
WP.32111/2014; R6
in WP.32112/2014

2.Sampath, Forest Contractor

R2 in WP.30004/
2014 & R5 in WP.
32111/2014 & R9
in WP.32397/2014
& R2 in Cont.p.

3.Gunasekaran, Forest Contractor

...R3 in WP.30004/
2014 & R6 in WP.
32111/2014 & R3
in Cont.P.

4.R.Andi

5.M.R.Annamalai

6.K.Sivaraj

7.D.Govindaraj

8.R.Ravichandran

9.T.Palani

10.K.Siva Kumar

11.A.Sriramulu

(R4 to R11-impleaded as per order dated 11.12.2014 by VRSJ in
MP.Nos.2 & 2 of 2014 both in WP.Nos.30004 & 30618 of 2014)

...Respondents 4 to
11 in both WPs.

12. Varnakumar

..R12 in W.P.No.30004,
30618/14

(R12 impleaded as per order
dated 2.3.2015

by this Court in W.Ps.30004, 30618, 32111, 32112 and 32397/14

13.The Chief Conservator of Forests,
Planning & Development, Panagal
Maligai, Saidapet, Chennai-15.

...R1 in WP.30618/
2014; R3 in WP.
32111/2014 & R4 in
WPs.32112 & 32397
of 2014

14.The Conservator of Forests, Vellore
Forest Circle, Vellore.

...R2 in WP.30618/
2014 & R5 in WPs.
32112 & 32397/
2014

15. The District Forest Officer
Thirupattur Forest Division
Thirupattur

...R3 in W.P.30618/14
R4 in W.P.32111/14,
R6 in W.P. 32112/14

16.The State of Tamilnadu, rep.by its
Principal Secretary to Government,
Environment & Forests (EC2) Department,
Secretariat, Chennai-9.

...R1 in WPs.32111
& 32397/2014

17.The Principal Chief Conservator of Forests,
(HOFF), Panagal Building, Chennai-15.

...R2 in WP.32111/
2014; & R3 in WPs.
32112 & 32397/
2014

18. The Chief Conservator of Forests
Planning and Development
Panagal Building, Chennai-15

...R3 in W.P.32111/14
...R4 in W.P.32112/14
and W.P.32397/12

19.The Director, Directorate of Tribal
Welfare, Chennai-5.

...R2 in WP.32112/ 2014

- 20.The Director of Environment, Ground
Floor, Panagal Maligai, Chennai-15.R2 in WP.32397/
2014
- 21.The District Forest Officer, Vellore
Forest Division, Vellore, Vellore District. ...R6 in WP.32397/
2014
- 22.The District Forest Officer, Tiruvannamalai
North Forest Division, Polur, Tiruvannamalai
District.R7 in WP.32397/
2014
- 23.The District Forest Officer, Tiruvannamalai
South Forest Division, Polur, Tiruvannamalai
District.R8 in WP.32397/
2014
- 24.K.Selvaraj, District Forest Officer,
Thirupattur Forest Division,
Thirupattur, Vellore District.R1 in Cont.P.
- 25.The State of Tamilnadu, rep.by its
Secretary to Government, Adi Dravidar
& Tribal Welfare Department,
Secretariat, Chennai-9.R1 in WP.32112/
2014

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus forbearing the first respondent from executing the relaying of road works in respect of (1) Alangayam Jamunamuthur - Mantharakuttai (2) Andiappanur Kambukudi - Pudur Nadu (Kambukudi to Belur) (3) Rangasamudram - Kambukudi and (4) Singarapettai - Nellivasal Manaiyandipatti and Adi Dravidar and Tribal Welfare Department, Ambur Range for improvements and formation of road works for tribals in respect of (1) Ambur - Naickaneri (2) Ambur - Panankatteri and (3) Periyankuppam - Kamanurthattu without calling for the tender notification by following the Tamil Nadu Transparency in Tenders Act, 1998 and Tamil Nadu Transparency in Tenders Rules, 2000 (WP.No.30004 of 2014); forbearing the respondents from executing the road works viz.Tirupattur Division (Tirupattur Range and Ambur Range) and executing improvements of Katcha Houses funds allotted as per the Government in G.O.(Pa) No.215 dated 13.10.2014 Adi Dravidar and Tribal Welfare Pa.Mel(2) Department without calling for the tender notification by following the Tamilnadu Transparency in Tenders Act 1988 and Tamilnadu Transparency in Tenders Rules 2000 (WP.No.30618 of 2014); directing the 1st respondent to take appropriate action against the respondents 2 to 6 for violating the provisions of the Tamil Nadu Transparency in Tenders Act 1998 and Tamil Nadu Transparency in Tenders Rules 2000 and for awarding contract by

private negotiations in respect of works viz. 1) Alangayam Jamunamuthur-Mantharakuttai 2) Andiappanur Kambukudi - Pudur Nadu (Kambukudi to Belur) 3) Rangasamudram-Kambukudi and 4) Singrapettai-Nellivasal Manaiyandipatti and Adi Dravidar and Tribal Welfare Department, Ambur Range for improvements and formation of road works for tribals in respect of 1) Ambur-Naickaneri 2) Ambur-Panankatteri and 3) Periyankuppam - Kamanurthattu without following the Tamil Nadu Transparency in Tenders Act, 1998 and Tamil Nadu Transparency in Tenders Rules, 2000 (WP.No.32111 of 2014); directing the respondents 1 and 2 to take appropriate action against the respondent 3 to 6 for violating the provisions of the Tamil Nadu Transparency in Tenders Act 1998 and Tamil Nadu Transparency in Tenders Rules 2000 and for awarding contract by private negotiations in respect of works viz. Tirupattur Division (Tirupattur Range and Ambur Range) and executing improvements of Katcha House funds allotted as per the Government in G.O. (Pa) No.215 dated 13.10.2014 Adi Dravidar and Tribal Welfare Pa.Mel (2) Department without following the procedure laid down under the Tamilnadu Transparency in Tenders Act, 1998 and Tamil Nadu Transparency in Tenders Rules 2000 (WP.No.32112/2014); and forbearing the respondents from executing the road works and making payments in respect of viz. 1. Kinnikulam to Amirty - 6.84 km of Vellore District 2. Pulliyur to Melpet - 8.00 km 3. Amirty to Jamnamarathur (part) - 7.5 km 4. Melpet to Paramanandal (part) - 8.00 km and 5. Melpet to Paramanandal (part) - 6.00 km of Tiruvannamalai District funds (Rs.697 Lakhs) allotted as per the Government order in G.O.(3D). No. 80 dated 10.9.2014 Environment and Forests (EC2) Department without calling for the tender notification by following the Tamil Nadu Transparency in Tenders Act 1998 and Tamil Nadu Transparency in Tenders Rules 2000 (WP.No.32397/2014).

PETITION under Section 11 of the Contempt of Courts Act to punish the respondents for the willful disobedience of the orders of this Court passed in WP.No.30004 of 2014 dated 17.11.2014.

For Petitioner in both WPs & Cont.P. & R1 in
MP.No.1 of 2015 in WP.No.30004 of 2014 : Mr.S.Doraisamy
For State : Mr.P.H.Arvind Pandian, AAG for Mr.M.K.Subramaniam,
SGP (F)

For Contractors : Mr.S.Dyaneswaran
For Respondents 4 to 11 in both WP.Nos.30004 and 30618/2014& R5
R12 in MP.No.1 of 2015 in WP.No.30004 of 2014 :
Mr.V.Suresh

For R12 in WP.No.30004 of 2014 : Mr.R.Sunilkumar

COMMON ORDER

The petitioner in these petitions, is a registered Class 1 Contractor with the Department of Forests in the State of Tamilnadu. It appears that the Government allotted a sum of Rs.24.618 Crores to the Forest Department under G.O.3D.No.80 Environment and Forests dated 10.9.2014 for the laying of roads by using plastic waste. Out of the said amount, a sum of Rs.4.98 Crores was allotted to the Thirupattur Division.

2. Contending that the District Forest Officer, Thirupattur Forest Division prepared an estimate for laying the roads from Thirupattur to Alangayam covering a distance of 26.5 Kms, by breaking the same into several fractions and also contending that without following the procedure prescribed by the Tamilnadu Transparency in Tenders Act, 1998 read with the Rules framed thereunder, the District Forest Officer had chosen two contractors for awarding the contracts, the petitioner came up with the first writ petition in W.P.No.30004 of 2014.

3. On 17.11.2014, I directed the issue of notice and also passed an interim order to the following effect :

"If the contracts for the seven items of work mentioned in the writ petition have been awarded without floating the tender, then the respondents are injuncted from carrying out any further work."

4. Thereafter, the petitioner came up with yet another writ petition in W.P.No.30618 of 2014 contending that the District Forest Officer, Thirupattur Forest Division had prepared another estimate for executing improvements of Katcha houses and the formation of link roads in Thirupattur and Ambur Range and that he had picked and chosen the contractors without following the provisions of the Act for the award of the contracts. On 24.11.2014, while ordering notice of motion in the second writ petition, I passed a similar interim order as was passed in W.P.No.30004 of 2014.

5. Thereafter, two more writ petitions were filed in W.P.Nos.32111 and 32112 of 2014 praying for similar reliefs in respect of various other items of work. In these two writ petitions, the learned Government Advocate took notices on 8.12.2014.

6. In the meantime, the petitioner also came up with a contempt petition in Cont.P.No.3211 of 2014 contending that the respondents were proceeding with the execution of work. Therefore, on 27.11.2014, I passed an order in the contempt petition directing the respondents to ensure that no further work is carried out.

7. Thereafter, the petitioner came up with the fifth writ petition in W.P. No.32397 of 2014 praying for similar reliefs, in respect of those allotted under G.O.3D.No.80 Environment and Forests dated 10.9.2014 without following the provisions of the Act and the Rules framed thereunder. On 10.12.2014, I directed the writ petitions to be posted along with the contempt petition.

8. In the meantime, a group of tribals came up with miscellaneous petitions both for impleading themselves and for modifying the interim orders on the ground that under the scheme for improvement of their Katcha houses, the existing roofs of their houses have been removed and that due to the interim order passed in the contempt petition, they virtually became roofless. Therefore, after allowing them to get impleaded in W.P.Nos.30004 and 30618 of 2014, I passed an order on 11.12.2014 permitting the contractors to complete the work of roofing the houses of the tribal people. However, I also ordered that no payment should be made to the contractors in the meantime.

9. Now, one Mr.Varnakumar has come up with M.P.No.1 of 2015 in W.P.No.30004 of 2014 for impleading himself as the 12th respondent. In view of the limited nature of the orders that I propose to pass in the writ petitions, impleading is allowed.

10. The one and only grievance of the petitioner, who is also a registered Class 1 contractor both with the Department of Forests and with the Public Works Department, is that the funds allotted by the Government for the laying of roads, improvement of Katcha houses, etc., have been split up into several parts and that the District Forest Officers of Thirupattur and Thiruvannamalai have awarded contracts to contractors without following the provisions of the Tamilnadu Transparency in Tenders Act, 1998.

11. On facts, there is no dispute about the fact that no tenders have been floated. The stand taken by the Department is that when the total amount, for which contracts are awarded, does not exceed a particular limit, they need not follow the provisions of the Act. Yet another objection taken by the respondents is that in view of the urgency, the work was entrusted to the contractors.

12. But, I have already held in a matter, which arose out of the award of contract in the District of Theni that splitting up of the whole contract into several parts, however noble the objective may be, may give rise to some kind of suspicion that the respondents do not want to follow the statutory provisions. Therefore, it would have been better if the respondents had actually followed the provisions of the Act even in matters of this nature.

13. Today, on facts, it is admitted that some portion of the work had been completed. However, payments have not been made. There are two problems that have to be addressed now. The first is that the funds allotted by the Government may lapse by 31.3.2015, if the impasse continues. At the same time, I cannot allow the contractors, to whom the contracts have been granted, to proceed with the work. Therefore, the only method, by which a balance could be struck, is to order the respondents to take measurements of the works already completed, to make payments for the same and to proceed with the award of tenders after following the provisions of the Act in respect of the balance of work and the other contracts.

14. In view of the above, all the writ petitions and the contempt petition are disposed of to the following effect :

(i) In the presence of the Executive Engineer of the Public Works Department, Vellore and in the presence of the petitioner and the contractors, to whom the contracts have been awarded, measurements shall be taken for the work that has already been completed by the contesting respondents/contractors;

(ii) it is open to the Department, after completion of the exercise of taking measurements, to make payments to the contractors, who have carried out such work;

(iii) Immediately after the measurements are taken, the District Forest Officer shall initiate the process of inviting tenders both for the work remaining uncompleted in the contracts already granted and being executed and in respect of the contracts, for which, no work or no contract has been awarded so far;

(iv) The work orders already issued to the contractors, who have carried on some work, shall stand cancelled for the remaining part of the work; and

(v) The funds allotted by the Government shall be transferred to the account of the District Forest Officer, so that they do not lapse and revert back to the Government on account of the problem of 31.3.2015 approaching.

No costs. Consequently, all connected pending MPs are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

WEB COPY

To

1.The District Forest Officer, Thirupattur Forest Division,
Thirupattur, Vellore District.

2.The Chief Conservator of Forests,
Planning & Development, Panagal
Maligai, Saidapet, Chennai-15.

3.The Conservator of Forests,
Vellore Forest Circle, Vellore.

4.The Principal Secretary to Government of Tamilnadu,
Environment &
Forests Department, Secretariat, Chennai-9.

5.The Principal Chief Conservator of Forests,
Panagal Building, Chennai-15.

6.The Director, Directorate of Tribal Welfare,
Chennai-5.

7.The Director of Environment, Ground Floor,
Panagal Maligai, Chennai-15.

8.The District Forest Officer,
Vellore Forest Division, Vellore, Vellore District.

9.The District Forest Officer,
Tiruvannamalai North Forest Division, Polur,
Tiruvannamalai District.

10.The District Forest Officer,
Tiruvannamalai South Forest Division, Polur,
Tiruvannamalai District.

11.The Secretary to Government of Tamilnadu,
Adi Dravidar & Tribal Welfare
Department, Secretariat, Chennai-9.

1 cc to Mr.R.Sunilkumar Advocate, sr 11489

1 cc to Mr.S.Doraisamy, Advocate, Sr. 11756

WP.Nos.30004, 30618, 32111, 32112 &
32397 of 2014 and Cont.P.No.3211
of 2014 and all connected pending MPs

SCD (CO)
kk 3/3