

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.30922 of 2014 &
M.P.Nos.1 & 2 of 2014

S.Sugumar

.. Petitioner

Vs.

1.The District Collector
Kancheepuram District
Kancheepuram.

2.The Block Development Officer
Chitlapakkam Panchayat Union
Chitlapakkam, Chennai 600 064.

3.The Secretary
Pozhichalur Panchayat
Pozhichalur, Chennai 600 074.

4.The President
Pozhichalur Panchayat
Pozhichalur, Chennai 600 074.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the fourth respondent made in his proceedings dated 07.11.2014, and quash the same and direct the respondents 2 to 4 to cancel the Meeting to be held on 26.11.2014, for call for Fresh Tender for cleaning and sewage and Drainage Water for the Pozhichalur Panchayat and consequently, restore the Tender work in favour of the petitioner upto the period of 2016 as per the Agenda dated 15.11.2014 and the agreement dated 07.12.2011, by receiving the renewal application and Tender amount.

For Petitioner : Mr.S.Ambigapathi

For Respondents : Mr.R.Vijayakumar,- R1
Addl. Govt. Pleader

Mr.D.Suriyanarayanan- R2 to R4

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.S.Ambigapathi, learned Counsel appearing for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader, appearing for the first respondent and Mr.D.Suriyanarayanan, learned counsel appearing for R2 to R4.

3. The petitioner has come forward with this Writ Petition challenging the proceedings of the fourth respondent dated 07.11.2014, by which the tender already granted in favour of the petitioner has been cancelled and fresh tender has been directed to be called for.

4. The respondent Panchyat has called for tenders for clearing sewage and drainage water in and around Pozhichalur Panchayat area from 2011 to 2016. It appears that there were two tenderers, the petitioner was the successful bidder, the tender was awarded in favour of the petitioner, an agreement was entered on 7.12.2011 and as per the said agreement the petitioner has paid a sum of Rs.50,000/- for the financial year 2011-2012 as fixed by the respondents 2 to 4. According to the petitioner, he is carrying on his duties faithfully and without any default. While so, the impugned order has been passed without issuing any notice to the petitioner and that too by the fourth respondent, who has no jurisdiction to cancel the tender. Further, it is submitted that the agreement period is from 2011 to 2016, whereas before the completion of the agreement period, an agenda for calling fresh tenders, is without due application of mind. Further, it is submitted that the renewal period falls on 07.12.2014, for the financial year 2014-15 and hurriedly the impugned order has been passed.

5. The fourth respondent has filed a counter affidavit along with a petition to vacate the interim order, by contending that the petitioner has approached this Court with unclean hands by suppressing the facts of filing of Suit in O.S.No.950 of 2014, on the file of Additional District Munsif Judge, Alandur, and since he has failed to obtain any interim order before the Civil Court, has filed the present Writ Petition and obtained an interim order of status quo. From the counter affidavit it is seen that there is no dispute to the fact that the petitioner has been declared as successful bidder and agreement has been entered between them. However, the respondent would state that the petitioner failed to pay the renewal

amount continuously for three years and as on date, the total amount to be recovered from the petitioner comes to Rs.1,50,000/- and therefore, they decided to call for fresh tenders and issued a notice to cancel the tender granted in favour of the petitioner.

6.Heard the learned counsel appearing on either and perused the materials placed on record.

7.According to the respondent Panchayat, the petitioner is a defaulter in paying the renewal amount. When that being the case, the competent authority is entitled to cancel the work order issued to the petitioner, but that can be done only after issuing notice and after affording an opportunity of hearing to the petitioner. Therefore, the impugned order has to be necessarily set aside, since it has been passed without issuing any notice to the petitioner and when the petitioner's tender was still in force. However, that does not mean that the respondent Panchayat cannot recover the amount due from the petitioner. It is always open to them to recover the amounts due from the petitioner, by following the procedure.

8.Accordingly, the fourth respondent is directed to issue a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order, thereafter, the petitioner is directed to submit his explanation within a period of fifteen days, on receipt of the explanation, it is open to the fourth respondent to pass appropriate orders on merits and in accordance with law, within a period of two weeks, after affording an opportunity of personal hearing to the petitioner. Till orders are passed by the fourth respondent, the interim of status quo already granted shall be maintained.

The Writ Petition is allowed and the impugned order is quashed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The District Collector
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Kancheepuram.

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1 cc to Mr.S.Ambigapathi ,Advocate, SR.No.6441

1 cc to Mr. D.Suriyanarayanan,Advocate, SR.No.6476

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