

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 28324 of 2015

R. Rathinam

..Petitioner

Vs.

1. The District Collector
cum Inspector of Panchayats,
Salem District, Salem.
2. The Project Director,
District Rural Development
Agency,
Salem District,
Salem.
3. The Assistant Director,
Panchayats,
Salem District,
Salem.
4. The Commissioner/Block
Development Officer,
Mecheri Panchayat Union,
Mecheri, Salem District.
5. K. Chetty Goundan
The Commissioner/Block
Development Officer,
Mecheri Panchayat Union,
Mecheri, Salem District.
6. M/s. Kishore & Co.,
Contractor,
Koonandiyur,
Mecheri via,
Mettur Taluk,
Salem District.
7. R. Sundaram

8. M/s.V.V.K. Constructions,
Contractor,
Mottur,
Gonur Post,
Mettur Taluk,
Salem District.

9. M/s.K.G.R. & Co.,
Contractor,
Thimirikottai,
Erakundapatti Post,
Mettur Taluk,
Salem District.

10. V. Navaneethakrishnan ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Declaration, declaring that the allotment of works order dated 17.07.2015 vide proceedings in Na.Ka.No. 1725/2015/A2 issued by the 4th and 5th respondents in favour of respondents 6 to 10 as illegal, arbitrary and in violation of mandatory procedures contemplated under the provisions of Tamil Nadu Transparency of Tenders Act, 1998 and its Rules, 2000 and consequently direct respondents 1 to 3 to conduct an enquiry with regard to illegality done by respondents 4 to 10 in the allotment of works order dated 17.07.2015 and take appropriate action against them.

For Petitioner :: Mr.M.R. Jothimanian

For Respondents :: Mr.RM. Muthukumar,
Govt.Advocate for R1 to R3
Mr.R. Ravichandran,
Addl. Govt. Pleader for
R4 & R5
Mr.T. Sellpandian for
R6 to R10

O R D E R

The petitioner is a registered contractor with the Rural Development Department and particularly, with the 4th respondent Panchayat Union. In July, 2015, a notification was issued by the 4th respondent inviting tenders from eligible contractors for various works in the 4th respondent Union, namely, 85 works, for the financial year 2015-2016. Based on the bids, the successful bidder was selected for the respective works mentioned in the work order dated 17.07.2015. While so, according to the petitioner, without any notification or paper

publication, another work order was issued and 18 other works were illegally entrusted to selected contractors, namely, respondents 6 to 10. According to the petitioner, no procedure was followed by the 4th respondent while awarding the aforesaid 18 works, eventhough the 4th respondent followed the procedure contemplated for awarding 85 works. He would submit that since the works were entrusted to the respective contractors, without following the provisions of Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder, he has approached this Court seeking a declaration that the allotment of works by order dated 17.07.2015 issued by the 4th respondent in favour of respondents 6 to 10 is illegal.

2. Heard Mr.M.R. Jothimanian, learned counsel for the petitioner, Mr.R.M.Muthukumar, learned Government Advocate for respondents 1 to 3, Mr.R. Ravichandran, learned Additional Government Pleader for respondents 4 and 5 and Mr.T. Sellapandian, learned counsel for respondents 6 to 10.

3. When the matter came up on 23.09.2015, since the learned counsel for the petitioner insisted upon an interim order, stating that no work had commenced in the 18 workspots, which were subsequently allotted by the impugned order dated 17.07.2015 and the same was denied by the respective learned counsel for respondents, this Court appointed Mr.S. Mahesh as an Advocate Commissioner to visit the 18 workspots and file a report as to whether work in those places had commenced or whether they were in the process of completion or whether they had already been completed. By report dated 29.09.2015, the Advocate Commissioner informed this Court that out of 18 works, almost 12 works had already been completed while 6 works were in the process of completion.

4. Mr.Jothimanian, learned counsel for the petitioner would submit that the procedure, as contemplated under Section 9 of the Tamil Nadu Transparency in Tenders Act, 1998 and Rules 8, 9, 11 and 12 of Tamil Nadu Transparency in Tenders Rules, 2000 were not followed. Secondly, he pointed out that individual notices to registered contractors, as per Rule 12 of the said Rules, were not served upon the petitioner and as per Rule 11 of the said Rules, publication was not effected in newspapers. Lastly, he would submit that the works, which were completed by virtue of the earlier tender were sought to be shown as works stated to have been executed under this tender. Therefore, he seeks to allow the writ petition.

5. On the other hand, learned Additional Government Pleader for respondents 4 & 5 would submit that notice inviting tender was served on the petitioner and as per the procedure

only, the works were entrusted to respondents 6 to 10. Further, according to the learned Additional Government Pleader, depending upon the valuation of the works to be executed, publication, if contemplated, will be issued.

6. Mr. T. Sellapandian, learned counsel for respondents 6 to 10 would submit that there is no violation of any Rule, whatsoever and since the petitioner failed in the tender, he has come before this Court with mala fide motive. Hence, the learned counsel sought the dismissal of the writ petition.

7. As rightly pointed out by Mr. Jothimanian, learned counsel for the petitioner, 85 works were allotted as per the notification dated 17.07.2015 and there is no dispute with regard to that. As far as the other set of 18 works allotted by the impugned work order dated 17.07.2015 alone, the petitioner has a grievance. With regard to the other set of 18 works, it is seen that the value of the works ranges from Rs.75,000/- to Rs.9,80,000/-, but below Rs. 10 lakhs. No doubt, as per Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998, the Tender Inviting Authority shall also publish the notice inviting tenders in Indian Trade Journal and in daily newspapers having wide circulation depending upon the value of the procurement prescribed, which only shows that publication depends on the value of the work to be executed. As per Rule 9(a) of the Tamil Nadu Transparency in Tenders Rules, 2000, if the value of the procurement exceeds Rs.25 lakhs, then, notice inviting tenders and decisions on tenders have to be published in State Tender Bulletin. As per Rule 11(1), the Tender Inviting Authority shall have the notice inviting tenders published in the Indian Trade Journal in all cases where the value of the procurement exceed Rs.50 crores. As per Rule 11(4), "the notice inviting tender shall be given due publicity in newspapers and also on notice boards in the District Offices. For tenders above rupees fifty lakhs, Director of Information and Public Relations will publish the notice inviting tenders as per instructions of the tendering department..." Therefore, the aforesaid rules would not be applicable to the case on hand as the value of all the 18 works is below 10 lakhs. Further, as per Rule 8, "Subject to the provisions of Rule 10, notices inviting tenders and decisions on tenders in all cases where the value of the procurement exceeds rupees five lakhs or below rupees twenty five lakhs shall be published in the District Tender Bulletin of the district where the headquarters of the Tender Inviting Authority is located and in the district where the work is to be executed or the goods and services supplied." Even this Rule is not applicable to the case of the petitioner. As per Rule 12 of the said Rules, "the tender inviting authority should send the notice inviting tenders to all possible tenderers including registered contractors directly."

According to the learned Additional Government Pleader, the petitioner was sent notice regarding the tender called for, which is stoutly denied by the learned counsel for the petitioner. If at all, the petitioner can attack the impugned work order, it can be only for violation of Rule 12, as the contention of the petitioner regarding non-publication is not supported by the provisions under the Act, as the value of the respective works is below Rs.10 lakhs.

8. Normally, an authority is expected to act as per the Rules. When a Rule contemplates about service of notice, it is expected that the notice should be sent only by RPAD as, in case of any dispute, the acknowledgement card can be produced and the dispute can be resolved effectively. But, in the case on hand, it is submitted by the learned Additional Government Pleader that notices were sent only by ordinary post. Therefore, hereinafter, the authority shall send notices through RPAD only, to the registered contractors to comply with Rule 12 of the above said Rules. In this case, though there is no proof available, this Court cannot ignore the submission made by the learned Additional Government Pleader that notices were sent through ordinary post.

9. Apart from that, though the work order was issued on 17.07.2015 the petitioner had approached this Court only on 24.08.2015 stating that the work order was issued only on 21.08.2015. However, to substantiate the stand of the petitioner, in this regard, there is no proof available before this Court. By the time, the petitioner approached this Court, most of the works had already commenced. In fact, the Commissioner's report revealed that 12 works had already been completed while 6 works were under way. In such circumstance, the relief sought by the petitioner cannot be granted. Since there was a delay on the part of the petitioner in approaching this Court and also due to completion of majority of the works, allotted by virtue of the impugned work order, this Court is not exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. Hence, the writ petition fails and the same is dismissed. No costs. It is open to the respondents to settle the amounts in respect of the works completed by respondents 6 to 10. No costs.

sd/
ASSISTANT REGISTRAR (CS-IV)

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SUB-ASSISTANT REGISTRAR

nv

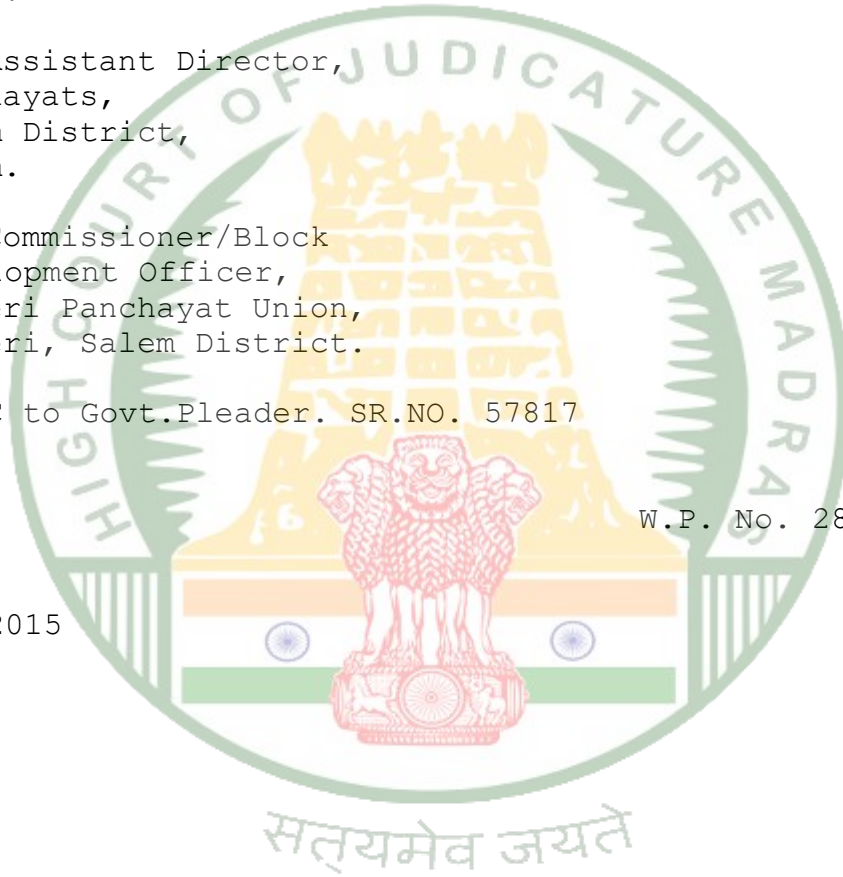
To

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+1 CC to Govt.Pleader. SR.NO. 57817

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CO-GJ
JD 20/11/2015



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