

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.3167 OF 2015
and M.P.No.1 of 2015

M/w.Om Sakthi Constructions
Rep. by its Partner,
S.Jeevarathinam
No.11, Annai Velankanni Street,
Kamarajar Nagar,
Puducherry - 605 011.

.. Petitioner

Vs.

The Superintending Engineer,
Bus Roads Department,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the impugned order in Pe.Saa.Thu.Na.Ka.No.B1/2681/2014, dated 28.01.2015 on the file of the respondent, quash the same.

For Petitioners : Mr.S.Doraisamy

For Respondents : Mr.P.V.Selvakumar
Standing Counsel

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.P.V.Selvakumar, learned Standing Counsel for the respondent.

2. The petitioner has filed this writ petition challenging the order dated 28.01.2015, by which, the petitioner has been blacklisted from the list of contractors of the respondent Corporation.

3. The petitioner is a civil engineering contractor registered with the respondent and he entered into an agreement for laying of the roads. He is stated to have completed the work on 03.12.2012 and the petitioner stated that he has done the work as per specifications. The payment for work done was also sanctioned. In terms of the contract, there is a defects liability for a period of three years.

4. The petitioner received a notice on 31.10.2014 stating that the road work done by them is found to be damaged and the repair had to be carried out by the Corporation themselves by incurring expenses to the tune of Rs.9.94 lakhs. The petitioner was directed to pay the said amount.

5. The petitioner sent a reply dated 17.11.2014 stating that the work was executed as per the specifications and the Corporation has retained 2.5% of the contract amount for the defect liability and the amount alleged to have been spent by the Corporation is a huge sum and the petitioner cannot be directed to pay the amount and pointed out that they have done work to the satisfaction of the Corporation and the action proposed to be taken against them is not sustainable. Subsequently, there was no further communication. Even after the explanation, the impugned order has been passed. In the impugned order, the allegation is that the petitioner has not paid the sum of Rs.9.94 lakhs within 15 days period. Consequently, the respondent Corporation has blacklisted the petitioner.

6. It is to be noted that in the show-cause notice dated 31.10.2014 there was no proposal made proposing to blacklist the petitioner as a registered contractor upon their failure to remit the amount of Rs.9.94 lakhs. Therefore, to that extent the impugned order is to be held to be unsustainable, since the same has been passed without affording opportunity to the petitioner.

7. That apart, insofar as the amount demanded from the petitioner, namely, Rs.9.94 lakhs is concerned, it is seen that no details has been furnished to the petitioner as to how the amount has been arrived at. In fact, the petitioner would state that they have done the work to the full satisfaction of the respondent Corporation and payment has been released and 2.5% of the contract amount has been withheld by the respondent. Therefore, prior to issuing the demand on the petitioner, the respondent ought to have furnished the full breakup details of the expenditure incurred, namely, Rs.9.94 lakhs and after affording an opportunity, should have been proceeded to recover the money. This is also not done by the respondent Corporation.

8. However, the petitioner in order to establish his bonafide has to deposit the amount to the respondent Corporation by way of Demand Draft subject to further orders to be passed by the respondent Corporation.

9. Accordingly, this writ petition is disposed of in the following terms:

- (1) The impugned order blacklisting the petitioner from the list of registered contractor is quashed ;
- (2) The respondent Corporation is directed to proceed further afresh after issuing show cause notice to the petitioner;
- (3) The petitioner is directed to deposit a sum of Rs.9.94 lakhs by way of Demand Draft to be drawn in favour of the Commissioner, Corporation of Chennai, without prejudice to the rights of the petitioner as well as the respondent corporation; and
- (4) On such action being initiated by the respondent Corporation, the petitioner is entitled to place all their objections in writing and after conducting enquiry fresh order shall be passed on merits and in accordance with law, within a period of three months from the date of receipt of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

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-s/d-

Assistant Registrar (CS-II)

Dt:

True Copy

Sub-Assistant Registrar

To

The Superintending Engineer,
Bus Roads Department,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

+ 1 cc to Mr.S.Doraisamy, Advocate SR 7231

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