IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2016

Coram

The Hon'ble Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11525 of 2016
&
W.M.P.No.9953 of 2016

P.Gopinathan ...Petitioner

Vs.

1 The District Collector
Salem District Salem.

2 The Project Director
District Rural Development Agency (DRDA)
Salem-1.

3 The Block Development Officer
(Village Panchayat) Kolathur Block Mettur
Taluk Salem District.

4 The Commissioner
The Block Development Officer (Block
Panchayat) Kolathur Block Mettur Taluk
Salem District.

5 M.C.M. & Co. Rep.by M.R.Kumar
Mettupalayanur Karungallur Post Mettur
Taluk Salem District-636 303.

6 Tmt.G.Thangam
W/o.Mr.Govindan Ramdoss Nagar Govindapadi
Mettur Taluk Salem District.

7 The Assistant Commissioner
Commercial Taxes Omalur.
R-7 is suo-motu
impleaded as per Order Dated:31/03/2016 by
T.S.S J. in WP.11525/2016

8. The Joint Commissioner (Territorial)
Commercial Taxes
Salem Division, Salem
R-8 is suo-motu
impleaded as per Order Dated:20/04/2016 by
T.S.S J. in WP.11525/2016 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus restraining the respondents 1 to 4 from settling the bills of the respondents 5 and 6 till the disposal of the petitioner's representation dated 02.03.2016.

For Petitioner : Mr.K.Elangoo
For Respondents : Mr.R.M.Muthukumar, Govt.Advocate for R1 and 2

Mr.A.Rajaperumal for R3 and 4

Mr.M.R.Jothimanian for R5 and 6

Mr.S.Kanmani Annamalai, Spl.Govt.Pleader (Taxes) for R7 and 8

O R D E R

Heard learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner has filed this writ petition praying for issuance of writ of mandamus to restrain the respondents 1 to 4 from settling the bills of the respondents 5 and 6 till the disposal of the petitioner's representation.

3. The petitioner was appointed as Block Development Officer (BDO) on 01.04.2014 and was transferred and posted as BDO, Village panchayat in Kolathur block on 29.06.2015. While going through the records, it came to the notice of the petitioner that the payments to the respondents 5 and 6 for contract works executed for the Panchayat has been made without deducting of taxes. Therefore, he submitted representation stating that the bills should not be settled without recovery of taxes. The representation given by the petitioner evoked partial response and the respondents 5 and 6 effected two payment of Rs.1,52,850 and Rs.2,86,760/- respectively. However, the total amount said to be due and payable is more than Rs.45,00,000/-. In order to ascertain a clear picture, this Court suo motu impleaded The Assistant Commissioner,Commercial Taxes, Omalur as the 7th respondent and this court passed the following order:

The petitioner has filed this writ petition praying for issuance of a writ of Mandamus to restrain the respondents 1 to 4 from settling the bills of the respondents 5 and 6 till the disposal of his representation, dated 02.03.2016.

2. Petitioner's case is that he was appointed as Block Development Officer, and he was discharging his duties without any complaints. While so, he was transferred as BDO (Village Panchayat) in the Kolathur Block. On verifying the records, it came to the petitioner's knowledge that the 5th and 6th respondents have executed several road works in Kolathur block and DRDA, Salem, and they have flouted the norms by colluding with the officials and the politicians, as a result of which, the work was deficient.

3. The petitioner filed a writ petition being W.P.No.34990 of 2015, seeking for direction upon the Director of Highways Research Station, Chennai, to inspect and test the work carried out by respondents 5 and 6 in Kolathur block and in the said Writ Petition, notice has been ordered and the writ petition is pending. While so, the petitioner states that he recently found that the 5th and 6th respondents have manipulated the statutory forms to be filed under the provisions of Tamilnadu Value Added Tax and defrauded the Government by not paying the tax and without deducting TDS etc., Therefore, the petitioner submitted a representation to the authorities to take appropriate action and in the meantime not to disburse any amount.

4. Learned counsel for the respondents 3 and 4 on instructions submitted that on coming to know an illegality committed by the respondents 5 and 6, the Assistant Commissioner, Commercial Tax, Omalur had issued directions to the 3rd respondent vide communication dated 21.03.2016 to immediately take steps for recovery of the entire tax amount, which ought to have been deducted and sourced, and the total amount which is to be

paid by the respondents 5 and 6 is more than Rs.45,00,000/-.

5. Learned counsel for the 3rd respondent has produced before this Court two receipts to show that payments have been made by the respondents 5 and 6 which are only Rs.1,52,850 and Rs.2,86,760/- respectively. It is not known as to what has happened to the remaining amount. Thus, the issue is very serious in nature and the matter requires immediate attention, for which purpose, respondents 3 and 4 should appear in person. Notice to the respondents 5 and 6 through Court and privately returnable by 20.04.2016. Assistant Commissioner, Commercial Taxes, Omalur is suo motu impleaded as 7th respondent in this writ petition. Learned counsel for the petitioner is also permitted to serve notice on the Special Government Pleader, Taxes, who will accept it on behalf of the 7th respondent.

Post the matter on 20.04.2016."

Pursuant to the said order the learned Special Government Pleader (Taxes) had appeared before this Court and submitted that both the respondents 5 and 6 have not filed their returns for the past two assessment years and to safe guard the interest of Revenue, learned Special Government Pleader suggested that the BDOs viz the 3rd and 4th respondent may be directed to recover 2% being the tax to be deducted at source from all payments to be effected to the respondents 5 and 6 which shall be remitted to the 7th respondent and thereafter it is open to the 5th and 6th respondents to approach the 7th respondent and justify their claim. One more request made by the Special Government Pleader is to implead the The Joint Commissioner (Territorial), Commercial Taxes,Salem Division, Salem as the 8th respondent. This request is accepted and accordingly the said authority is suo motu impleaded as 8th respondent, cause title be suitably amended.

4. In the light of the above, writ petition is disposed of by directing the respondents 3 and 4 to deduct tax at the rate of 2% from all the bills which are to be settled to the respondents 5 and 6 and the remaining amount shall be paid to the respondents 5 and 6 subject to satisfaction of other conditions. The amount so deducted as TDS shall be remitted to the 7th respondent by the respondents 3 and 4 leaving it open to

the respondents 5 and 6 to file appropriate application before the 7th respondent to establish their case. The 8th respondent shall ensure the above direction is scrupulously complied with. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

true Copy

Sub-Assistant Registrar

To
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Commercial Taxes Omalur.

6. The Joint Commissioner (Territorial)
Commercial Taxes
Salem Division, Salem

+1 cc to Mr.K.Elangoo Advocate sr.24372
+2 ccs to Mr.M.R.Jothimanian Advocate sr.24408
+1 cc to Special Government Pleader(Taxes) sr.24455

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