

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.20028 of 2016 and  
W.M.P.Nos.17261 and 17262 of 2016

M.S.Engineers  
rep. by its Managing Partner,  
No.19, Edayar Street,  
Coimbatore-641 001. ... Petitioner

Vs.

Coimbatore City Municipal Corporation  
rep. by its Commissioner,  
Coimbatore-641 001. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Mandamus, forbearing the respondent herein from proceeding further against the petitioner without furnishing the copies of the documents relied upon by the Enquiry Officer and Measurement Books and affording an opportunity to enable the petitioner to examine the officials through its Advocates as requested in its petition dated 05.06.2016.

For Petitioner : Mr.K.Duraisami,  
Senior Counsel  
for Mr.Kandhan Duraisami

For Respondent : Mr.R.Yashod Vardhan,  
Senior Counsel  
for Mr.R.Sivakumar

ORDER

Heard Mr.K.Doraisami, the learned Senior Counsel, assisted by Mr.Kandhan Duraisami, the learned Counsel appearing for the petitioner and Mr.R.Yashod Vardha, the learned Senior Counsel, assisted by Mr.R.Sivakumar, the learned Standing Counsel for the respondent Corporation.

2. The present proceeding is sequel to an earlier order passed by this Court in W.P.No.36924 of 2015. In the said Writ

Petition, the petitioner sought for quashing the order dated 19.08.2015 in and by which the petitioner was blacklisted from the list of approved contractors of the respondent Corporation. The said writ petition was partly allowed by an order dated 15.02.2016 and the operative portion of the said order reads as follows:

'16. In my view, these decisions do not render support to the case of respondent since they are all pertaining to the award of contracts. In the instant case, the petitioner is an aggrieved individual, having been issued with an order terminating his license, as well as blacklisting him as a contractor of the Corporation. Blacklisting a contractor is a very serious matter, as it would have a great impact on the entire business activities, rather it would result in a civil death of a firm or an organisation. Therefore, principles of natural justice are required to be followed since the order results in serious civil consequences. It is made clear that these observations are made on the legal aspect and do not concern about factual allegations. In the case of the petitioner is concerned, this Court is constrained to make such observations in the light of the fact that the petitioner has not been furnished with the copy of the enquiry report which appears to be the basis of the decision dated 15.07.2015, taken by the Commissioner, which ultimately resulted in the decision of the Council on 27.07.2015 and issuance of the impugned order. Therefore, without furnishing the Enquiry Officer's report, action could not have been proceeded further. Even assuming that the petitioner did not seek for a copy of the same, the Enquiry Officer's report being a very vital document and the observations made therein being adverse to the interest of the petitioner, it ought to have been communicated to the petitioner. Hence on this technical aspect, this Court is inclined to interfere with the impugned order.

17. Accordingly, the Writ Petition is partly allowed and the impugned order is set aside and the respondent is directed to furnish the Enquiry Officer's report as well as his order dated 15.07.2015, which have been referred to in the impugned order within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said report/order, the petitioner is permitted to submit his explanation within a period of three weeks thereafter, and on receipt of the same, the

respondent shall afford an opportunity of personal hearing to the petitioner to put forth its submissions, based on which the respondent shall take a reasoned decision on merits and in accordance with law, within a period of eight weeks on which the personal hearing is concluded.

18. Though this Court has set aside the impugned proceedings and remanded the matter for fresh consideration, since the petitioner's license had already been cancelled, apart from the fact that the license period is already over, the petitioner cannot participate in any tender of the respondent Corporation or any other Corporation or Government bid. This direction shall be subject to the ultimate decision, that will be taken by the respondent in terms of the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

In terms of the above order, this Court directed the respondent Corporation to furnish the Enquiry Officer's report as well as the order dated 15.07.2015 referred to in the impugned order dated 19.08.2015 within a time frame and the petitioner was permitted to submit his explanation within a period of 3 weeks thereafter and an opportunity of personal hearing was directed to be granted.

3. The respondent Corporation, vide Communication dated 11.03.2016, has furnished the findings of the Enquiry Committee, which runs to about 43 pages. On receipt of the same, the petitioner submitted a representation on 20.30.2016 stating that the copy of the order passed by the Commissioner dated 15.07.2015 and the basis for the decision of the Council of the Corporation held on 27.07.2015 have not been furnished and these documents are required as they have been referred to in the impugned order dated 19.08.2015. Pursuant thereto, these documents have been furnished by the respondent Corporation vide Communication dated 31.03.2016. After the receipt of these documents and other records, the petitioner submitted a representation on 05.06.2016 in which the petitioner sought for the following :

''(a) furnish the copies of the photographs relied on by the Enquiry Officer in connection with Charge Nos.1, 2, 3, 4 and 13.

(b) furnish the copies of the relevant files relied on by the Enquiry Officer in connection with Charge Nos.3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.

(c) furnish copies of Measurement Books connected to all the 21 charges.

(d) accord full opportunity to the petitioner to bring out the truth by allowing the counsel for the petitioner to cross-examine the above mentioned officials.''

4. It appears that since the documents sought for by the petitioner have not been furnished and the personal hearing was fixed on 14.06.2016, the petitioner has approached this Court by way of this Writ Petition praying for issuance of a Writ of Mandamus, forbearing the respondent herein from proceeding further against the petitioner without furnishing the copies of the documents relied on by the Enquiry Officer and the Measurement Books and affording an opportunity to enable the petitioner to examine the officials through its Advocates as requested in its petition dated 05.06.2016.

5. A counter affidavit has been filed by the Commissioner of the respondent Corporation, virtually, foreclosing the request made by the petitioner and taking a stand that because the earlier Writ Petition was only partly allowed, it is deemed that the findings of the Enquiry Committee are correct and proper.

6. After hearing the learned Senior Counsel for the respondent Corporation and perusing the counter affidavit filed by the respondent, this Court is unable to subscribe the stand taken by the respondent in the counter affidavit and the respondent Corporation foreclosed the request made by the petitioner by way of such counter. Therefore, in my view, the averments set out in the counter affidavit stand eschewed.

7. The only thing that has to be seen is whether the petitioner has been afforded a fair and reasonable opportunity to put forth his defence in the enquiry to be conducted. It is stated that the Enquiry Officer is in the cadre of Assistant Commissioner. This Court does not agree with the same since the enquiry which is sought to be conducted is in respect of an earlier order where the petitioner was blacklisted and that order having been set aside and the matter having been remanded to the respondent for fresh consideration, the Enquiry Officer should be none other than the Commissioner of the Respondent Corporation itself. To this observation made by this Court, the learned Senior Counsel appearing for the respondent does not have any serious objection and would request this Court to pass appropriate orders.

8. With regard to the request for the copies of the documents made by the petitioner as mentioned above, though the respondent has taken a stand earlier that photographs are not available, it appears that photographs are available and therefore, there would not be any difficulty for the respondent Corporation to furnish the photocopies of the photographs sought for. So far as furnishing copies of the files and the Measurement Books are concerned, the petitioner is not justified in asking for the same because the files may contain voluminous records and some may not pertain to the petitioner. Nevertheless, these records having been relied on by the Enquiry Committee to hold that the charges are proved, the petitioner is entitled to pursue the files and the Measurement Books. Thus, so far as the files and the measurement books as requested by the petitioner in Clause (b) and Clause (c) above are concerned, the respondent need not furnish copies of the same. But, shall give adequate opportunity to the petitioner to pursue the files and the Measurement Books.

9. With regard to the plea for allowing an Advocate to cross-examine the officers etc. is concerned, the enquiry directed to be conducted by the respondent Corporation is for the purpose that the petitioner is given reasonable and adequate opportunity to put forth his defence. Undoubtedly, the enquiry proceedings is not a criminal trial. Therefore, the question of engaging a Counsel for cross-examining the officers or leading oral evidence does not arise. To ensure fairness, the petitioner should be given full opportunity to put forth his defence and it would be sufficient to give an opportunity of personal hearing after the petitioner peruses the documents and submits the additional objections.

10. It is submitted that a Counsel was engaged by the petitioner because the Law Officer of the Corporation of Coimbatore was also present in the enquiry proceedings. Since this Court has stated that the presence of the counsel should be avoided, equally, it applies to the respondent Corporation as well and the Law Officer should not form part of the enquiry proceedings and this problem will not arise because this Court is inclined to direct the Commissioner of the respondent Corporation to act as an Enquiry Officer.

11. In the light of the above and the broad consensus of the parties, the Writ Petition is disposed of on the following terms:

1. The Respondent Corporation is directed to furnish photocopies of the photographs relied on by the Enquiry Committee;

2. The petitioner is permitted to peruse the relevant files as well as the relevant measurement books with the assistance of an Engineer/s or an authorised representatives to assist him in perusal as well as during the enquiry. The number of persons to assist the petitioner is restricted to two only;

3. The request for permitting counsels to assist the petitioner is rejected and so also the prayer for cross-examination also stands rejected;

4. As this court has eschewed the averment set out in the counter affidavit, the Commissioner of the respondent Corporation, who has been nominated as an Enquiry Officer, shall conduct the enquiry in a fair manner without being influenced by the stand taken in the Counter Affidavit which stand effaced and eschewed;

5. Ten days should be granted to the petitioner to pursue all the files/Measurement Books as it appears to be voluminous;

6. The petitioner is permitted to engage the services of not more than two persons to assist him in perusal of records and during the enquiry since it is stated that the records are voluminous; and

7. After perusal of the files, the petitioner is granted 15 days time to submit his further objections and after which the enquiry shall be conducted by affording an opportunity of personal hearing to the petitioner assisted by the said two persons who will be nominated by the petitioner.

No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

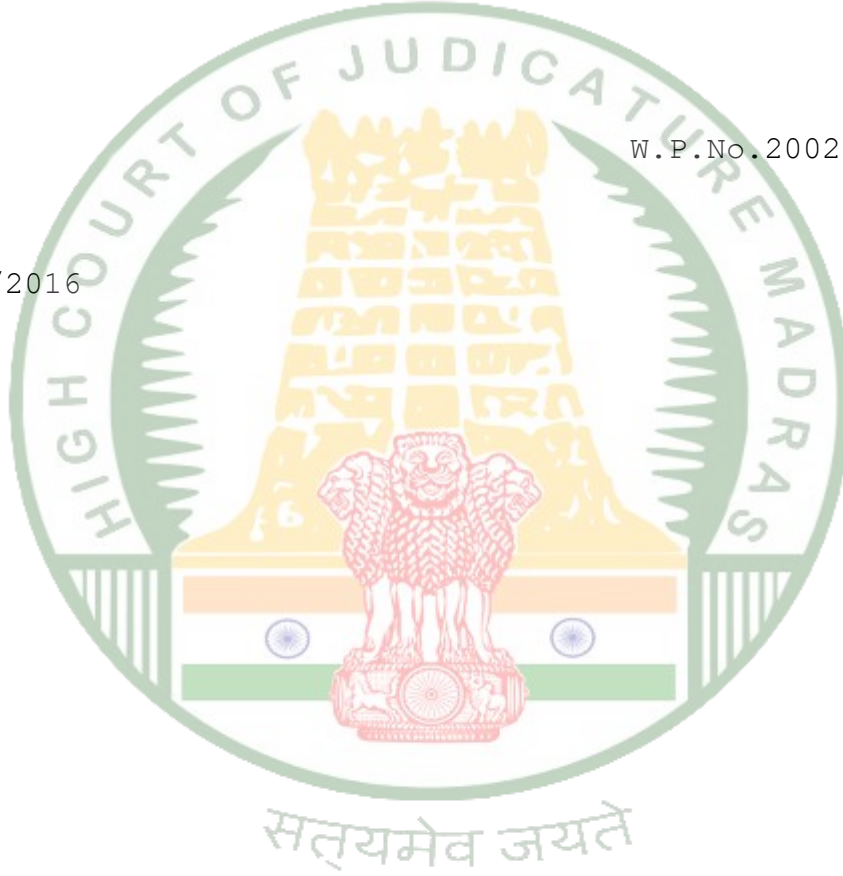
To

The Commissioner,  
Coimbatore City Municipal Corporation,  
Coimbatore-641 001.

+3cc to M/S.Muthumani Doraisami, Advocate Sr.51068[21/09/2016]  
+1cc to M/S.R.Sivakumar, Advocate Sr.51034

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srg 20/09/2016

W.P.No.20028 of 2016



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