

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P. No. 34990 of 2015

&

M.P. No. 1 of 2015

Mr.P. Gopinathan

... Petitioner

Vs.

1. The District Collector,
Salem District, Salem.
2. The Director,
The Highways Research Station,
Guindy, Chennai - 600 032.
3. The Block Development Officer,
(Village Panchayat),
Kolathur, Mettur Taluk,
Salem District.
4. M.C.M. & Co.,
rep. by Mr.R.Kumar
Mettupalayanur,
karungallur PO,
Mettur Taluk,
Salem District - 636 303.
5. Tmt. Thangam
6. The President,
Kannamoochi Village Panchayat,
Mettur Taluk, Salem District.

... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 1st respondent to refer the road works namely 1. Moolakadu Panchayat for laying two layer roads measuring 340 meters, and 2. Pannavadi Chandrikapuram Kaliyamman Koil to Kaveri River including culvert and retaining wall 3. Retaining wall at Kannamoochi Chettiur grave yard carried out by the 4th and 5th

respondents at the 3rd respondent block to the 2nd respondent for inspection and test till the disposal of the petitioner's representation dated 8.10.2015.

For Petitioner : Mr.S. Ilamuhil

For Respondents : Mr.V. Jayaprakash Narayanan,
Special Government Pleader
for R1 & R2
Mr.V. Jayaprakash Narayanan
for R3 & R6
Mr.M.R. Jothimanian for R4 & R5

O R D E R

The petitioner, who is the suspended Block Development Officer, Kolathur Block, has filed the present writ petition for issue of a Writ of Mandamus directing the 1st respondent to refer the road works namely 1. Laying two layer roads in Moolakadu Panchayat measuring 340 meters, 2. Laying of two layer roads from Pannavadi Chandrikapuram Kaliamman Koil to Kaveri River including culvert and retaining wall 3. Retaining wall at Kannamoochi Chettiyur grave yard to AGAMT Tank carried out by the 4th and 5th respondents at the 3rd respondent block to the 2nd respondent for inspection and test till the disposal of the petitioner's representation dated 8.10.2015.

2. The petitioner was appointed as Block Development Officer on 01.04.2014 under the control of the 1st respondent. On 29.06.2015, the petitioner was transferred and appointed as Block Development Officer (Village Panchayat) in the Kolathur Block. After taking charge, the petitioner verified the records and inspected all the ongoing contractual works being carried out by the contractors within the limit of his block. The said works were sanctioned by the 1st respondent vide proceedings relating to Na.Ka. No. 1290/2015/A5 dated 16.04.2015, Na.Ka.No. 1463/2015 A5 dated 24.04.2015 and Na.Ka. No. 3515/2015 dated 26.06.2015. Pursuant to the same, the following works were allotted to the 4th and 5th respondents:

(i) Work A - Laying of two layer roads measuring 340 meters at Moolakadu Panchayat for a sum of Rs.5.50 lakhs (allotted to 4th respondent)

(ii) Work B - Laying of two layer roads from Pannavadi Chandrikapuram Kaliamman Koil to Kaveri River including culvert and retaining wall for a sum of Rs.29.80 lakhs (allotted to 5th respondent); and

(iii) Work C - Construction of retaining wall from Kannamoochi Chettiyur Graveyard to AGAMT Tank for

a sum of Rs.19.80 lakhs (allotted to 5th respondent).

All the above works come under Tamil Nadu Village Habitation Improvement Scheme and Infrastructure Gap Filling Fund Scheme 2015-2016. According to the petitioner, the 4th and 5th respondents, flouting all the norms and procedures, hurriedly carried out the above said three works without following and conducting quality control test and before laying the roads, none of the field and laboratory tests required to be carried out by the Contractor and Assistant Engineer, as per Rural Roads Specifications as stipuated in Rural Road Manual issued by the Union Ministry of Rural Development were done. Hence, the petitioner issued a notice in Roc.No. 279/2015/T1 dated 31.07.2015 to the 4th respondent calling upon him to adhere to the norms and procedures of the above said test; another notice in Roc.No. 279/2015/T1 dated 07.08.2015 to the 5th respondent for breaching of Tamil Nadu Tender Transparency Act, 2000 since the 5th respondent, having quoted 5.82% less estimate rate, remitted only Rs.59,600/- as Contract Deposit instead of Rs.2,68,200/- and another notice was issued in Roc.No. 1947/2015/T2 dated 17.08.2015 to the 6th respondent to invite re-tender for Work C due to breach of Tamil Nadu Tender Transparency Act, 2000. It is the further case of the petitioner that aggrieved by his act, respondents 4 to 6, stage-managed a bribery case against the petitioner, resulting in his arrest by framing him under Sction 7 of PC Act, 1988. Subsequently, after coming out of jail, the petitioner sent a representation to the 1st respondent dated 08.10.2015 calling upon him to take action against the two erring contractors and he had also requested the 1st respondent to direct the 2nd respondent to carry out "Quality Assurance and Research" and "High Quality Assurance Clause Q3" with regard to the road and retaining wall works. Since no action has been taken, the petitioner has come before this Court.

3. Heard Mr.S. Ilamuhil, learned counsel for the petitioner, Mr.V. Jayaprakash Narayanan, learned Special Government Pleader for respondents 1 and 2, Mr.M.R. Jothimanian, learned counsel for respondents 4 and 5 and Mr.V. Jayaprakash Narayanan for respondents 3 and 6.

4. Though Mr.M.R. Jothimanian, learned counsel for respondents 4 and 5 would submit that the petitioner demanded bribe, even for smaller works executed by contractors, which ultimately resulted in registration of criminal case against the petitioner, a perusal of the service records of the petitioner produced by the learned Special Government Pleader would show that the petitioner was not involved in any kind of act of misappropriation, except non-reporting for duty on one occasion, on account of his wife's delivery. Therefore, from the records,

it is evidently clear that except the present case, which, according to the petitioner, was stage-managed by respondents 4 to 6, there is nothing against the petitioner.

5. An officer, who is entrusted with supervision of execution of works in his block, has got a duty to ensure that the works are executed properly and with quality. Irrespective of his claim regarding the trap case, into which this Court is not inclined to go in detail, the quality of the works executed by the 4th and 5th respondents have to be tested, especially, when it is being questioned by an officer, who was in-charge, at the time of execution of the said works. If really, the 4th and 5th respondents had executed the works allotted to them, in strict adherence to the standards of quality, then there should not be any problem for subjecting the works done by them for re-inspection and re-testing.

6. Therefore, the 1st respondent is directed to refer the works, namely, Work A, Work B and Work C to the 2nd respondent for inspection and testing within a period of eight weeks from the date of receipt of a copy of this order. Till the assessment of quality of the works executed, is completed, on re-inspection, further work shall not be proceeded with by the 4th and 5th respondents.

7. Since it is submitted that for the work already executed by respondents 4 and 5, they are entitled to payment, it is appropriate to direct the 3rd respondent to process the bill claim of 4th and 5th respondents, as per law. If the 3rd respondent decides to pay the eligible amount to the above said respondents, then, in that event, he shall inform the details of the same to the 4th and 5th respondents within a period of two weeks and thereafter, the 3rd respondent shall make the payment after getting a bank guarantee from each of respondents 4 and 5, equivalent to the amount to be disbursed to them.

8. Further, as per the order of this Court, passed today, if it is found, after re-inspection and re-testing to be done by the 2nd respondent, that the works allotted to the 4th and 5th respondent have not been executed properly, with quality, then the 3rd respondent is at liberty to invoke the bank guarantee furnished by the 4th and 5th respondents and encash it.

9. The writ petition is disposed of with the above observations. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nv

To

1. The District Collector,
Salem District,
Salem.
 2. The Director,
The Highways Research Station,
Guindy, Chennai - 600 032.
 3. The Block Development Officer,
(Village Panchayat),
Kolathur, Mettur Taluk,
Salem District.
- + 1 CC to Mr.M.R.Jothimanian, Advocate SR NO 36725[6/7/16]

W.P. No. 34990 of 2015

RJ(CO)
CA(05/07/2016)

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