

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35937 of 2015

G.Kumaresan

..Petitioner

Vs.

The Principal Secretary,
Environment and Forests Department,
State of Tamil Nadu,
Secretariat, Chennai-9.

2.The Principal Chief Conservator of Forests (HOFF),
Panagal Maligai,
Saidpet, Chennai-15.

3.The Chief Conservator of Forests,
Planning and Development,
Panagal Maligai,
Saidpet, Chennai-15.

4.The District Forest Officer,
South Forest Division, Tiruvannamalai.

5.K.Rajendran,
District Forest officer,
South Forest Division,
Tiruvannamalai.

..Respondents

Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondents 1 to 3 to issue fresh cheque for a sum of Rs.18,25,652/- for the work executed by the petitioner viz., relaying black top roads at the forest road between Paramananthai and Melpattu at Chengam Range in Thiruvannamalai South Forest Division between reach 5 and 6.

For Petitioner : Mr.S.Doraisamy.

For Respondents : M/s.N.Inbanathan,
Govt.Advocate (Forests)
for R1 to R4.
Mr.V.Selvaraj, for R5.

O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come forward with the present Writ Petition seeking for issuance of mandamus directing the respondents 1 to 3 to issue fresh cheque for a sum of Rs.18,25,652/- for the work executed by the petitioner viz., relaying black top roads at the forest road between Paramananthal and Melpattu at Chengam Range in Thiruvannamalai South Forest Division between reach 5 and 6.

3.The petitioner is the Class-I contractor in Highways Department and in the Forest Department. The petitioner being a Class-I contractor and his establishment is fully equipped with all materials and machineries for executing all kinds of road works and there is no need to take lease or hire any materials or machineries from any source.

4.The fifth respondent is the District Forest Officer of South Forest Division, Tiruvannamalai. Earlier, the fifth respondent entrusted some road contracts to one P.Arulkumar, without following the procedure laid down under the Tamil Nadu Transparency in Tenders Act, 1998, the petitioner filed writ petitions before this Court in WP.Nos.30004, 30618, 32111, 32112 and 32397 of 2014 and obtained interim orders restraining the 5th respondent from executing any work. The fifth respondent disobeyed the orders of this Court. The petitioner filed two contempt petitions in Cont.P.Nos.682 and 679 of 2015 and this Court allowed the writ petitions and directed for retender and also permitted the petitioner to participate in the tender.

5.In the meanwhile, the petitioner executed following road works in Tiruvannamalai (south) Forest Division:

"relaying black top roads by using plastic wastage at the forest road between Paramananthal and Melpattu at Chengal Range in Thiruvannamalai South Forest Division between reach 5 and 6."

6.The total value of the work executed is Rs.40lakhs (Rs.20Lakh for each reach). The cheque value after deduction is Rs.36,51,304/- (each reach Rs.18,25,652/-). On 31.03.2015, the Assistant, District Forest Office, South Forest Division, Tiruvannamalai by name Manivannan called upon the petitioner to come and collect the cheque from the office for a sum of Rs.18,25,652/- for each reach. The petitioner went to the office of the 5th respondent on 31.03.2015 and met the said Assistant and signed in cheque issue register for being acknowledged the receipt of two cheque leafs bearing Nos.072721 and 072733 each for Rs.18,25,652/-.

7.The petitioner found that cheque bearing No.072733 was not signed by the 5th respondent. The 5th respondent wantonly issued the cheque without signing with an ulterior motive. The petitioner informed the same to the Assistant Manivannan,

he said that he will get signature from the 5th respondent and return back later, the said Manivannan also gave a receipt stating that the cheque was received back. The petitioner approached the 5th respondent in person, the 5th respondent informed unless the usual commission at the rate of 36% of the cheque amount i.e, Rs.13,14,500/- out of total amount of Rs.26,51,304/- is paid, he will not release the cheque.

8.The petitioner also lodged a complaint in the local police station and Director of Vigilance and Anti Corruption. Then, the petitioner filed writ petition in WP.No.23425 of 2015 to direct the Director of Vigilance and Anti Corruption to take appropriate Action for the offence committed by the District Forest Officer/Rajendran.

9.Thereupon, the Directorate of Vigilance and Anti Corruption after thorough investigation found the offences were committed by the said District Forest Officer (south) Rajendran, in connivance with Assistant Manivannan and contractor Arulkumar and registered a case in Cr.No.1 of 2015 on 15.08.2015 on the file of Inspector of Police, Vigilance and Anti Corruption, Tiruvannamalai.

10.The petitioner states that the cheque dated 31.03.2015 issued for the works already executed has now become time barred and invalid. Since, the payment was not made, the petitioner gave his representation to the respondents 1 to 3 on 08.10.2015 requesting to make payments for the work already executed. But till date no order has been passed by the respondents 1 to 3 and no payment was made till date. Hence, the petitioner filed the present writ petition.

11.The fifth respondent filed his Counter interalia stating that unless a sum of Rs.13,14,500/- representing 36% of the cheque amount is paid, the cheque will be released is a deliberate and false statement. The cheques were duly signed by the fifth respondent for the works already executed by the petitioner and thereafter the cheques were dealt with by the Assistant in charge. The complaint lodged by the petitioner before the Inspector of Police, Town Police Station, Tiruvannamalai was closed as it is found to be untrue. The case to register the complaint, filed by the petitioner in CrI.OP.No.17255 of 2015 was closed by this Court on 14.07.2015 giving liberty to the petitioner to work out his remedy in the manner known to law. Again, the petitioner filed WP.No.23425 of 2015 seeking for the same relief amounts to abuse of process of Court, the remedy available to the petitioner in view of the order made in CrI.OP.No.17255 of 2015 is to file a private complaint. The registration of FIR.No.1 of 2015 dated 15.08.2015 by the Inspector of Police, Vigilance and Anti Corruption, Tiruvannamalai to the facts and circumstances of the case is legally impermissible and the petitioner has deliberately omitted to implead the other Contractor Arulkumar

as a party respondent. Therefore, prayed for dismissal of the writ petition.

12. Heard the submissions of learned counsel appearing for the petitioner and the learned Government Advocate (forests) who accepts notice on behalf of the respondents 1 to 4.

13. It is not in dispute that the petitioner is entitled for the cheque amount of Rs.18,25,652/-. That being so, this Court without going into other aspects made in the affidavit as well as in the counter affidavit, directs the petitioner to submit a fresh representation to the respondents 1 to 3 within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the respondents 1 to 3 are directed to consider the representation of the petitioner, on merits and in accordance with law and issue a fresh cheque to the petitioner for a sum of Rs.18,25,652/- within a period of two weeks, thereon.

14. The writ petition is disposed of accordingly. No costs.
tsh

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal Secretary,
Environment and Forests Department,
State of Tamil Nadu,
Secretariat, Chennai-9.
2. The Principal Chief Conservator of Forests (HOFF),
Panagal Maligai,
Saidpet, Chennai-15.
3. The Chief Conservator of Forests,
Planning and Development,
Panagal Maligai,
Saidpet, Chennai-15.
4. The District Forest Officer,
South Forest Division, Tiruvannamalai.

+ 1 cc to Mr.V.Selvaraj, Advocate Sr 15256

+ 1 cc to The Spl.Govt.Pleader (FOREST) Sr 15281

KR/10/3/16

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