

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.36924 of 2015

and

M.P.No.1 & 2 of 2015

M.S.Engineers

Represented by its Managing Partner

No.19, Edayar Street,

Coimbatore - 641 001.

... Petitioner

Vs

Coimbatore City Municipal Corporation

Represented by its Commissioner

Coimbatore - 641 001.

... Respondent

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent relating to its order in Na.Ka.No.8172/2014/MD5 dated 19.08.2015 and quash the same and direct the respondent to forthwith renew the registration of the petitioner as Class I Contractor.

For Petitioner : Mr.K. Doraisamy, Senior Counsel
for Mr.K.Muthumani Doraisamy

For Respondent : Mr.Sivakumar
Standing Counsel

ORDER

Heard Mr.K.Doraisamy, Senior Counsel appearing for the petitioner on behalf of Mr.Muthumani Doraisami and Mr.R.Sivakumar, the learned Standing Counsel appearing on behalf of the respondent and with their consent, this Writ Petition is taken up for final hearing.

2. The petitioner is a partnership firm engaged in civil construction, laying of roads, maintenance of parks, supply of labour for cleaning up the bus stands, schools, streets, road etc., Their activities are said to be restricted only within the jurisdiction of Coimbatore City Municipal Corporation. The petitioner was a registered contractor of the respondent Corporation and he is said to have been elevated from Class-III status to Class-II status by proceedings dated

14.12.2009 and thereafter as a Class-I contractor on 11.05.2011. These, according to the petitioner, was achievable only because of their sincere, devoted and hard work. The nature of works which were said to have been done by the petitioner is stated in Paragraph No.4 of the affidavit filed in support of this Writ Petition. While so, by an order dated 20.10.2014, the petitioner's license as registered contractor was suspended by the respondent Corporation, based on ten allegations.

3. The petitioner filed a Writ Petition before this Court, challenging the order of suspension in W.P.No.28550 of 2014. Since one of the allegations against the petitioner was that he was parking his heavy vehicles in Government School compound and allowing his staff to use the school premises, especially when the school was a girls school, was found to be illegal. Therefore, it appears that the vehicles, which were parked were seized.

4. When the petitioner sought for release of the vehicles, this Court held that parking of the vehicles and storing of materials by the petitioner within the campus of the Corporation School is unlawful. Therefore, the petitioner was directed to immediately remove the vehicles parked in the campus of the Corporation School. That apart, the petitioner had filed Writ Petition in W.P.No.28551 of 2014, for a direction to settle the payment in respect of the works already completed and the bills which were pending before the respondent Corporation. Another Writ Petition, being W.P.No.31532 of 2014 was filed, challenging the order dated 13.11.2014. When all these three Writ Petitions were heard, it was submitted on behalf of the petitioner that the petitioner may be permitted to approach the respondent by way of representation and the respondents were directed to take action and the petitioner was directed to submit individual representation, in respect of each of his grievances, which were to be considered.

5. As pointed out earlier, the three Writ Petitions for three reliefs namely the first writ petition challenging the order of suspension dated 20.10.2014; the second writ petition for settlement of his pending bills and third Writ Petition challenging the order dated 13.11.2014. It appears that the petitioner has submitted representation only in respect of pending bills and he has not sought for cancellation of order of suspension nor made a representation against the order dated 13.11.2014. After the Writ Petitions were disposed of, a charge memo was issued to the petitioner dated 31.03.2015 containing 21 allegations. The petitioner was granted time to submit his explanation. The petitioner submitted his explanation on 19.04.2015. At that stage, the petitioner filed another Writ Petition in W.P.No.13537 of 2015, challenging the order dated 11.04.2015, after which the petitioner submitted his

application for renewal of his license on 02.06.2015. Since the said application for renewal of his license was not considered, he filed another Writ Petition before this Court in W.P.No.17373 of 2015. The said Writ Petition was disposed of by an order dated 24.06.2015, directing the respondents to consider the petitioner's representation.

6. In the meantime, based on the explanation given by the petitioner, which was found to be not satisfactory, a Enquiry Officer was appointed to conduct an enquiry into the charges and a team of technical expert to assist the Enquiry Officer was also appointed, as inspection had to be conducted.

7. The learned Senior Counsel for the petitioner would state that those inspecting officers were nominated are all the officers who had been inspecting the petitioner's work and approved the bills, pursuant to which, the petitioner has received the payments. The Enquiry Officer directed the petitioner to appear for the enquiry on 15.07.2015. In the counter affidavit, it is stated that an authorised representative of the petitioner firm was present before the Enquiry Officer and he submitted a letter dated 15.07.2015 stating that in addition to what has already been stated in the explanation, they do not wish to add anything. The Enquiry Officer is said to have submitted a report in his proceedings dated Na.Ka.No.4055/15/Ma1. This report was taken into consideration and it appears that the Commissioner has passed an order dated 15.07.2015, pursuant to which Council of the respondent Corporation by resolution No.157 dated 27.07.2015 has decided to cancel the petitioner's license and to blacklist him from the list of approved contractors.

8. The learned Senior Counsel's argument is that the Enquiry Officer's report dated 15.07.2015 was not furnished to the petitioner, the proceedings of the Commissioner was not furnished to the petitioner and the entire proceedings have been conducted in a hurried manner, and all along the petitioner has been discharging his duties to the utmost satisfaction of all concerned and for certain malafide reasons, the impugned proceedings have been passed.

9. The learned Standing Counsel for the respondent had elaborately taken this Court to the factual matrix and by referring to the counter affidavit submitted that the petitioner did not seek for a copy of the enquiry officer's report and therefore non-furnishing of the same would not vitiate the proceedings. That apart, though an opportunity was granted to the petitioner to attend the oral enquiry, he has not utilised the opportunity and therefore the petitioner cannot take such a stand before this Court. Further, it is submitted that whatever be the pending bills, it is a separate matter which cannot be

roped into in the present litigation. Further, in the present petition, by referring to the charges which have been proved, it is submitted that the charges are very serious in nature and therefore the Corporation Council took an informed decision and passed the impugned order. In support of his contention, the learned counsel has relied on the decision of the Hon'ble Supreme Court in Jagdish Mandal Vs. State of Orissa, reported in [2007] 14 SCC 517 and Elektron Lighting Systems Pvt Ltd. and another, Vs. Shah Investments Financial Developments and Consultants Pvt Ltd. and Others Etc., reported in [2015] 8 MLJ 629 (SC).

10. After hearing the learned counsel on both sides and perusing the materials placed on record, the short issue which falls for consideration in this petition, is that whether the principle of natural justice had been followed before terminating the petitioner's contract or before blacklisting him.

11. The contention of the respondent is that they have adhered to the Circular issued to the District Collectors by the Public Works Department dated 15.11.1979. In the said circular, the Standard Code for Civil Contractors has been set out and Clause No.5 of the Circular deals with the removal from the approved list and if a person persistently violates any important conditions of the contract, he could be removed from the list of contractors. Further, in terms of Clause 5.2, the decision regarding removal from registration/suspension of business/removal from the approved list taken after the issuance of a show cause notice and consideration of representation, if any, in reply thereto should be communicated to the firm concerned. Clause 5.3 provides that such decision should be communicated to other Government Departments responsible for major construction works, for information and action, if necessary.

12. Therefore, it is submitted by the respondent that they have strictly followed the said circular which was issued by the Public Works Department to the District Collectors. Further, in the impugned order, reference has been made to the Standard Contract Terms and Conditions as stipulated in the Engineering Manual for Urban Local Bodies in Tamil Nadu and in which Clause 52 deals with the Powers of the Municipality to terminate the contract in case of insolvency or for want of due diligence. By relying with Clause 52(a), it is the contention that the question of furnishing the report to the contractor does not arise and this procedure has been followed.

13. Termination of a contract may result in civil consequences however if the period of contract is already over, then the question of specifically enforcing the contract does not arise. However, the money claim if any, could always be agitated by the contractor. Apart from that, if the contractor loses the license, or, the contract has been unauthorisedly terminated, then always the common law provides for remedy to sue for damages. Therefore, in the present Writ Petition, the petitioner is not entitled to canvas the case with regard to the cancellation of the contract, and if at all there is any claim for damages, it is a separate issue. However, there are two other issues which concerns the petitioner namely, the cancellation of the license as registered contractor and blacklisting.

14. Admittedly, the period of license granted to the petitioner had expired on 31.03.2015 and as on date he does not have a valid license/registration. The fact remains that he had applied for renewal of registration and pending the same, Writ Petition has been filed to pass an order on the same and direction has been issued in the Writ Petition to consider representation. The reason for cancellation of petitioner's license and blacklisting him is on account of the charge memo which came to be issued on 31.03.2015 and containing as many as 21 charges. The petitioner has submitted his reply denying all charges. Not satisfied with the explanation, the Competent Authority has appointed an Enquiry Officer. It is seen that the Enquiry Officer was assisted by a team of officials presumably because certain technical aspects are also involved in the matter. The fact that the Enquiry Officer afforded an opportunity to the petitioner to appear before him is not in dispute. The petitioner's authorised representative appeared before the Enquiry Officer, but he appears to have not taken any specific stand. Be that as it may, the Enquiry Officer submitted his report dated 15.07.2015 and this appears to be the basis of the impugned order. This report is dated 15.07.2015. Though the Engineering Manual stipulates the manner in which the termination of contracts are to be dealt with, it does not contemplate for an enquiry. The respondent, in my view, rightly directed an enquiry to be conducted. The mistake committed by the respondent arose at the stage after the Enquiry Officer submitted his report. This report dated 15.07.2015 holds that the charges framed against the petitioner are being proved. Therefore, at that stage of the matter, principles of natural justice is required to be followed by furnishing the copy of the report to the petitioner with opportunity to submit his explanation. It may be true that the relevant Engineering Manual does not provide for such a procedure. But the principles of natural justice would require that the petitioner should be communicated with the findings of the Enquiry Officer,

which undoubtedly is an adverse material to the interest of the petitioner. Therefore, the petitioner should be in a position to dispute, the allegations or the conclusions which were arrived at by the Enquiry Officer. This opportunity was denied to the petitioner. That apart, it is not known as to what was the order passed by the Commissioner dated 15.07.2015, by which he has accepted the Enquiry Officer's report. The basis of the decision of the Council of the respondent Corporation on 27.07.2015 is also not forthcoming.

15. The learned counsel for the respondent relied on the decisions of the Hon'ble Supreme Court in the case of Elektron Lighting Systems Pvt Ltd., which has been relied on in the decision in Jagdish Mandal Vs. State of Orissa. It has to be pointed out that both these judgments relates to scope of judicial review in award of tenders. The Hon'ble Supreme Court has pointed out that the scope of judicial review of administrative action is to prevent arbitrariness, irrationality, unreasonableness, bias and malafides and the purpose is to check whether choice or decision is made lawful and not to check whether the choice or decision is sound. In the said cases, the choice is with regard to the successful bidder and the aggrieved person is before Court. Under such circumstances, the Court pointed out that in the case of award of contracts, certain special features should be borne in mind, a contract is a commercial transaction and principles of Equity and natural justice stay at a distance.

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.

ds

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To:

Coimbatore City Municipal Corporation
Represented by its Commissioner
Coimbatore - 641 001.

+ 1 cc to Mr.Muthumani Doraisami, Advocate SR 9543

+ 1 cc to Mr.R.Sivakumar, Advocate SR 9670

cnr(co)
prk26/2

W.P.No.36924 of 2015