

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6715 of 2016

and

WMP Nos.5978 and 5979 of 2016

Mr.N.P.Sons Constructions,
Rep. by its Managing Partner
Mr.P.Gopalakrishnan .. Petitioner

Versus

1. The Principal Chief Conservator of Forests,
Panagal Building,
Jennis Road, Saidapet,
Chennai - 15.

2. The Forest Engineer,
Forest Engineering Division,
No.11, Arabic College Street,
Kaja Nagar, Tiruchirapalli - 20.

3. Mr.Udayakumar
Forest Engineer,
No.11, Arabic College Street,
Kaja Nagar, Tiruchirapalli - 20.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, calling for records relating to the impugned tender notification dated 12.02.2016, issued by the 2nd respondent, published in Tamil Daily Thinaboomi dated 12.02.2016, to quash the same as illegal, arbitrary and abuse of process of law.

For Petitioner

: Mr.R.Subramaniam
for Mr.C.Prabakaran

For Respondents

: Mr.N.Inbanathan
Government Advocate [Forest]

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. The petitioner is a registered contractor of the forest department and the challenge in this writ petition is to a tender notification issued by the 2nd respondent calling for tenders for improvement and maintenance of road work from Pennagaram tp Anaibethalla in Dharmapuri Distirct. As per the notification which has been published in the Tamil daily dated 12.02.2016, the tender forms will be available for sale upto 26.02.2016 till 5.00pm and the completed tender forms have to be submitted by 3.00pm of 29.02.2016 and on the same date, the tenders will be opened.

3. The case of the petitioner has a chequered history. The first writ petition filed by him in W.P.No.24559 of 2014 was for issuance of a writ of mandamus to disburse the amount of Rs.58,27,268/- together with interest in respect of the works executed by the petitioner pursuant to the work order issued by the 2nd respondent dated 13.02.2013. The said writ petition was disposed of by order dated 30.01.2015, directing the petitioner's representation dated 09.08.2014, to be considered. As the order was not complied with, within the time stipulated by this Court, the petitioner issued a contempt notice to the respondents on 07.05.2015 and filed Cont.P.No.1155 of 2015, since the order was not complied with despite notice of contempt.

4. In the contempt petition, a counter affidavit was filed by the 3rd respondent stating that there are certain left over works and the works were mentioned in a tabulated format in paragraph No.13 of the counter affidavit dated 19.06.2015. In the same counter affidavit, the 3rd respondent admitted that the petitioner is entitled for payment of Rs.29,77,539/-. When the contempt petition was heard, this Court while recording the presence of the 3rd respondent, took note of the fact that the 3rd respondent has admitted that they will pay a sum of Rs.29.78 lakhs and at the request of the 3rd respondent, time was granted to effect payment as undertaken by them. This order dated 24.07.2015 in Cont.P.No.1155 of 2015 was not complied with and therefore, the petitioner sent a notice of Contempt on 16.10.2015. Since, there was no response to the Contempt notice, the petitioner filed another contempt petition in Cont.P.No.2582 of 2015. On notice being issued in the Contempt Petition, the 3rd respondent filed a compliance report before this Court stating that a cheque for Rs.27,55,211/- has been drawn in favour of the petitioner and the same was produced before the Court. The said payment made to the petitioner was recorded by this Court in its order dated 27.01.2016 and with regard to the remaining issues, it was left open to the

authorities to look into the matter.

5. In the meantime, a notice was issued by the Additional Principal Chief Conservator of Forests (Protection & Vigilance) & Chairman of the Committee dated 23.10.2015, informing the petitioner that a committee has been constituted to check measure the quantity of work done in the field with reference to the measurement book, quantify the value of work and recommended the amount to be paid to the Contractor. It was stated that the Committee proposed to inspect the road improvement work on 28.02.2015 at 10.00am in the presence of the petitioner and check measure the quantity of work in the field so as to quantify the work done and thereafter arrive at the value of executed work and submit a report to the 1st respondent.

6. Though, the said notice was issued, the case of the petitioner is that till date, the Committee has not inspected the said road improvement works as stated in the notice dated 23.10.2015. But, the 2nd respondent has now proceeded to notify fresh tender for the very same work, which has been done by the petitioner.

7. Mr.R.Subramaniam, learned counsel for the petitioner would contend that if the new tender is awarded and work is redone, then the question of evaluating the work done by the petitioner nor checking the quantity of work done, cannot be made and therefore, the impugned tender should be injunctioned.

8. The learned Government Advocate on instructions submitted that the Committee will inspect the road improvement work done by the petitioner pursuant to the work order, which was issued to him and the impugned tender process will not be an impediment for the inspection.

9. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the firm view that if the department has taken a stand that they want to reinspect the road improvement work done by the petitioner and for which purpose a committee has been constituted, till the inspection is done by the Committee in the presence of the petitioner, fresh tender should not be awarded for the same work, as it will impede the inspection to be conducted. However, this Court is not inclined to quash the tender notification, for this purpose. But, proposes to pass the following order which will meet the ends of justice.

10. In the light of the above discussion, there will be a direction to the respondents 1 and 2 to direct the Committee which has been constituted to inspect the work, which has been done by the petitioner pursuant to the work order dated 13.02.2013, for which payments have been withheld, to make

measurements and assess the quantity of work done, etc., and such inspection be done in the presence of the petitioner so as to enable the inspecting team to submit a report to the 1st respondent. The said inspection shall be conducted within a period of two weeks from the date of receipt of a copy of this order.

11. In the meantime, the 2nd respondent is permitted to proceed with the tender, but however, the award of contract to the successful tenderer can be made only after the committee inspects the works done by the petitioner and submit its report to the 1st respondent. The intended bidders who are likely to participate in the tender notified shall be informed about the direction issued by this Court.

12. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ars

To

1. The Principal Chief Conservator of Forests,
Panagal Building,
Jennis Road, Saidapet,
Chennai - 15.

2. The Forest Engineer, सत्यमेव जयते
Forest Engineering Division,
No.11, Arabic College Street,
Kaja Nagar, Tiruchirapalli - 20.

3. Mr.Udayakumar
Forest Engineer,
No.11, Arabic College Street,
Kaja Nagar, Tiruchirapalli - 20.

+2 ccs to Mr.C.Prabakaran Advocate sr.11431
+1 cc to Special Government Pleader sr.11606

W.P.No.6715 of 2016

aa25/02/2016