



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 02.08.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.12103 of 2016

and

WMP (MD) No.9230 of 2016

V.Ramakrishnan

... Petitioner

Vs

1.The Conservator,
Tirunelveli Region,
Tirunelveli.

2.The Divisional Forest Officer,
Social Forestry Division,
N.G.O.Colony,
North Main Street,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.1220/2015/ku, dated 03.06.2016 and quash the same and direct the respondents to repay the deposited amount to the Petitioner.

For Petitioner : Mr.S.Meenakshi Sundaram

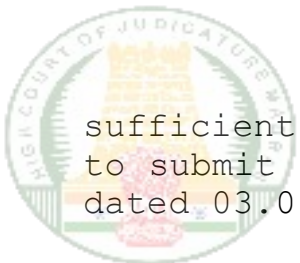
For Respondents : Mr.A.Muthukaruppan
Addl.Govt.Pleader

ORDER

Heard both sides.

2. According to the Learned Counsel for the Petitioner, the impugned order of the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, dated 03.06.2016, is an illegal one in the eye of Law.

3. The Learned Counsel for the Petitioner urges before this Court that the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, had failed to appreciate that the impugned order was passed by him without providing



sufficient opportunity and also the Petitioner was not called upon to submit any explanation, prior to passing of the impugned order, dated 03.06.2016.

4. The prime stand taken on behalf of the Petitioner is that the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, had failed to appreciate that already the Tender issued in his favour was cancelled by the First Respondent / Conservator, Tirunelveli Region, Tirunelveli. Also it is projected on the side of the Petitioner that there is violation of principles of natural justice.

5. Lastly, it is the contention of the Learned Counsel for the Petitioner that the Second Respondent had failed to take into account that action can only be taken, on the basis of terms and conditions adumbrated in the Tender Notice, dated 18.01.2016, and in fact, he cannot traverse beyond the terms and conditions.

6. Per contra, it is the submission of the Learned Additional Government Pleader for the Respondents that the Petitioner was declared as the highest bidder and quoted Rs.98,751/- per Hectare and immediately after tender, he should remit 1/3rd of the amount of the total bid viz., Rs.12.87 Lakhs and in fact, he had not paid the amount, as per the conditions. Thereafter, the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, was professed to issue Notice on 08.02.2016, in directing the Petitioner to deposit the bid amount and that was not complied with. As such, the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, issued a show-cause Notice, on 04.04.2016, to the Petitioner and the same was received by the Petitioner, on 07.04.2016. Yet he had not given any reply to the aforesaid Notice and ultimately, the Second Respondent, had passed an order, on 03.06.2016, removing the Petitioner from the 'Contractors Panel', as per Law.

7. The Learned Additional Government Pleader for the Respondents urges before this Court that the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, is the competent person to remove the Petitioner from the 'Contractors Panel List' and further, the Petitioner had not availed the opportunity and filed the present Writ Petition before this Court.

8. In this connection, it is represented on behalf of the Respondents that, as per Appendix 14, Section 130(C), Rule 5 of the Tamil Nadu Forest Laws Manual, Rule 7(5) confers power filing of an appeal to the aggrieved party against the order of cancellation or suspension of registration, by the District Forest Officer or the District Forest Officer Authorized Officer etc., Further, in the instant case, the Petitioner had not preferred the Appeal within the time from the date of passing of the order and therefore, the filing of



the Writ Petition by the Petitioner, is not maintainable in the eye of Law.

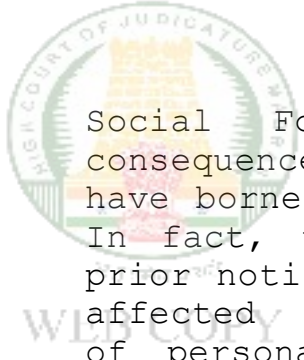
9. The Learned Additional Government Pleader for the Respondents contends that, when the Petitioner has an effective and efficacious remedy of preferring an appeal, as per Rule 7 of Tamil Nadu Forest Laws Manual, under the Caption of Removal of Contractors for availing of an Appeal, then, the present Writ Petition filed by the Petitioner is a premature and otiose one.

10. At this stage, this Court, on perusal of the impugned order, dated 03.06.2016, passed by the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, is of the considered view that the Second Respondent had informed the Petitioner inter alia to the effect that the Petitioner was directed to pay the auction amount of Rs.38,61,164/-, subject to the conditions etc., and also he was issued with consecutive remainders. After receipt of the same, still the Petitioner was informed that he had not remitted the amount and the same was a contrary one, as per auction conditions. As such, straightway, the impugned order, dated 03.06.2016, was passed by the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, by stating that the Petitioner had no explanation to offer, in the subject matter in issue, and in this regard, a reliance was placed in respect of Section 130(C) Rule 5 of Appendix 14, of the Tamil Nadu Forest Laws Manual, wherein, Rule 7 in respect of Removal of Contractors was mentioned and accordingly, the Petitioner was removed from the 'Panel of Contractors'.

11. A cursory perusal of the impugned order, dated 03.06.2016,, latently and patently indicates to the minds of this Court that the impugned order was passed by the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, ipso facto / straightway, without providing a reasonable / adequate opportunity to the Petitioner to explain his stand / position and in this regard, there is a clear negation of principles of natural justice, in the considered opinion of this Court.

12. Undoubtedly, the principles of natural justice are not the embodiment of the set Rules. The aim of 'Rules of Natural Justice' is to secure justice or to put it negatively, to prevent miscarriage of justice. As a matter of fact, 'Rules of Natural Justice' do not supplant the Law of the land but supplement it.

13. As a matter of fact, the principles of 'Hear the other side', in the instant case, was not followed by the Second Respondent. Removing the Petitioner's name from the 'Panel of Contractors', by virtue of passing of the impugned order, dated 03.06.2016, by the Second Respondent / Divisional Forest Officer,



Social Forestry Division, Tirunelveli, is one of civil consequences and in this regard, the Second Respondent ought to have borne in mind the rudimentary principles of natural justice. In fact, the principles of fair hearing are:- (I) Issuance of prior notice (ii) Right to make representation by the aggrieved / affected and (iii) Right to be heard (including the opportunity of personal hearing, if situation so warrants). Only after hearing the other side necessary orders are to be passed in the manner known to Law and in accordance with Law.

14. As far as the present case is concerned, this Court is of the considered view that the impugned order, dated 03.06.2016, removing the Petitioner from the Panel of Contractors, was passed by the Second Respondent, straightway, without issuance of prior Notice / Show-cause to him and straightway an order was passed to the detriment of the Petitioner. Inasmuch as there is violation of principles of natural justice, then, this Court interferes with the said order, on this score alone and sets aside the same. Consequently, the Writ Petition succeeds.

15. In the result, the Writ Petition is allowed. Leaving the parties to bear their own costs. The impugned order, dated 03.06.2016, passed by the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, is set aside by this Court for the reasons assigned in the Writ Petition.

16. It is made clear that allowing of the Writ Petition by this Court will not preclude the Second Respondent to proceed afresh in the subject matter in issue, of course, by issuance of show-cause notice, and to receive the explanation / remarks from the Petitioner, after specifying the time limit in a reasonable manner and to pass necessary speaking orders, on merits, in the manner known to Law and in accordance with Law.

17. It is open to the Petitioner to raise all the factual and legal pleas before the Second Respondent and it is incumbent on the Second Respondent / Divisional Forest Officer, Social Forestry Division, Tirunelveli, to advert to each and every plea taken on behalf of the Petitioner and to deal with the same with a free, fair mind and to pass necessary orders in a reasoned fashion, that too, in a dispassionate manner, especially, uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. Consequently, connected Miscellaneous Petition is closed

Sd/-
Assistant Registrar (CS-II)

/True copy/



To

1.The Conservator,
Tirunelveli Region,
Tirunelveli.

WEB COPY

2.The Divisional Forest Officer,
Social Forestry Division,
N.G.O.Colony,
North Main Street,
Tirunelveli.

+1 CC to Mr.S.MEENAKSHI SUNDARAM, Advocate, SR No.41620

+1 CC to THE SPECIAL GOVERNMENT PLEADER , SR No.41541

W.P (MD) No.12103 of 2016
02.08.2016

MPK

SH/GSV-PM/SAR-III:05.08.2016:5P/5C