



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition(MD)No.12958 of 2013
and
M.P(MD)Nos.1 and 2 of 2013

B.Sangeethkumar

... Petitioner

Vs.

1.The District Collector,
Karur District,
Karur.

2.The Commissioner,
Aravakurchi Panchayat Union Office,
Aravakurchi,
Karur District.

3.The Project Director/
District Rural Development Officer,
Karur, Karur District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the second respondent dated 04.07.2013 in Na.Ka.No.A2/1421/2012 and the consequential order dated 22.07.2013 in Na.Ka.No.A2/1421/2012 and quash the same.

For Petitioner : Mr.S.Gokul Raj

For Respondents : Mr.Aayiram K.Selvakumar
Govt. Advocate

O R D E R

This writ petition has been filed challenging the order passed by the second respondent dated 04.07.2013 in Na.Ka.No.A2/1421/2012 and the consequential order dated 22.07.2013 in Na.Ka.No.A2/1421/2012.

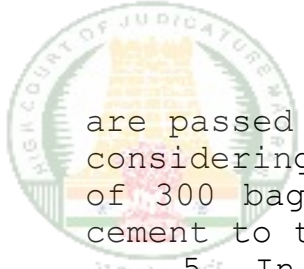
2. By the first order, the second respondent has directed the petitioner to hand over 500 bags of cement pursuant to the cancellation of the contract and by way of the second order, the second respondent has directed the petitioner to hand over the 500



bags of cement and failure to hand over the said bags, the amount representing twice the cost of material will be deducted from the money withheld by the second respondent in connection with the various contract works earlier given to the petitioner.

3. It is an admitted fact that the petitioner has been awarded six items to be executed by him for the second respondent. It is not in dispute that the petitioner though executed few of the works, the contract in respect of the work relating to the formation of cement road at Jangalpatti and formation of cement road between Talayaripatti main road and shops in Inanganur Panchayat were not executed within the time and hence, the contract was subsequently cancelled. However, it is the case of the petitioner that in relation to the work, which was subsequently not executed by the petitioner, only 300 bags of cement were supplied to the petitioner and that he has requested the second respondent to take back those 300 bags of cement, which was available at the work site. It is the further case of the petitioner that he disputes the receipt of 200 bags of cement. His further case is that with regard to 200 bags, which was never delivered to the petitioner, the petitioner has submitted a representation disputing the receipt of 200 bags of cement by the petitioner and that an enquiry was conducted in this regard. According to the petitioner, though the enquiry is not completed and no final order was passed by the enquiry officer, the impugned orders have been passed by the second respondent demanding the entire 500 bags of cement and consequential order threatening to recover the cost at double the value of the materials.

4. A perusal of the impugned orders passed by the second respondent clearly indicate that no notice was issued to the petitioner to show cause. The impugned order dated 04.07.2013 proceeds on the basis that the receipt of 500 bags of cement by the petitioner as an admitted fact. Though it is the case of the petitioner that the 300 bags of cement which was available in the work site has to be retrieved by the second respondent and that he has also referred to this in the representation which has given earlier to the second respondent, there is no consideration by the second respondent in the impugned orders. Even in the counter affidavit, the second respondent has not disputed the fact that the 300 bags are available at the work site. From the stand taken by the rival parties, it is not possible to this Court to come to the conclusion that whether the 300 bags, said to have been left at the work site by the petitioner are available or not. Even with regard to the specific case of the petitioner that the enquiry that was directed to find out whether the 200 bags of cement were actually supplied to the petitioner or not, there is no findings or report filed by the enquiry officer and the impugned order has been passed without reference to such enquiry. The counter affidavit filed by the second respondent do not disclose any rebuttal. In such circumstances, this Court is of the view that the impugned order of the second respondent dated 04.07.2013 and consequential order dated 22.07.2013 are liable to be set aside on the short ground that they



are passed in violation of principles of natural justice and without considering the stand taken by the petitioner as to the availability of 300 bags of cement at work site and non supply of 200 bags of cement to the petitioner.

5. In that view of the matter, the impugned orders are set aside and this writ petition is allowed, however, the second respondent is at liberty to initiate proceedings afresh, after issuing a show-cause notice to the petitioner and consider the objection and materials submitted by him in defence within a period of six weeks from the date of receipt of such explanation to the show-cause notice. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Karur District,
Karur.

2.The Commissioner,
Aravakurchi Panchayat Union Office,
Aravakurchi,
Karur District.

3.The Project Director/
District Rural Development Officer,
Karur, Karur District.

+1 cc to Mr.S.GOKUL RAJ ,Advocate, Sr.No: 42130

+1cc to M/S Special Government Pleader, Sr No. 42215

jam/24.08.16/AAL-MPA/ 3P-6C

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