

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17839 of 2017
and
W.M.P.No.19364 of 2017

B.Ganaprakasam .. Petitioner

Vs.

1. The District Collector,
Kanchipuram, Kanchipuram District.
2. The Thasildar, Thirukalukundram, Kanchipuram District.
3. The Block Development Officer,
Thirukalukundram, Kanchipuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.198/2017/A2, dated 03.07.2017 and quash the same and direct the third respondent to re-allot the work order to the petitioner to continue the contract.

For petitioner : Mr.J.S.Arun Kumar

For respondents: Mr.S.Diwakar, Spl.G.P. for RR-1 & 2

Mr.R.Venkatesh, Govt. Advocate for R-3

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the Commissioner of Thirukalukundram Panchayat Union in Na.Ka.No.198/2017/A2, dated 03.07.2017 and quash the same and direct the third respondent to re-allot the work order to the petitioner to continue the contract.

2. The case of the petitioner is that there was a Resolution in Resolution No.3, dated 27.06.2016 by the Kadampadi Village Panchayat in its meeting regarding the land(s) in Survey Nos.267, 268 and 269 which are meant for cart passage, can be used for formation of Iynthu Kann Varapathy Road to reach ECR. Based on the said Resolution, the Thirukalukundram Panchayat Union has passed orders in its Panchayat Council meeting in Subjet No.816, vide proceedings dated 22.08.2016, which was

communicated to the third respondent, subsequent to which, tenders were called for on 01.09.2016 and on 08.09.2016, the petitioner succeeded in the bid for the said formation of Road scheme. Thereafter, on 09.09.2016, the third respondent issued work order to the petitioner relating to the laying of Blue Metal Road from ECR to Iynthu Kann Varapathy Road. After approval of the said work order, the petitioner purchased the materials required for the said work, which was interrupted due to seasonal rain, due to which, the first layer of the Road is filled with clay mud, thereby the foundation of the Road was stopped, which resulted in delay in completing the work. It is further stated by the petitioner that one T.Dhanapal of the Village has filed a Writ Petition in W.P.No.6378 of 2017 and a Division Bench of this Court, by order dated 16.03.2017, directed the respondent therein, i.e. the Commissioner-cum-Block Development Officer, Thirukalukudram Panchayat Union, Kancheepuram District to consider the representation of the petitioner therein dated 07.03.2017 and do the needful in accordance with law. Pursuant to the said order of this Court, the third respondent issued a Notification, dated 04.04.2017 to the Assistant Engineer of the Thirukalukundram Panchayat Union to submit a report after completion of the road work within one week. Subsequently, on instructions from the Assistant Engineer, the petitioner started filling the clay sand in the land(s) in question for formation of road. Thereafter, the second respondent interrupted and stopped the work on the ground that 100 meters of lands from ECR to reach Iyandhu Kann Varapathi Road belong to Government and the land(s) are not cart passage.

3. It is further stated by the petitioner that the village people made a representation on 12.04.2017 to the first respondent requesting him to convert the said 100 meter-distance Government lands for formation of the laying of the said Road for public purpose and as there was no response, the said T.Dhanapal filed another Writ Petition in W.P.No.9768 of 2017 praying for considering the said representation, dated 12.04.2017 for the said conversion of the lands. In the meantime, the Commissioner of Thirukalukundram Panchayat Union, without notice to the petitioner, by the impugned order dated 03.07.2017, issued the order for cancellation of the work order, dated 09.09.2016.

4. Learned counsel for the petitioner stated that the petitioner was not issued with any notice before-ever the impugned order is passed. According to the learned counsel, in terms of Rule 13(7) of the Tamil Nadu Panchayats (Preparation of Plans and Estimates for Works and Mode and Conditions of Contracts) Rules, the name of the contractor may be removed from the Register of Contractors by the Executive Authority or Commissioner or Secretary, as the case may be, for any proved misconduct or any financial incapacity or for any other reasons

and before taking such course of action, a notice in writing shall be given to the contractor to show cause as to why such removal of names be made.

5. Learned Special Government Pleader appearing for the respondents 1 and 2 and the learned Government Advocate appearing for the third respondent submitted that the work order was allotted to the petitioner on 09.09.2016 and that the petitioner has not commenced any work and that on complaint by the villagers, the said Dhanapal filed W.P.No.6378 of 2017 was filed and in pursuance of the order of this Court passed in the said Writ Petition on 16.03.2017, the work was given to the said Dhanapal. It is their further contention that a show cause notice was also issued to the petitioner regarding non-completion of work and even after receipt of the said show cause notice, the petitioner did not respond and that the stand of the petitioner that the work has been completed, is totally incorrect.

6. In reply, learned counsel for the petitioner, while reiterating the contentions, stated that no notice was issued to the petitioner before cancellation order of the work, which is completely contrary to the provisions of the said Rules and also opposed to the decision of this Court reported in 2010 (1) CTC 511 (Madras) in the case of Rukmani Vs. Kandamangalam Panchayat Union).

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the petitioner was allotted the work order for laying the said Road on 09.09.2016. A reading of the provisions of the said Rule 13(7) of the said Rules makes it clear that the petitioner being a registered contractor, has been allotted the work order for laying the road as stated supra, and that in the event of non-carrying out the work, for the removal of the name of the contractor registered with the respondent-authority, the notice in writing has got to be issued prior to such removal and after obtaining explanation from the contractor, further course of action be made and that if the said notice is not able to be served on the contractor, the notice will have to be sent with Registered Post with Acknowledgement Due (RPAD) directly. This has also been observed by this Court in the said decision reported in 2010 (1) CTC 511 (Mad) (cited supra).

9. Admittedly, there is no evidence produced by the respondents to show that prior notice has been served on the petitioner before issuance of the impugned order. Hence, on this ground, the impugned order is interfered with and the same is accordingly set aside. This order will not preclude the

respondents from issuing notice to the petitioner and call for explanation from him and thereafter take appropriate decision in the matter. It is needless to point out that if the respondents want the petitioner to carry out the work order, it is for the respondents to allot the work to him. Even after allotment of the work to the petitioner, if the petitioner is not going to carry out the work, and now, we are living in the world of technology and whether the petitioner is carrying out the work or not, can be easily videographed or photographed, and in order to enable the respondents to substantiate their stand, then it is open for the respondents to take appropriate action in the matter and go in for public auction/tender process.

10. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, W.M.P. is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Kanchipuram,
Kanchipuram District.
2. The Thasildar,
Thirukalukundram,
Kanchipuram District.
3. The Block Development Officer,
Thirukalukundram,
Kanchipuram District.

+2 Ccs to Mr. J.S. Arunkumar, advocate sr 85771.

+1 Cc to Govt. Pleaded sr 85427.

W.P.No.17839 of 2017

SP(05/12/2017)