

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.38749 of 2004
and
W.P.M.P.No.46300 of 2004

R.Nimrode

.. Petitioner

Vs.

1. The Executive Officer,
Maraimalai Nagar Town Panchayat,
Maraimalai Nagar,
Kancheepuram District.
2. The Commissioner,
Municipal Administration,
Chepauk, Chennai-600 005.
3. The District Collector,
Town Panchayat Division,
Kancheepuram District,
Kancheepuram.
4. The Chief Engineer,
Highways Department,
Chepauk, Chennai-600 005.

.. Respondents

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 relating to the order passed by the first respondent/Executive Officer, Maraimalai Nagar Town Panchayat in Na.Ka.No.995/2001/A1, dated 31.08.2004 and quash the same and forbear the first respondent from proceeding any recovery based upon the said order.

For Petitioner : Mr.D.Govinda Reddy

For Respondents: Mr.O.Selvam, Govt. Advocate for R-1
Mr.R.Venkatesh, Govt. Advocate for
RR-2 to 4

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent/Executive Officer, Maraimalai Nagar Town Panchayat in Na.Ka.No.995/2001/A1, dated 31.08.2004 and quash the same and forbear the first respondent from proceeding any recovery based upon the said order.

2. The case of the petitioner is that he is a registered civil contractor. The petitioner was a successful bidder in the formation of roads in Maraimalai Nagar and that the petitioner has agreed to complete the work, for which, proper materials have been used with thicker density and as per the specifications and norms provided in the tender form, the petitioner has taken up the work and the entire contract work including the construction of RCC culvert was executed by the petitioner and that there was periodical inspection by the Department officials and entry was also made in the books. The work was completed within 60 days and the road was handed over to Maraimalai Nagar Town Panchayat for traffic on 20.06.2003. After completion of the work and after verification, the authority has sanctioned a sum of Rs.26,30,027/- and a sum of Rs.18,46,233/- was paid after deducting the value of the materials supplied. After nearly a month of the completion of the work, it is stated that the road was badly damaged, which was reported to the District Collector on the basis of the report given by technical officials and the petitioner was called upon to complete the work and that the costs will have to be incurred by the petitioner. The petitioner stated that he has completed the repair work by spending approximately Rs.4 lakhs. The previous road was only 6 mts. wide and was readily distressed and in damaged condition and the subsequent road repair was not caused due to the petitioner's contractual obligation and the same was caused due to technical defect and design and technical parameters, for which the contractor should not be blamed. The petitioner did the repair work by spending additional amount of Rs.4 lakhs.

3. It is the further case of the petitioner that he received communication, dated 19.11.2003 from the first respondent calling upon the petitioner to complete the repair work immediately, since the Maraimalai Nagar-Anna Salai is the main road and that road is passing from GNT Road to Maraimalai Nagar, where more than 200 industries situated in Maraimalai Nagar. The petitioner gave a reply, dated 04.02.2004 stating that the damage to the road was caused only due to design by the Engineering experts and that the petitioner's contract related

to the above work as per BOQ and designed by the contract. But unfortunately, the first respondent, by communication, dated 16.02.2004, by quoting the previous correspondence, asked the petitioner to complete the entire road repair work within one month, failing which, he would be black-listed and that the amount for the repair of the damaged road would be calculated and recovered. The petitioner gave reply on 24.02.2004 stating that the damage was not caused due to wrong workmanship or substandard materials, but due to improper design. Without considering the same, and after lapse of six months, the impugned order dated 31.08.2004 was passed stating that the petitioner was responsible for the damage of the road, as the same has not been laid properly and black-listed him and the proceedings be initiated for recovering the loss caused to the Maraimalai Nagar Town Panchayat.

4. The petitioner further submitted that black-listing the petitioner is totally arbitrary and illegal and that there is no deficiency on the part of the petitioner and he has carried out the work in terms of the contract. He further stated without any enquiry being conducted, coming to the conclusion arbitrarily and stating that the petitioner was responsible, is incorrect. The petitioner also stated that the road could have been damaged on various grounds, namely due to defects in laying the road, due to heavy vehicle traffic over and above the permitted limit, natural calamity etc. The petitioner further stated that he has repaired the road by spending additional amount of Rs.4 lakhs from his pocket. It is the grievance of the petitioner that the impugned order is causing mental agony and hardship to him and the same may be interfered with and quashed.

5. The first respondent has filed counter affidavit stating that the petitioner has challenged the impugned proceedings on the ground that he was black-listed from participating in the future contracts that may be notified by Maraimalai Nagar Town Panchayat and also to recover the loss incurred by the Town Panchayat by reason of the inferior quality of black-topping road laid by the petitioner at Anna Salai, Maraimalai Nagar. It is further stated that the petitioner has not completed the work with the quality it deserves. After completion of the work by the petitioner, believing that the black-topping was upto the standards expected, the Town Panchayat has released the entire payment to the petitioner and the petitioner has received the entire amount. As the damage was caused to the roads laid by the petitioner within 28 days of black-topping, and the quality is inferior, and that the cracks developed even within 25 days of black-topping. The black-topping road was badly damaged and it became unsuitable for motorists and it caused hardship to the motorists riding on the road. Due to the poor quality of laying the road by the petitioner, the Town Panchayat was subjected to

criticism by the general public and several complaints have been made to the District Collector.

6. It is further stated in the counter that by proceedings dated 20.08.2003, the first respondent called upon the petitioner to carry out the repairing work within ten days. The petitioner also attended the repairing work, but the averment of the petitioner that he had finished the repair work completely, is incorrect. The petitioner commenced the repairing work, but he had left the work half-way and the roads were not conducive for travel. The work undertaken by the petitioner is not of superior in nature, but it is inferior in quality. The petitioner justified the work done by him in the reply dated 04.09.2003 stating that the work carried on by him is superior in nature and that is the reason why the entire payment has been released by the Town Panchayat. The release of payment has nothing to do with the quality of work performed by the petitioner. Even within 25 days of the completion of the work, there were several cracks witnessed in the black-topped road. The reason assigned by the petitioner is that the damage has been caused due to intermittent rain and the presence of heavy container vehicles on the road. The petitioner admitted that the damages were caused to the road. Further, even if there is rain and container vehicles were operated on the road, within 28 days, the roads could not have developed crack, unless the contractor had resorted to poor quality of materials of workmanship. Thus, the damages caused to the black-topped road within 25 days, is largely attributable to the poor workmanship of the men engaged by the petitioner as the contractor and the quality with which the work was undertaken by him.

7. The first respondent further stated in the counter that it is true that the first respondent, by proceedings dated 19.11.2003, called upon the petitioner to complete the work immediately, but it was not heeded to by the petitioner. The petitioner refused to fulfil his contractual obligations specifically contained in the agreement entered into between the petitioner and the Town Panchayat. There was a breach of the terms and conditions in the agreement, for which the petitioner has to make good the loss sustained by the Panchayat. The petitioner has failed to raise his little finger during the subsistence of the contract and regarding the fault in the design and therefore, he is estopped from raising the same after completion of work and after coming to light of the fact that the petitioner has resorted to unethical contractual work. On 16.02.2004, the first respondent wrote a letter calling upon the petitioner to carry out the repair works, failing which he would be black-listed from participating in future contracts. The petitioner replied for the said letter, which indicates that the petitioner was given adequate opportunities in compliance with

the principles of natural justice. After taking into account the totality of the circumstances, the impugned order dated 31.08.2004 has been passed and it needs no interference.

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

9. It is not in dispute that the petitioner was the successful bidder who was given contract to do the work of laying the roads. As there was damage to the roads, the petitioner was asked to repair and that the roads were in very bad shape within 28 days of laying the road. The only contention of the petitioner is that there was no opportunity given to him and the petitioner should have been heard before coming to any conclusion. That contention cannot be accepted, more particularly, in the light of the decision of the Supreme Court reported in 2014 (9) SCC 105 (Gorkha Security Service Vs. Government (NCT of Delhi) and others), as adequate opportunity was given to the petitioner, more particularly, in the letter dated 16.02.2004 issued by the first respondent, the petitioner was specifically put on notice as to why he should not be black-listed from the existing list of contractors maintained by the Town Panchayat.

10. That apart, it is an admitted fact that there was a damage to the roads. According to the petitioner, it is not due to his conduct, but on account of the deficiency of the engineers. Admittedly, the petitioner has raised no objection with regard to the design when he took over to complete the work. The contention that on account of the rain and that heavy vehicles were plying on the road, the damage was caused to the roads, cannot be accepted. The roads are laid only for the purpose of moving the vehicles including heavy motor vehicle to ply. If the contention of the petitioner is going to be accepted, after laying of the roads, no vehicle except the cycle should ply and keeping the roads in-tact. Even mud road is sufficient for the cycles to go, and there is no need for black-metal road. Having taken the work and using the poor quality of materials, the petitioner cannot contend that he has not been given opportunity of being heard.

11. Moreover, the writ petition is filed in the year 2004 and at this distant point of time, remanding the matter back is not required, more particularly when the facts are admitted. The defence taken that the petitioner should be heard, may not be correct, as sufficient opportunity had been given and that based on the communication, the repair works have been taken and still it comes to light that the roads are done with inferior quality.

12. The only defence available to the petitioner is that he has to part with the payment of the money by paying commission to various officials, and that with the available money, he has to lay the road and earn money. Firstly, there cannot be any such defence, and even assuming that he has taken that point, that cannot be a ground to grant the relief sought for by the petitioner in this Writ Petition. The commission is nothing but bribe. It may be true that unless and otherwise the money is parted with as commission at various levels, there is no possibility of getting things done. It is very unfortunate state of affairs. This may be one such case. But that cannot be a ground for the petitioner to seek the relief. If the petitioner had paid any money for getting the works done, that itself is a serious offence/crime.

13. For the above reasons, the Writ Petition is dismissed. No costs. Consequently, W.P.M.P. is closed.

14. Before parting with the case, it is pertinent to note that Hon'ble Mr. Justice N. Kirubakaran, while dealing with W.P.No.29133 of 2017, by order dated 04.12.2017, has observed as follows regarding corruption:

"8. A recent survey by "Transparency International" states that India is the most corrupt country in Asia, followed by Vietnam, Thailand, Pakistan and Myanmar. When it comes to bribery rate, "The Forbes" article rates India as the highest in the list with 69% bribery rate. Corruption has become rampant in all Government departments, inspite of enactment of Prevention of Corruption Act, 1988. It is being said that corruption has become the order of the day and most of the official functions are done only on payment of illegal gratification. An officer who has been appointed for doing official duties and is drawing salary from the public exchequer, cannot compel/expect the public to pay bribe for doing his duty."

15. From the above observations made by the learned Judge, I am of the view that there is every possibility that the Tamil Nadu may be ranked No.1 corrupt State. It is to be noted that most of the roads have been laid with inferior quality/patch work by collecting money. The public money is being misused and the contractors, who may be close to many of the officials or others, part with the money for the purpose of getting a tender. Having parted with the money, in order to earn more money, they use inferior quality materials and lay the road, which causes not only damage to the road so laid, but also causes several accidents and pot-holes, etc. are formed on the roads. The

contractor and others who are successful in getting the tender, are not bothered about the accident that occurs due to bad condition of the roads on account of using inferior materials. It is very sorry state of affairs. The citizens had come to a level that as long as their family members and children are not affected, they are happy and that the contractors and others have no concern for the human-beings. This Court is of the view that for proper laying and maintenance of the roads, no one should collect any money under the guise of commission, which is nothing but bribe. That apart, the Corporation of Chennai/CMWSSB dealing with the drainage and water supply apart from storm water drain, Electricity Department for laying underground cable and the other Departments like Telephone Department, cable work, etc., have got to join together and a decision be taken before laying the roads, so that all the requirements of the residents from these Departments are completed/fulfilled in accordance with law, so that the roads can be laid finally. In such an event, there will be no damage to the roads. If every person is going to think that the land is their own body, they will decide as to whether so many operations can be done in the same place and if done, whether the survival is possible.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

CS
To

1. The Executive Officer,
Maraimalai Nagar Town Panchayat,
Maraimalai Nagar,
Kancheepuram District.

2. The Commissioner,
Municipal Administration,
Chepauk, Chennai-600 005.

3. The District Collector,
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Kancheepuram.

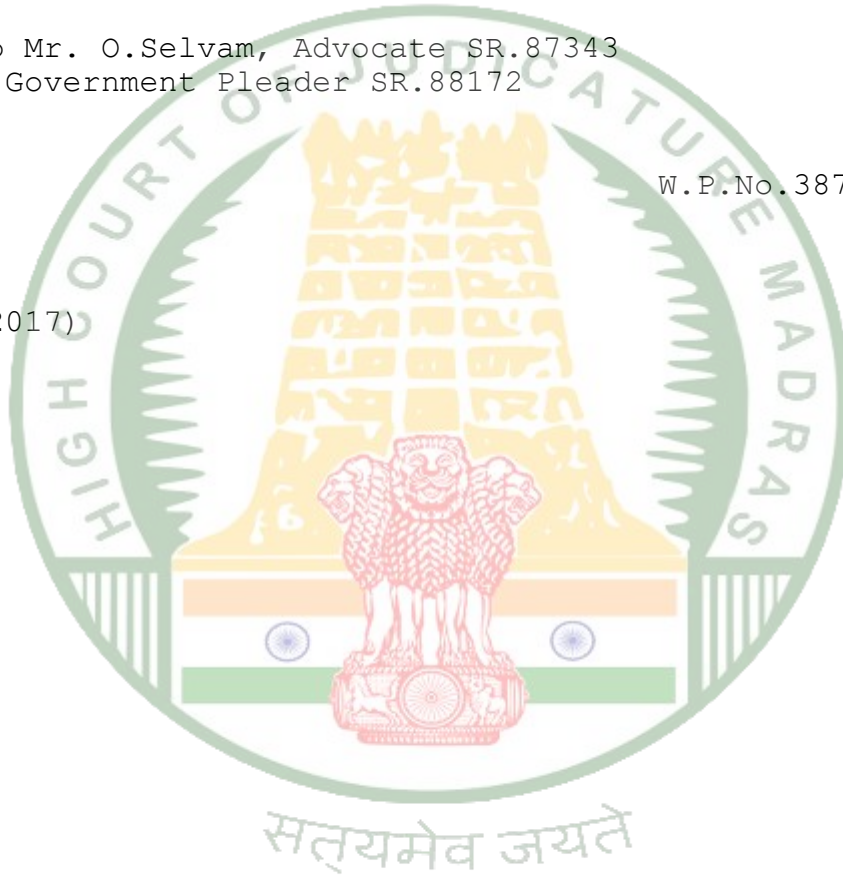
4. The Chief Engineer,
Highways Department,
Chepauk, Chennai-600 005.

5. The Managing Director, CMWSSB,
Chintadripet, Chennai.
6. The Commissioner, Corporation of Chennai,
Chennai.
7. The Chief General Manager,
Tamil Nadu Circle,
BSNL, No.80, Anna Salai, Chennai-600 002.
8. The Chairman, TNEB, Mount Road, Chennai.

+ 2 ccs to Mr. O.Selvam, Advocate SR.87343
+ 1 cc to Government Pleader SR.88172

W.P.No.38749 of 2004

DR(Cs)
EU(22/12/2017)



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