

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.12.2017
CORAM
THE HONOURABLE MR. JUSTICE R. SURESH KUMAR
W.P.No.38398 of 2003

N.Masilamani

... Petitioner

Vs.

The Executive Engineer,
Public Works Department,
Water Resources Committee,
Madhiya Pennaiyaru Vadinila Kottam,
Thrivannamalai,
Thiruvannamalai District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records of the respondent relating to K.No.EVA.3/D510/655 Pa dated 05.12.2003 and to quash the same and consequently direct the respondent to allot fund to the petitioner to fulfill his duty in agreement No.54DL/99/2000.

For Petitioner : Mr.T.Karunakaran
For Respondent : Mr.M.Elumalai
Government Advocate

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorari, to call for the records of the respondent relating to the Proceedings No.K.No.EVA.3/D510/655 Pa, dated 05.12.2013, quash the same and direct the respondent to allot funds to the petitioner to fulfill his duty in Agreement No.54DL/99/2000.

2.It is the case of the petitioner that he is a registered Contractor in the Public Works Department at Salem District. In the year 1999-2000, the respondent called for tender for special repair works to the cross masonry works in the 4th sluice of the irrigation channel of the Melchozhankuppan lake in Polur Taluk. The petitioner claimed that he participated in the tender and came out as successful bidder and also paid a sum Rs.3,100/- as security deposit in the year 1999 itself and the petitioner subsequently entered into an Agreement with the respondent and the total estimate of the project was agreed as Rs.1,53,123/-. Even though the petitioner became the successful bidder to undertake the work, the fund was not allotted to execute the works. However, the respondent called for a fresh tender on

22.10.2003 to improvise the standard of the said Lake. The fresh tender is for a separate project for the estimation of Rs.10,00,000/-.

3. Thereafter, the petitioner approached the respondent several times, but the respondent has refused to reply and all of a sudden on 05.12.2003, they passed the impugned order, by which they stated that the respondent has cancelled the Agreement entered into between the petitioner and the respondent. Challenging the said order dated 05.12.2003, the present Writ Petition has been filed.

4. I have heard Mr.T.Karunakaran, learned counsel appearing for the petitioner and Mr.M.Elumalai, learned Government Advocate appearing for the respondent.

5. In the impugned order, the respondent has stated that the tender floated for the special repair works to the cross masonry works in the 4th sluice of the irrigation Channel built across the Melchozhankuppam Lake, had been cancelled, and therefore, the EMD of Rs.3,100/- deposited by the petitioner shall be refunded to him.

6. In this regard, the learned Government Advocate appearing for the respondent would rely upon the following averments made in the counter affidavit:

"3. I respectfully submit that regarding Para 4 of the affidavit, it is submitted that in the meanwhile, the Government of India announced the Rastriya Sam Vikas Yozana Scheme based on high level poverty and low per capita income to uplift the farmers by improving the irrigation sources in pukka manner. Due to non-commencement of the agreed work by the petitioner Thiru.N.Masilamani, that work was also included in the Rashtriya Sam Vikas Yozhana Programme for the year 2003-2004 as one of the component among other components of works proposed, for which sanction was accorded by Government on G.O.Ms.No.114, Planning Development and Special initiatives (Sp-2) Dept/dt.08.10.2003. The components of works proposed are.

4. I respectfully submit that regarding Para 5 of the affidavit, it is submitted that as pointed out in Para 3 above, the agreement No.54D1/99-2000 drawn for carrying out repair nature of work and the expenditure has to be charged under "2702 AH Maintenance and Repairs" fund allotted by Government of Tamil Nadu. But, the tenders called for on 22.10.2003 for which fund is allotted by Government of India. Therefore, it is not possible to disburse from the fund sponsored by Government of India to

carry out work as stated by the petitioner Thiru.N.Masilamani Contractor, Melcholankuppam Village in Polur Taluk.

However, since the petitioner was aware of the tender in which, the component of the work for which he has already entered agreement with the Department is included, he is free to participate in the tender. But he has not participated in the tender. The statement of the petitioner that he has approached the respondent was baseless and against the truth. Since the component of the work for which agreement was entered with the petitioner, was included in the Central Government Rashtriya Sam Vikkas Yoshana Programme and tender was called for, the agreement entered with the petitioner was cancelled."

7.By relying upon the said averments made in the counter affidavit, the learned Government Advocate would submit that since no fund was allotted to the said work for the tender called for and the petitioner also participated in the tender, the respondent could not execute the work. However, subsequently the said work had been included in the Central Government Scheme called as Rashtriya Sam Vikkas Yoshana Programme and accordingly, new tender was floated and the agreement had been entered into by the Department with the new tenderer and the work had been executed long back.

8.In view of the said position, since no fund was allotted to the said work order, and ultimately, the said work entrusted to the petitioner and was cancelled, had subsequently been included in the Central Government Scheme and the work was entrusted to the different contractor, who completed the work, the question of reviving the said work, at this juncture, does not arise.

9.In view of the developments, this Court is of the considered view that the prayer sought for in this Writ Petition assailing the impugned order cannot be sustained and therefore, the relief sought for in this Writ Petition cannot be granted.

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In the result, this Writ Petition is dismissed. If the deposit of Rs.3,100/- made by the petitioner has not already been disbursed to the petitioner, the same shall be disbursed by the respondent/Department with interest @6% per annum till the date of payment within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mps

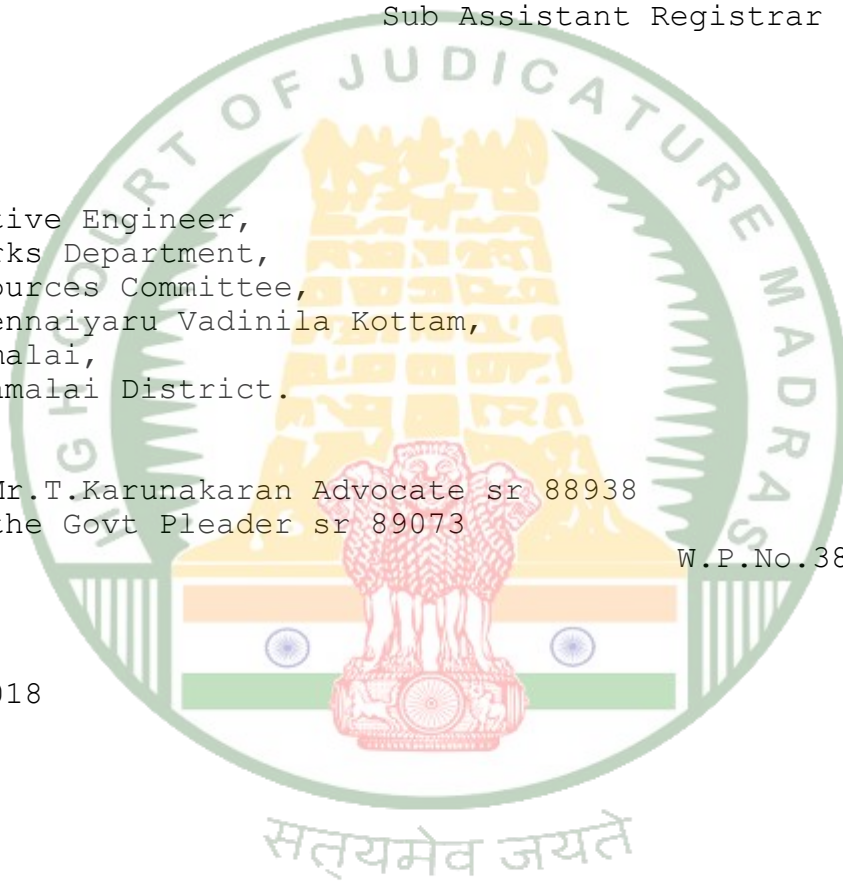
To

The Executive Engineer,
Public Works Department,
Water Resources Committee,
Madhiya Pennaiyaru Vadinila Kottam,
Thrivannamalai,
Thiruvannamalai District.

+1 cc to Mr.T.Karunakaran Advocate sr 88938
+1 cc to the Govt Pleader sr 89073

W.P.No.38398 of 2003

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