

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED:12.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.608 of 2017 &
C.M.P. (MD) .No.5013 of 2017

N.Kumaresan

... Appellant/4th Respondent

vs.

1. S.Poovammal

2. State of Tamil Nadu
Rep. By its Secretary,
Food/Co-operative/Civil Supplies,
Secretariat,
Fort St. George,
Chennai- 600 009.

3. Tamil Nadu Civil Supplies Corporation,
Rep. By its Managing Director,
12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

4. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli.

...Respondents/Respondents

PRAYER:Writ Appeal is filed under Clause 15 of Letters Patent Act against the order, dated 24.05.2017, made in W.P.(MD).No.9713 of 2017.

Prayer in WP(MD). 9713/ 2017 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records in relation to the order passed by the 1st respondent vide Letter NO.7495/A1/2016-3 dated 13.10.2016, quash the same and consequently direct the 1st respondent to take appropriate action as against the 4th respondent.



For Appellant : Mr.S.Ramesh
for Mr.T.Balaji
For R1 : Mr.Niranjana S.Kumar,
Additional Advocate General.
For R2 to R4 : Mr.B.Pugalenthi
Additional Advocate General
Assisted by
Mr.D.Mayarajan
Standing Counsel for
TNCSC

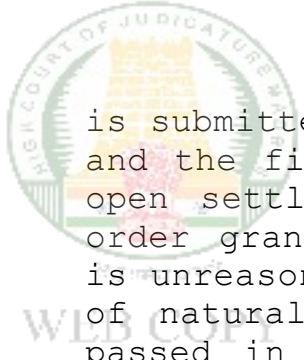
JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**]

Heard Mr.S.Ramesh, learned counsel for Mr.T.Balaji, learned counsel for the appellant, Mr.Niranjana S.Kumar, learned counsel appearing for the first respondent and Mr.B.Pugalenthi, learned Additional Advocate General assisted by Mr.D.Mayarajan, Standing counsel for TNCSC appearing for the respondents 2 to 4.

2. This appeal is directed against the order passed in W.P(MD)No.9713 of 2017, dated 24.05.2017. The said writ petition was filed by the first respondent herein to quash the Government letter, dated 13.10.2016. The said letter appears to be an order rejecting the appeal petition filed by the petitioner wherein the first respondent sought for a direction to take action against the appellant, blacklist him and cancel all works awarded to him by the Civil Supplies Corporation. The writ petition was heard by the Vacation Court on 24.05.2017 and allowed at the admission stage and the matter has been remanded back for fresh consideration. Further, the Court directed, till the second respondent herein passes final orders, the appellant herein shall not be engaged as a Contractor by the Civil Supplies Corporation. The appellant would attack the impugned order on several grounds namely on the merits, on the ground of violation of principles of natural justice and various other grounds. On merits, it is contended that the first respondent/writ petitioner has miserably failed in the earlier round of litigation in W.P.No.13130 of 2015, dated 25.09.2015, which order was affirmed by the Division Bench in appeal by judgment, dated 13.10.2015 in W.A.(MD)No.1066 of 2015 and further affirmed by the Hon'ble Supreme Court in S.L.P(C) No (s) 3785 of 2016, dated 08.04.2016.

3.Further, it is submitted that the liberty granted by the Hon'ble Supreme Court was to go before the appellate authority and the first respondent/writ petitioner did not go before the appellate authority challenging the award of tender in favour of the appellant, but sought for Black-Listing him. This appeal was considered by the Government and has been rejected. Therefore, it



is submitted that a finality has to be attached to any proceedings and the first respondent/Writ petitioner cannot be allowed to re-open settled issues. Further, it is submitted that prohibitory order granted in the writ petition without hearing the appellant is unreasonable and arbitrary and in total violation of principles of natural justice. Therefore, it is submitted that the order passed in the Writ petition deserves to be set aside in its entirety.

4.Mr.B.Pugalenth, learned Additional Advocate General would submit that there is a separate Standing counsel for Civil Supplies Corporation and it is not known as to how the Government Advocate has accepted notice for them and therefore, the order passed by the Writ Court was without notice to the Civil Supplies Corporation. Further, it is submitted that the order impugned in the Writ petition was passed considering all the facts and circumstances and there is no error in the decision taken by the Government.

5.Mr.Niranjan S.Kumar, learned counsel appearing for the first respondent/Writ petitioner would submit that while it may be true that the Writ petition was allowed without notice to the appellant herein, if the material papers are placed before the Court, then the Court will be able to appreciate the contentions raised by the Writ petitioner as to how the appellant is not entitled for the award of contract. Further, it is submitted that the order impugned in the writ petition dated, 13.10.2016 is not a speaking order and it has been passed without giving opportunity to the first respondent.

6.After elaborately hearing the learned counsel for the parties and perusing the materials placed on records, we have no hesitation to hold that the impugned order passed in the writ petition, has to be necessarily set aside for more than one reason. Firstly, on the account of the fact that the appellant herein was not put on notice though he was impleaded as fourth respondent in the writ petition. Secondly, the writ petition was allowed at the admission stage without notice being served on the respondents/Civil Supplies Corporation. Though, the order indicates that the Government Advocate has accepted notice for the first respondent in the writ petition, it is informed by the learned Additional Advocate General that there is a separate Standing counsel for the Civil Supplies Corporation and the Government Advocate would not be justified in accepting the notice on behalf of the respondent Corporation. While allowing the writ petition, the Writ Court has passed the prohibitory order forbearing the Civil Supplies Corporation from engaging the appellant herein, who is an existing contractor, engaged in



7. We are of the clear view that the prohibitory order granted by the writ Court goes beyond the scope of the main prayer in the writ petition. Thus, on the above grounds, the impugned order is liable to be set aside.

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8. The learned counsel appearing for the first respondent/writ petitioner submitted that an opportunity should be granted to the first respondent to put forth his submission to demonstrate as to how the order, dated 13.10.2016 is not tenable.

9. This could have been done only after all the respondents in the writ petition enter appearance through their respective counsel and after pleadings are complete. Therefore, the writ petition has to be restored to the file of the learned Single Judge of this Court. Thus being fully convinced that the procedure adopted by the writ Court was not correct and the prohibitory order granted by the writ court travels beyond the scope of the prayer sought for in the writ petition, we are inclined to interfere with the impugned order.

10. Accordingly, the writ appeal is allowed and the impugned order is set aside and the writ petition is restored to file of this Court. The Registry is directed to place the writ petition before the appropriate Bench to be heard afresh on merits after the parties file their counter affidavit. It is made clear that the observations contained in this order are only for the purpose of reaching the above conclusion, which we have arrived at and we leave the merits of the case to be decided by the writ Court after the pleadings are complete.

11. In the light of the orders passed in the main writ appeal, the respondents Corporation would be entitled to permit the appellant to move the lorries. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Food/Co-operative/Civil Supplies,
Secretariat,
Fort St. George,

<https://hcservices.cemil.in/hcservices/009>.



2. Tamil Nadu Civil Supplies Corporation,
Rep. By its Managing Director,
12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli.

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SDS/SV/SAR 2/14.06.2017/5P/4C