

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAMContempt Petition No. 136 of 2018

M.S.Engineers
Represented by its Managing Partner
No.19, Edayar Street
Coimbatore - 641 001 ... Petitioner

Vs.

Dr.K.Vijayakarthiskeyan, I.A.S.,
Commissioner
Coimbatore City Municipal Corporation
Coimbatore - 641 001 ...Respondent

Prayer: Petition filed under Section-11 of the Contempt of Courts Act, 1971 to Punish the respondent herein for wilfully disobeying the terms of the order of this Court dated 08.09.2018 made in W.P.No.20028 of 2016.

For Petitioner : Mr.Kandhan Duraisami

For Respondent : Mr.R.Sivakumar

WEB COPY
ORDER

Heard Mr.Kandhan Duraisami, learned counsel for the petitioner and Mr.R.Sivakumar, learned Standing counsel appearing for the respondent Corporation.

2.This contempt petition has been heard on various
<https://hcservices.ecourts.gov.in/hcservices/>

dates and when the case came up on 12.04.2018, the Court

passed the following order:

"Heard Mr.Kandhan Duraisami, learned counsel for the petitioner and Mr.R.Sivakumar, learned Standing counsel for the respondent Corporation.

2. The writ petition was disposed of by this Court on 08.09.2016, issuing the following directions:

"11. In the light of the above and the broad consensus of the parties, the Writ Petition is disposed of on the following terms:

1.The Respondent Corporation is directed to furnish photocopies of the photographs relied on by the Enquiry Committee;

2.The petitioner is permitted to peruse the relevant files as well as the relevant measurement books with the assistance of an Engineer/s or an authorised representatives to assist him in perusal as well as during the enquiry. The number of persons to assist the petitioner is restricted to two only;

3.The request for permitting counsels to assist the petitioner is rejected and so also the prayer for cross-examination also stands rejected;

4.As this court has eschewed the averment set out in the counter affidavit, the Commissioner of the respondent Corporation, who has been nominated as an Enquiry Officer, shall conduct the enquiry in a fair manner without being influenced by the stand taken in

the Counter Affidavit which stand effaced and eschewed;

5.Ten days should be granted to the petitioner to pursue all the files/Measurement Books as it appears to be voluminous;

6.The petitioner is permitted to engage the services of not more than two persons to assist him in perusal of records and during the enquiry since it is stated that the records are voluminous; and

7.After perusal of the files, the petitioner is granted 15 days time to submit his further objections and after which the enquiry shall be conducted by affording an opportunity of personal hearing to the petitioner assisted by the said two persons who will be nominated by the petitioner.

3. In spite of lapse of more than one year, the respondent has not complied with the directions issued by this Court. This Court while issuing the directions in the writ petition pointed out as to what are the errors committed by the respondent while taking action against the petitioner. It is not known as to why the respondent has been dragging on the matter for over one year.

4. In the light of the same, if the respondent is not complying with the order and direction issued by this Court on or before 20.04.2018, he shall appear in person on 23.04.2018.

5. Post on 23.04.2018."

3. Subsequently, the matter was heard on 23.04.2018. On that day, an order dated 17.04.2018 was produced before the Court. The Court, after hearing the parties passed the following order:

"A copy of the order passed by the respondent dated 17.4.2018 purportedly to be in compliance with the order passed in the writ petition has been produced before this Court and a copy of the same has been served on the learned counsel for the petitioner.

2. The learned counsel for the petitioner points out that though the order dated 17.4.2018 is 18 pages order, first 12 pages extract the written submissions of the petitioner and the remaining pages extract charges and without rendering a proper finding, the order dated 17.4.2018 has been passed. The learned counsel for the petitioner seeks time to put an affidavit on place pointing out as to how the order is in violation of the order passed in the writ petition.

3. List on 12.6.2018."

4. Subsequently, the matter was adjourned and taken up for hearing on 13.06.2018 wherein the Court took serious note of the conduct of the respondent and passed the following order:

"In spite of opportunities granted to the respondent to remedy the breach, the respondent

appears to have not taken the matter seriously and has been dragging on the matter. It is rather unfortunate that the respondent has not even immediately contacted the standing counsel, who has sought instruction on the additional affidavit filed by the petitioner on 07.06.2018. Thus, it appears that the respondent has no respect for the orders passed by this Court.

2. However, one last and final opportunity is granted to the respondent to remedy the breach, failing which the respondent shall appear in person before this Court on 06.07.2018."

5. Today an affidavit has been filed by the Commissioner of Coimbatore City Municipal Corporation, which reads as follows:-

"I, Dr.K.Vijayakarthekeyan, I.A.S., Son of R.Kannan, Hindu aged about 31 years and residing at Commissioner Bungalow, Ponnurangam Road East, R.S.Puram, Coimbatore - 641 002, do hereby solemnly affirm and sincerely state as follows:

1. I am the respondent herein and as such I am well acquainted with facts of this case from the connected files.

2. At the outset, I tender my un-conditional and sincere apology before this Hon'ble Court. I have highest regard to the proceedings and orders of this Hon'ble Court and I have no intention to disobey any orders, particularly to that of the

3. I submit that the proceedings against the Petitioner Company were initiated much earlier to me assuming this office of Commissioner on 20-11-2014. On the receipt of the copy of order of the Hon'ble Court dated 08-09-2016, I had sought for the connected files and instructions from the existing staff, including the City Engineer and the concerned Engineers. This is my first independent charge holding office. Due to my inadequate experience in dealing with enquiry proceedings I had to rely upon the above mentioned Engineers, they too have no much experience in conducting enquiries of the above nature. However, now I have realized it is not an excuse for the lapses occurred in this subject matter.

4. I submit that I have perused the additional affidavit filed by the petitioner and also obtained necessary opinion from the Corporation Standing Council and on his opinion I have once again perused the entire files carefully and I am of the view that though some of the allegations against the petitioner Company like that they have indulged in impersonation in supply of labourers, poor operation and maintenance of the Parks and Gardens, that they have un-authorisedly occupied and misused the Corporation School premises, but the charges issued to the petitioner company are vague and repetitive. Therefore, I have now understood that the consequential enquiry held by me may not be fair.

5. I submit that in the above stated facts and circumstances I humbly pray that this Hon'ble Court may be pleased to permit me to withdraw the order in Na.Ka.No.8172/2014/MD5 dated 17-04-2018

passed by me, with a liberty to apply my mind afresh to the above allegations levelled against the petitioner company and in the event of me coming to a conclusion that there is a prima facie materials, then the Commissioner may be permitted to proceed against the petitioner as per the law.

6. For the reasons stated in the above paras it is therefore humbly pray that this Hon'ble Court may be pleased to accept my sincere apologies and absolve me from this contempt proceeding and pass appropriate order and thus render justice."

6. From the above affidavit it is seen that the Commissioner tendered unconditional apology and has gone through the entire file and has come to the firm opinion that the charges issued to the petitioner are vague and repetitive and he has now understood that the consequential enquiry is not fair and requests permission to withdraw the order dated 17.04.2018 with liberty to apply his mind afresh to the allegation levelled and in the event of coming to the conclusion that there is a prima facie material, then he may be permitted to proceed against the petitioner as per law.

7. In the light of the stand taken by the respondent, the following order is passed:

The contempt petition stands disposed of by setting aside the charge memo dated 31.03.2015, the order dated 19.08.2015 blacklisting the petitioner and the order dated 17.04.2018 passed by the respondent. In the considered opinion of this Court, blacklisting the petitioner for three

years itself is a substantial punishment and it may be appreciated on the part of the respondent to drop further action. However, the conduct of the petitioner should be closely watched as and when he has been awarded fresh contracts. The personal appearance of the respondent is dispensed with and apology tendered is accepted.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

CO/06/07/2018

To

The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 641 001.

one cc to M/S.R.Sivakumar, Advocate, Sr.No.9206

One cc to M/s.Muthumani Doraisami, Advocate, Sr.No.9109.