IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.46675 of 2002
W.P.M.P.No. 14375 of 2003

R.Subbiah Sundaram (died)
Sankararamalingam
(Substituted as LR of deceased
P1-R.Subbiah Sundaram as per
the Court order dated 11.10.2018
by RSKJ in W.P.M.P.No.1656 of 2007 ...Petitioner

Vs

1. State of Tamil Nadu rep. By its
Secretary, Home Department,
Fort St. George, Chennai - 9

2. The Superintendent of Police,
Tirunelveli District,
Tirunelveli. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari by calling for the records of the second respondent's impugned order made in C.No.K3/40656/02 dated 24.12.2002 and quash the same.

For Petitioner : Mr.C.V.Vijaya kumar

For Respondents : Mr.K.Ravi kumar,
Additional Government Pleader

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorari to call for the records of the second respondent's impugned order made in C.No.K3/40656/02 dated 24.12.2002 and to quash the same.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows :-

The original petitioner, one R.Subbiah Sundaram was a PWD Contractor and he was engaging in doing some small contract works being entrusted to him, by way of offer, that is, repairing work in the Police Quarters, Police Stations etc., not exceeding to the cost of Rs.10,000/-. Such minor works the petitioner had undertaken for various times between 1993-94 to 2000-2001 financial years. According to the respondents, totally he had undertaken 936 such kind of small works, which had been entrusted to him. In this regard, it is the further case of the petitioner that for each and every such similar repair works, a memo would be given by the respondents, under which by way of notification, the work schedule would be given, based on which, they will give the usual rate and accordingly the work will be entrusted to the contractors. Apart from this procedure, there had been absolutely no tender schedule being issued by the respondents or any other officials and therefore, the question of issuance of tender form, from the respondents for cost does not arise.

3. While so, all of a sudden, the impugned order has been passed in the year 2002, by the respondents directing the petitioner to pay a sum of Rs.1,92,240/- towards tender costs and sales tax for 936 works undertaken by him during the said period. Challenging the said order, the petitioner filed a writ petition in W.P.No.39163 of 2002, where in this Court passed an order dated 23.10.2002, by allowing the said writ petition on the ground that prior to passing the order, no show cause notice was issued and therefore, this Court directed the respondents to issue show cause notice and thereafter to decide the issue.

4. Pursuant to the said order passed by this Court, a show cause notice dated 22.11.2002, was issued by the second respondent stating that, in view of the Audit objection raised that the cost of the tender schedule as well as the sales tax had not been received from the contractors including the petitioner who, according to the respondents had undertaken 936 small works, for the period from 1993-94 to 2000-2001, the said show cause notice was issued directing the petitioner to give his written representation within seven days. Pursuant to that, the petitioner had given his reply on 26.11.2002, wherein he was specifically stated that as per the procedure, which was followed by the PWD Department, the tender schedule can be obtained only on payment of required cost and sales tax, which will be mentioned in the tender notice. However, insofar as the works undertaken by the petitioner, no such tender schedule was issued to anyone including the petitioner and the work was done only based on the offer and pursuant to the memo issued in this regard. Therefore, the question of payment of cost of tender schedule did not arise.

5. Though such explanation was given to the show cause notice, the respondents not satisfying with the same, had passed the present impugned order dated 24.12.2002, stating that the petitioner has to pay the cost of the tender schedule along with sales tax payable to the said works undertaken by him for the period of 1993-1994 to 2000-2001, accordingly, the said amount of Rs.1,92,240/-, is due from the petitioner and he has to pay the same otherwise the provisions of the Tamil Nadu Revenue Recovery Act 1864 would be invoked. Aggrieved over the said impugned order of the second respondent dated 24.12.2002, this writ petition has been filed with the aforesaid prayer. During the pendency of this writ petition, since the sole petitioner died, the present writ petitioner, being the legal representative of the deceased petitioner has come in to the picture.

6. I heard Mr.C.V.Vijayakumar, learned counsel appearing for the petitioner, who would submit that, firstly, there had been no tender schedule issued at any point of time, during the entire works undertaken by the petitioner between the years 1993-94 to 2000-2001. The learned counsel appearing for the petitioner would further submit that, the works undertaken by the petitioner are very small/minor repair works, undertaken in the Police Quarters and no works exceeded the value of Rs.10,000/-, and the respondents did not prepare any tender schedule and therefore, no tender schedule had been issued. This was the pattern followed in respect of all the works undertaken by the petitioner and similarly placed contractors for several years. As the preparation of tender schedule for these kind of repair works is not necessary, since they were very minor works, the said procedure had not been adopted by the respondents. When that being so, there had been no occasion for the petitioner for receiving tender schedule at any point of time from the respondents and hence the payment of tender schedule cost in this regard does not arise.

7. The learned counsel appearing for the petitioner would further submit that, though the said reasons had been given by the petitioner in his reply to the show cause notice, the same had not been considered by the respondents and they directly proceeded to recover the cost by invoking the provisions of the Tamil Nadu Revenue Recovery Act 1864, through the impugned order and therefore, the same has been assailed.

8. Per contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents would submit that, though the aforesaid works undertaken by the petitioner had been done, by way of issuance of memo by the department, pursuant to which, the schedule attached along with the memo was the basis for undertaking the work. Though initially the cost of

the tender schedule had not been recovered from the petitioner, subsequently when audit was undertaken, there was an objection in respect of several such contractors, including the petitioner, who had undertaken minor repair works for several years in the respondent department and therefore, based on the said objection raised by the audit, the action was initiated against all the contractors including the petitioner.

9. The Additional Government Pleader would further submit that, when the said action was initiated against the petitioner, he approached this Court by way of filing a writ petition and thereafter pursuant to the order passed by this Court in W.P.No.39163 of 2002 dated 23.10.2002, a Show Cause was issued by which, an opportunity was given to the petitioner. However, the reply given by the petitioner to the show cause notice was not acceptable to the respondents, as the petitioner is liable to pay the tender cost along with the sales tax for each of the works undertaken by him and therefore, the Final order of demanding the said sum of Rs. 1,92,240/- was issued. Therefore the said order is fully sustainable and therefore, it needs no interference from this Court.

10. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

11. Even though it was claimed by the respondents that for each and every works, the cost of the tender schedule of Rs.100/- has to be recovered and this was pointed out by the audit objection, there is no proof to show that for each and every works tender schedule had been prepared and issued at the cost of Rs.100/-. More over, admittedly these works, which were undertaken by the petitioner, are only very minor repair works, undertaken in the police quarters and police stations etc., and the works will be depending upon the necessity of the police department and therefore, there cannot be any fixed cost to the tender schedule.

12. When that being the position, even though, there had been a procedure in the respondent department to collect the sale taxes prescribed therein, in this case, since such preparation of tender schedule was not in practice, the respondents ought not to have proceeded against the petitioner and similarly placed persons, merely because of the audit objection, without applying their mind. Before proceeding against the petitioner, the respondents ought to have verified, whether the tender schedule had been prepared for each and every work undertaken by the petitioner. Since no such exercise had been done and it is the defence of the petitioner that no tender schedule had been prepared, the question of recovery of tender

schedule cost, as has been rightly pointed out by the learned counsel appearing for the petitioner, does not arise. Moreover, admittedly the works undertaken by the petitioner were between the years 1993-1994 to 2000-2001 and therefore, even on the point of limitation, no recovery can be made from the petitioner, as there is no binding contract between the petitioner and the respondents department in this regard and nothing to that effect has been filed before this Court. Therefore, for all these reasons, this Court is of the considered view that the impugned order cannot be sustained.

13. In the result, the writ petition deserves to be allowed and is, accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rts/kmm

To

1. The Secretary,
State of Tamil Nadu,
Home Department,
Fort St. George, Chennai - 9

2. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

+1cc to the Government Pleader, S.R.No.74326

W.P.No.46675 of 2002
W.P.M.P.No.14375 of 2003

MG(CO)
CS/04/12/2019