

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|-------------|--------------|
| Reserved on | Delivered on |
| 18.04.2018  | 05.06.2018   |

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.479 of 2018  
and  
C.M.P.No.4449 of 2018

M/s.Savitha Devi  
Rep. by Managing Director,  
Transport Contractor,  
No.29/19, Sannathi Street,  
Thiruvannamalai,  
Thiruvannamalai District.

... Appellant

Vs.

- 1.The Tamil Nadu Civil Supplies Corporation,  
Rep. by its Managing Director,  
No.12, Thambusamy Road, Kilpauk,  
Chennai - 600 010.
- 2.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Thiruvannamalai,  
Thiruvannamalai District.

[R2 amended as per order  
dated 09.01.2018 in  
W.M.P.No.263 and 264 of 2018  
in W.P.No.32435 of  
2017]

- 3.The Deputy Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Thiruvannamalai.

... Respondents

PRAYER : Appeal filed against the order passed by this Court  
dated 13.02.2018 passed in W.P.No.32435 of 2017.

PRAYER IN W.P.No.32435 of 2017.

Writ Petition filed Under Article 226 of the Constitution of India praying to writ of Certiorari to Call for the proceedings of the 2nd respondent herein, signed by the 3rd respondent herein, bearing Na.Ka.No.B1/4710/2016 dated 6.12.2017 of the 2nd respondent and quash the same.

For Appellant : Mr.V.Karthik, Senior Counsel  
for M/s.R.Kannan

For Respondents : Mr.S.T.S.Moorthy,  
Additional Advocate General  
Assisted by Mr.L.P.Shanmugasundaram

J U D G M E N T

R.SUBRAMANIAN, J.

1. This intra Court appeal challenges the dismissal of the Writ Petition in W.P.No.32435 of 2017. The challenge in the said Writ Petition was to the order of the 3<sup>rd</sup> respondent dated 06.12.2017, in and by which, the petitioner in the Writ Petition was directed to be black listed.

The facts leading to the filing of the Writ Petition are as follows:

2. The petitioner which is a partnership firm was declared to be the lowest bidder for transportation of paddy from the railhead at Porur to the Modern Rice Mills at Porur and Cheyyar for the period from 2015 - 2017. A work order was also issued to the petitioner and the contract was to come to an end on 30.06.2017. While so, the 2<sup>nd</sup> respondent in W.P.No.32435 of 2017 viz., The Regional Manager, Tamil Nadu Civil Supplies Corporation, issued notice on 15.05.2017 alleging delay in transportation of paddy from the Porur railhead to Porur Modern Rice Mill and Cheyyar Rice Mill during May 2017.

3. The appellant had submitted its explanation to the 2<sup>nd</sup> respondent on 10.06.2017. It is claimed by the appellant that no further action was taken by the respondents pursuant to the said show cause notice. The period of contract had come to an end on 30.06.2017 and the same was extended for a period of one month from 01.07.2017 to 31.07.2017. While so, on 08.07.2017, the 2<sup>nd</sup> respondent/ Regional Manager, Tamil Nadu Civil Supplies Corporation issued a notice, alleging certain irregularities in

the operations of the petitioner. The said notice also required the petitioner/ appellant to submit its explanation within 7 days from the date of receipt of the said notice.

4. The petitioner by its letter dated 17.07.2017 requested the respondents to grant further time till 24.07.2017 for submitting its explanation. Another letter was sent on 24.08.2017 stating that the Managing Partner of the petitioner was hospitalized and hence further time was sought for. In the mean time, in view of the interim orders granted by this Court in W.P.No.18215 of 2017, the petitioner/ appellant continued its operations. Thereafter, the petitioner/ appellant submitted its explanation on 25.10.2017. The impugned order dated 06.12.2017 came to be passed black listing the petitioner even without specifying the period for which the black listing is to be in force.

5. Aggrieved by the said order black listing the petitioner, the petitioner/ appellant had come forward with the Writ Petition in W.P.No.32435 of 2017. The main contention of the petitioner in the said Writ Petition is that the order black listing the petitioner is beyond the powers of the 2<sup>nd</sup> respondent and the black listing by itself cannot be an independent punishment. The petitioner would further contend that the black listing has been done without conducting an enquiry and suffers from non-application of mind.

6. The learned Single Judge who heard the Writ Petition, however, dismissed the same on the sole ground that the remedy by way of appeal to the Managing Director of the respondent Corporation is available to the petitioner, hence the petitioner cannot directly approach this Court without exhausting the alternative remedy. Aggrieved by the dismissal of the said Writ Petition, the petitioner in W.P.No.32435 of 2017 has come forward with the above appeal.

7. We have heard Mr.V.Karthik, learned Senior Counsel for M/s.R.Kannan, learned counsel appearing for the appellant and Mr.S.T.S.Moorthy, learned Additional Advocate General assisted by Mr.L.P.Shanmugasundaram for the respondents.

8. Mr.V.Karthik, learned Senior Counsel appearing for the appellant would contend that the order dated 06.12.2017 black listing the petitioner/ appellant is contrary to the principles of natural justice and is beyond the powers of the 2<sup>nd</sup> respondent. He would also point out that no opportunity of personal hearing was afforded to the petitioner/ appellant before the order black listing the petitioner/ appellant came to be passed.

9. He would further submit that availability of alternative remedy is not an absolute bar for entertaining the Writ Petition under Article 226 of the Constitution of India. He would also rely upon the certificates issued by the Regional Manager of the respondent Corporation at Cuddalore dated 07.07.2017, as well as the certificates issued by the 2<sup>nd</sup> respondent dated 08.07.2017, wherein, the very same officer as Regional Manager incharge of Villupuram Region as well as the Regional Manager of Thiruvannamalai Region had issued certificates stating that the performance of the petitioner as a Transport Contractor of the Civil Supplies Corporation has been satisfactory. He would also point out that on the same day viz., 08.07.2017, the same officer has chosen to issue the show cause notice also.

10. Mr.V.Karthik, learned Senior Counsel appearing for the appellant/ petitioner would contend that since the order black listing the petitioner involves civil consequence, the 2<sup>nd</sup> respondent Regional Manager, Tamil Nadu Civil Supplies Corporation, Tiruvannamalai should have afforded an opportunity to the petitioner/ appellant before passing an order black listing the petitioner.

11. In response to the above contentions of the learned Senior Counsel for the appellant, Mr.S.T.S.Moorthy, learned Additional Advocate General would submit that the 2<sup>nd</sup> respondent has considered the explanation of the petitioner/ appellant and has on available material concluded that the deficiencies in the services of the petitioner alleged in the show cause notice dated 08.07.2017 do exist and invoking the powers vested in the Regional Manager as per the agreement entered into pursuant to the grant of tender, the order of black listing has been passed. He would further point out that Clause 25 of the agreement empowers the Regional Manager to terminate the contract and black list the contractor on reasonable cause and hence according to the learned Additional Advocate General, the order black listing the petitioner is justified.

12. A counter affidavit has been filed by the Regional Manager viz., the 2<sup>nd</sup> respondent. In the counter affidavit, apart from projecting the availability of alternative remedy, the 2<sup>nd</sup> respondent has also stated that the appellant/ petitioner had taken its own sweet time to file an explanation to the show cause notice dated 08.07.2017 and only after following the prescribed procedure, the order black listing the petitioner came to be passed on 06.12.2017. It is also stated that though the show cause notice dated 08.07.2017 required the petitioner/ appellant to file its response within 7 days, the appellant had in fact filed his response only on 25.10.2017. Hence, there is no merit in the contention of the appellant/ petitioner that it was not given sufficient time to submit its explanation. The

learned Additional Advocate General would further contend that Clause 25 of the agreement between the parties relating to the contract does not contemplate a personal enquiry before exercising the power of black listing.

13. We have considered the rival submissions. Clause 25 of the agreement entered into between the parties pursuant to the award of the contract reads as follows:

"25. The Corporation ie. SRM/RM reserves right to terminate the contract and to black list the contractor on reasonable cause after giving fifteen days notice to the contractor, in case the performance of the contractor is found to be unsatisfactory and it shall be lawful for the corporation to get the work done by other sources and to adjust in full or part, the extra expenditure and damages, if any, suffered by the corporation as consequences of the breach of contract, on the part of the contractor from out of the Security Deposit furnished by the contractor and other amounts due to the contractor from the Corporation, besides legal remedy. The decision of the Managing Director or Senior Regional Manager/ Regional Manager in this regard, will be final and binding on the contractor."

14. As could be seen from the extract above, the respondent Corporation is required to give 15 days notice to the contractor before taking action to black list the contractor. The notice dated 08.07.2017 requires the petitioner/ appellant viz., the contractor to submit its explanation within a period of 7 days from the date of receipt of the notice. Based on the above Mr.V.Karthik, learned Senior Counsel appearing for the appellant would contend that the notice itself is defective inasmuch as it is not in compliance with the requirements of Clause 25 of the Contract.

15. However, it is seen that the petitioner/ appellant had submitted its explanation only on 25.10.2017 nearly three months from the date of the show cause notice. Therefore, we are of the opinion that the prescription of 7 days in the show cause notice dated 08.07.2017 would not per se invalidate the proceedings, unless it is shown that the petitioner/ appellant has been prejudiced by the fixation of such a shorter period in the show cause notice. As could be seen from the impugned order dated 06.12.2017, the petitioner/ appellant has sought for extension of time for filing its explanation and has filed its explanation

on 25.10.2017 ie., well after the 15 days period. We are therefore of the considered opinion that the prescription of a lesser period in the show cause notice than what is contemplated in Clause 25 of the agreement cannot be made a ground to invalidate the proceedings of the 2<sup>nd</sup> respondent.

16. The next contention of the learned Senior Counsel appearing for the appellant is that the appellant was not given a personal hearing before the order black listing it came to be passed on 06.12.2017. In the counter affidavit filed by the 2<sup>nd</sup> respondent on behalf of the respondents in this Writ Appeal, it is not stated that the petitioner/ appellant was afforded an opportunity of personal hearing before the order dated 06.12.2017 came to be passed. The main ground of attack to the order dated 06.12.2017 made by the petitioner/ appellant is that it is contrary to the principles of natural justice and the respondents should have given an opportunity of personal hearing inasmuch as the order black listing contractor involves civil consequences.

17. The counter affidavit proceeds on the footing that no prejudice has been caused to the appellant because of the absence of personal enquiry. We are unable to approve the said contention of the respondent Corporation. It is the fundamental principles of law that the principles of natural justice should be strictly adhered to, before passing an order which would result in civil consequences. Admittedly, no enquiry has been conducted by the 2<sup>nd</sup> respondent before the order dated 06.12.2017 came to be passed.

18. The learned Single Judge has dismissed the Writ Petition solely on the ground of availability of alternative relief. The availability or otherwise of an effective alternative remedy is not an absolute bar for exercising the jurisdiction of Article 226 of this Court. The question of non-interference under Article 226 of Constitution of India in cases where there is an effective alternative remedy is a self imposed restriction and the same will not preclude this Court from examining the correctness of the actions, particularly when the actions are quasi-judicial in nature and they visit the affected persons with civil consequences. Once it is found that the principles of natural justice stood violated, the said self imposed restriction of non-exercise of jurisdiction under Article 226 of Constitution of India in view of the availability of the alternative remedy will pale into insignificance.

19. Mr.S.T.S.Moorthy, learned Additional Advocate General would contend that Clause 25 of the Agreement does not contemplate a personal enquiry. Clause 25 which has been extracted above, of course, empowers the respondents to

terminate the contract and black list the contractor on a reasonable cause after giving 15 days notice in case the performance of the contractor is found to be unsatisfactory.

20. As already pointed out, the order black listing a contractor involves civil consequence and in such cases, a fair and reasonable opportunity would mean an include of a requirement of personal hearing also. In the absence of such personal hearing cannot be concluded that the appellant/petitioner was afforded a fair and reasonable opportunity before the order of black listing came to be passed.

21. In view of the above discussions and in view of the admitted position that no opportunity of personal hearing was afforded to the appellant/ petitioner, we are constrained to interfere under Article 226 of the Constitution of India. For the foregoing reasons, the order of the learned Single Judge dismissing the Writ Petition on the ground of availability of alternative remedy will stand set aside. The order impugned in the Writ Petition dated 06.12.2017 having been passed in violation of principles of natural justice is quashed and the Writ Petition in W.P.No.23435 of 2017 will stand allowed.

22. Since, we have quashed the order dated 06.12.2017 only on the ground of non-compliance of the principles of natural justice. The second respondent will re-hear the matter after giving an opportunity of personal hearing to the petitioner and thereafter, decide the matter afresh on merits without being influenced by any of the observations made by us in this order. The Writ Appeal is allowed, the order dated 06.12.2017 is set aside and the matter is remitted to the 2<sup>nd</sup> respondent to enable the 2<sup>nd</sup> respondent to give an opportunity of personal hearing to the petitioner/ appellant and thereafter decide the matter afresh. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

सत्यमेव जयते Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1.The Tamil Nadu Civil Supplies Corporation,  
Rep. by its Managing Director,  
No.12, Thambusamy Road, Kilpauk,  
Chennai - 600 010.

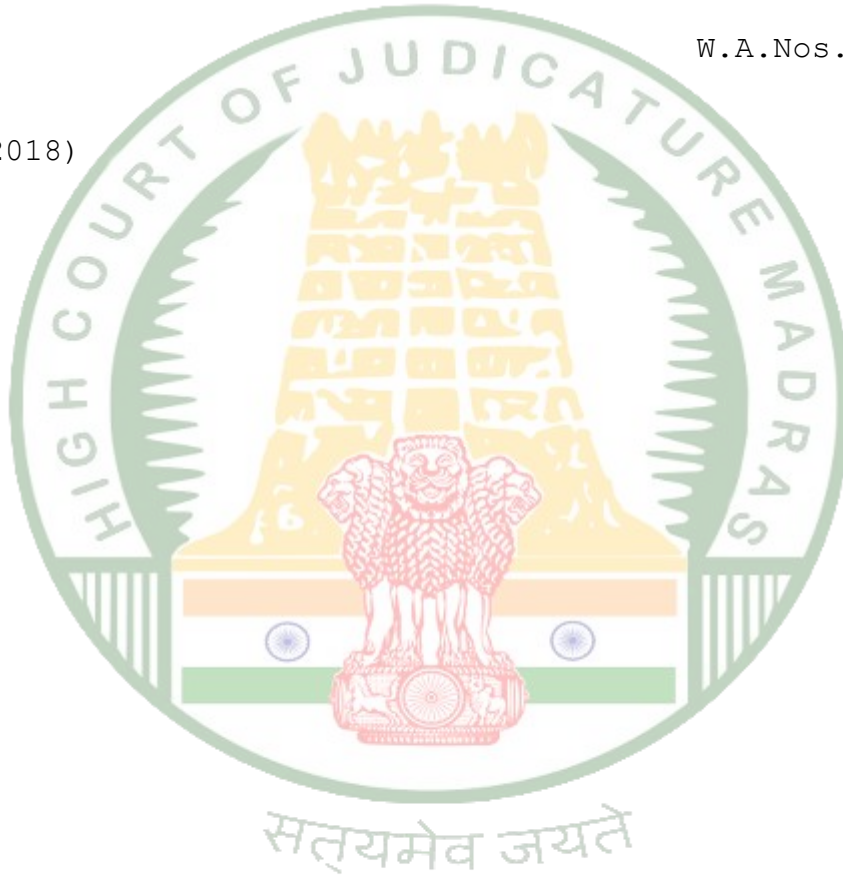
2.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Thiruvannamalai,  
Thiruvannamalai District.

3.The Deputy Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Thiruvannamalai.

+1cc to Mr.R.KANNAN, Advocate, S.R.No.34633

Judgment in  
W.A.Nos.479 of 2018

MG(CO)  
TR(08/06/2018)



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