

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.66 of 2018 and C.M.P.No.516 of 2018

R.Nimrode

... Appellant

Vs.

1.The Executive Officer,
Maraimalai Nagar Town Panchayat,
Maraimalai Nagar,
Kancheepuram District.

2.The Commissioner,
Municipal Administration,
Chepauk, Chennai-600 005.

3.The District Collector,
Town Panchayat Division,
Kancheepuram District,
Kancheepuram.

4.The Chief Engineer,
Highways Department,
Chepauk, Chennai-600 005.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent as against the order dated 08.12.2017 passed by this Court in Writ Petition No.38749 of 2004.

Writ prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified Mandamus to call for the records relating to the Order passed by the First respondent/Executive Officer, Maraimalai Nagar Town Panchayat in Na.Ka.No.995/2001/A1, dated 31/08/2004 and quash the same the forbear the first respondent from proceeding any recovery based upon the said Order.

For Appellant : M/s.AL.Ganthimathi

For Respondents : Mr.V.Anandhamurthy,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The Executive Officer, Maraimalai Nagar Town Panchayat by proceedings, dated 31 August, 2004 blacklisted the appellant, who was a registered contractor. Since materials relied on by the Executive Authority were not furnished to the contractor and there was violation of the principles of natural justice, the appellant challenged the proceedings dated 31 August, 2004 before the Writ Court. The learned Single Judge dismissed the writ petition primarily on the ground that within a period of 28 days, the road laid by the appellant was in a pitiable condition. Feeling aggrieved by the order dismissing the writ petition, the appellant has come up with this appeal.

2. The learned counsel for the appellant contended that the report relied on by the Executive Officer in his proceedings dated 31 August 2004 was not furnished to the appellant. According to the learned counsel, there was no specific proceedings initiated against the appellant for blacklisting. The proceedings relating to the repair of the road was taken to blacklist the appellant.

3. We have also heard the learned counsel for the respondents.

4. The first respondent awarded a contract to the appellant for formation of roads in Maraimalai Nagar. The appellant completed the work and received the amount from the Local Body.

5. Since the road was badly damaged within a period of 28 days, the Local Body called upon the appellant to repair it emergently. The appellant appears to have repaired the road. However, he was not prepared to re-lay the road. There were series of proceedings involving the appellant and the first respondent. In those proceedings, the first respondent indicated that in case, the road is not repaired to the satisfaction of the Local Body, he would be blacklisted. However, the fact remains that there was no specific proceeding relating to blacklisting.

6. The Executive Officer in his proceedings dated 31 August, 2004 referred to the report submitted by the Divisional Engineer, Highways Department. The inspection report submitted by the Divisional Engineer was taken as part and parcel of the proceedings for blacklisting the appellant. However, the fact remains that no such report was given to the appellant.

7. The order disqualifying the contractor would involve civil consequences to him. He should be put on notice with

regard to the adverse materials collected and relied on by the authority. It would not suffice that in an incidental proceedings, a reference is made that the contractor would be disqualified. There should be independent proceedings initiated by the authority for blacklisting. The contractor should be given a reasonable opportunity to submit his response.

8. The order passed by the Executive Officer does not contain any details with regard to the specific notices issued for blacklisting the contractor. Similarly, there is nothing on record to show that a copy of the report relied on by the first respondent in his proceedings dated 31 August, 2004 was furnished to the appellant. This aspect was not considered by the learned Single Judge. We are therefore of the view that the matter requires fresh consideration.

9. The Supreme Court in Union of India v. A.K.Mithiborwala and ors. reported in AIR 1975 SC 266, considered the effect of an order blacklisting the contractor and the necessity to issue notice to the affected party before taking such a decision.

The Supreme Court said,

"12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the

prejudice of a person it has to be supported by legality.

14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation."

10. The proceedings dated 31 August, 2004 is set aside. The matter is remanded to the first respondent for fresh consideration. The first respondent is at liberty to issue a comprehensive notice to the appellant to show cause as to why he should not be blacklisted. The appellant should be given a reasonable opportunity to submit his response. In case, the first respondent is placing reliance on any of the reports, copies of such reports should also be given to the appellant. The order should contain reasons for blacklisting. However, we make it clear that this judgment would not stand in the way of

taking action against the appellant for recovery of the loss sustained by the Local Body on account of the alleged poor workmanship.

11. The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

abr/svki

To

- 1.The Executive Officer,
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- 4.The Chief Engineer,
Highways Department,
Chepauk, Chennai-600 005.

+1cc to Mr.AL.Gandhimathi, Advocate SR.No.19827
+1cc to Government Pleader SR.No.20102

W.A.No. 66 of 2018

SS(CO)
GN(13/04/2018)