

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.16821 of 2011

&

M.P.No.1 of 2011

Masani ... Petitioner

Vs.

The Estate Officer,
Tamil Nadu Agriculture University,
Coimbatore ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the respondent's order made in Lr.No.H/DB/Sr.DO/CW/LADIESHOSTEL/ADAC&RI/TRY/2011 dated 23.06.2011 to quash the same and consequently direct the respondent to permit the petitioner to commence and complete the work at the revised rates.

For Petitioner :Mr.L.Chandrakumar

For Respondent :Mr.Abdul Saleem

O R D E R

This writ petition has been filed challenging the order dated 23.06.2011 passed by the respondent in Lr.No.H/DB/Sr.DO/CW/LADIESHOSTEL/ADAC&RI/TRY/2011.

2. It is the case of the petitioner that he is a contractor with the respondent and he was awarded the contract for construction of a Ladies Hostel in first floor at Anbil Dharmalingam Agricultural College and Research Institute, Trichy and for construction of a ladies hostel at Forest College and Research Institute, Mettupalayam. According to him, he commenced the work and due to price escalation, he had requested the respondent for price escalation through several representations . However, the respondent rejected the

representations of the petitioner by rejecting the price escalation stating that the Government Orders have no application and the respondent being an autonomous body requested the petitioner to complete the work as per the terms and conditions of the contract.

3. According to the petitioner without any hearing, the respondent by the impugned proceedings dated 23.06.2011 passed the following orders for non completion of the work by the petitioner:

- (a) Earnest money deposit is forfeited;
- (b) Additional security deposit is forfeited;
- (c) Withheld amount is forfeited;
- (d) The petitioner's firm has been blacklisted permanently;
- (e) Recommended to Government Departments to blacklist the petitioner's firm;
- (f) Additional Cost involved due to re-tender will be recovered from the petitioner as per Revenue Act.

4. Aggrieved by the impugned order dated 23.06.2011, this writ petition has been filed.

5. A counter affidavit has been filed by the respondent stating that the petitioner has committed breach of contract and therefore, they are entitled for forfeiture of earnest money deposit, forfeiture of additional security deposit and forfeiture of withheld amount. According to them, the petitioner had stopped the work abruptly and did not show progress inspite of the reminders sent by the respondent. According to the respondent, the petitioner is also not entitled for any escalation as per the special conditions for rates and prices sent by the respondent, while entering into the contract. Therefore, according to them, the impugned order has been issued only as per the terms and conditions of the contract entered into by the petitioner with the respondent.

6. Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.Abdul Saleem, learned counsel for the respondent.

7. According to the learned counsel for the petitioner, the impugned order will have to be quashed, since the respondent cannot blacklist the petitioner's firm permanently and also cannot send recommendations to all the Government Department like PWD etc., for blacklisting the petitioner's firm. According to him, this violates Article 19(1)(g) of the Constitution of India. He also drew the attention of this Court to the terms and conditions of the contract and submitted that there is no power

for the respondent to blacklist the petitioner's firm.

8. Per contra learned counsel for the respondent would submit that the petitioner committed breach of contract and there was an enormous delay in the execution of the work order by the petitioner as per the contract. Therefore, the respondent in accordance with the terms and conditions of the contract have rightly forfeited the earnest money deposit, additional security deposit and withheld amount from the petitioner.

9. Admittedly, as seen from the counter affidavits as well as the typed set of papers filed by the respondent, there is a breach of contract committed by the petitioner. The contract also does not provide for escalation of price during pendency of the contract. Therefore, the respondent have rightly rejected the request of the petitioner for escalation in prices. This being the case, the respondent has rightly forfeited the earnest money deposit, additional security deposit and withheld amount.

10. The affidavit filed by the petitioner in support of this writ petition also admits that the petitioner could not comply with the terms and conditions of the contract in view of the escalation of price. The terms and conditions of the contract also does not provide for any escalation in price as sought by the petitioner. Therefore, the contention of the learned counsel for the petitioner that the respondent ought not to have forfeited the earnest money deposit, additional security deposit and withheld amount cannot be accepted by this Court. However, the terms and conditions of the contract does not provide for blacklist of the petitioner's firm permanently or for sending recommendations to all the Government department like PWD etc., to blacklist the petitioner's firm.

11. Admittedly, the contract has been entered into only with the respondent by the petitioner and not with other Government departments. This being the case, the respondent cannot send recommendations to all the Government departments like PWD etc., to blacklist the petitioner's firm. Since the contract also does not provide for blacklisting of the petitioner firm permanently, in case, there is a breach of contract committed by him, the respondent cannot blacklist the petitioner's firm permanently. Therefore, the impugned order which has blacklisted the petitioner's firm permanently and has also permitted recommendations to be set to all the Government Departments like PWD etc., to blacklist the petitioner's firm is an erroneous order and violates the fundamental right of the petitioner to carry on his business and in effect it violates

Article 19(1)(g) of the Constitution of India.

12. Excepting for blacklisting the petitioner's firm permanently and sending recommendations to Government departments like PWD etc., to blacklist the petitioner's firm, all other directions given under the impugned order are valid as it has been issued only pursuant to the terms and conditions of the contract entered into between the petitioner and the respondent.

13. In the result, the impugned order dated 23.06.2011 in Lr.No.H/DB/Sr.DO/CW/LADIESHOSTEL/ADAC&RI/TRY/2011 is quashed in respect of (a) blacklist of the petitioner's firm permanently and (b) sending recommendations to Government Departments like PWD to blacklist the petitioner's firm and in all other aspects such as forfeiture of earnest money deposit, forfeiture of additional security deposit of withheld amount and additional cost involved due to re-tender will be recovered as per Revenue Recovery Act shall stand confirmed.

14. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

The Estate Officer,
Tamil Nadu Agriculture University,
Coimbatore

+lcc to Mr.L.Chandrakumar Advocate sr105493

+lcc to Mr.Abdul Saleem Advocate sr365

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