

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P. No.29255 of 2007

The Voluntary Health, Education and
Rural Development Society (VHERDS),
rep. by its Executive Director Mr.K.Bhanu,
No.41, (Old No.19), Circular Road,
United India Colony, Kodambakkam,
Chennai 600 024

..... Petitioner

Vs.

1. The Secretary,
Ministry of Rural Development,
Government of India,
8-9 Floor, Paryaravan Bhavan,
CGO Complex, Lodhi Road,
New Delhi 110 003.
2. The Director General,
Council for Advancement of People's
Action and Rural Technology (CAPART),
India Habit Centre, Zone-5A (Core-C),
2nd floor, Lodi Road, New Delhi -110 003.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent culminating in the impugned order bearing F.No.ARTS/TND/17/08/2002 dated 03.08.2007 issued to the petitioner and quash the same and forbear the respondent from blacklisting the petitioner.

For Petitioner

: Mr. D.P. Vasudavan

For Respondents

: Mr. Thangasivan,
for R2

: R1-dismissed, vide order
dated 16.11.2010

O R D E R

This writ petition has been filed challenging the order passed by the second respondent directing the petitioner to refund the amount paid to the petitioner and forbearing the respondents from blacklisting the petitioner.

2. According to the petitioner, it is a voluntary organization engaged in Rural Development Activities. The second respondent- Council for Advancement of People's Action and Rural Technology (CAPART), is involved in planting of bamboos in various places throughout the country. The petitioner approached the second respondent to sanction a project to the petitioner. Considering the petitioner's request, a project was sanctioned to the petitioner on 14.08.2003 to the extent of Rs.22,01,000/- with implementation period of 24 months, and, a sum of Rs.11,00,000/- was paid to the petitioner as first installment. After receipt of the first installment, the petitioner proceeded to implement the project by starting the nursery and planting saplings.

3. Subsequently, the second respondent requested the petitioner to furnish a statement of physical progress and the financial utilization of funds. The petitioner has also submitted its progress report, and the status of the project along with the detailed financial expenditure incurred. The second respondent, vide letter dated 11.04.2005, informed the petitioner that the petitioner has been placed under Financial Assistance Stopped (FAS) status. The petitioner came to know that the impugned order has been passed based on the mid-term Evaluation Report generated by them without involving the petitioner. Thereafter, the petitioner made a representation to the second respondent to keep the FAS order in abeyance. The petitioner has also furnished details to satisfy the second respondent that the project was duly completed and the first installment paid to the petitioner has been duly utilized in the project and they are not responsible for the failure of the crops. Without considering the petitioner's representation, a show cause notice dated 06.02.2007 was issued and the second respondent directed the petitioner to repay the amount received by them with interest at the rate of 6%. Thereafter, the petitioner made a request to give further opportunity to explain the implementation of the project. Considering the request, the second respondent conducted an enquiry on 22.06.2007 and the petitioner also explained the details of the implementation of the project to the Deputy Director General. Now, without considering the same, the impugned order dated 03.08.2007 has been passed rejecting the petitioner's request and directed the petitioner to refund the amount within a period of 30 days.

Challenging the said order, the present writ petition has been filed.

4. The respondents filed a counter affidavit stating that during the month of August 2002, the petitioner has sent a proposal of bamboo cultivation in 196 villages in Kancheepuram District at the cost of Rs.1.526 Crores. In the above proposal they have identified 196 villages adjoining the river beds of Vegavathi and Palar river and 5000 beneficiaries will be identified from and out of the small marginal farmers and farm women from SHGs group. Each beneficiary will be supported with 30 saplings of bamboo to be planted in their field bunds, channel bunds and boundaries etc. The pre-funding appraisal was conducted by CAPART and the report revealed that the proposal is technically feasible in the target area. Subsequently, the National Standing Committee on Rural Technology (NSCRT) approved the project at a total cost of Rs.22,01,000/- and beneficiaries contribution was fixed as Rs.5,60,000/- for a period of two years. As per sanction order dated 14.08.2003, 50 bamboo seedlings were to be given to each beneficiary and thus 50000 seedlings were to be given to 1000 beneficiaries of 196 villages with a condition that the petitioner has to implement the project as per the terms and conditions of the order of sanction.

5) In January 2005, the second respondent deputed a team of two project evaluators to conduct the mid-term evaluation and the team found various discrepancy/deficiency, on the part of the petitioner to implement the scheme and the scheme was not successfully implemented by the petitioner and there is no possibility of completion of project and the project has not been resulted in achieving the objectives. In the above circumstances, the organization was put under the Funding Assistance Stopped (FAS) category. Since the project was not implemented by the petitioner, the second respondent issued a notice to the petitioner and sought for refund of the amount. Subsequently, on the request of the petitioner, an enquiry was also conducted and the explanation submitted by the petitioner was not found convincing and acceptable and hence the impugned order has been passed. That apart, the petitioner organization itself in its letter dated 25.06.2007 requested the second respondent to close the file without asking for refund of the amount released to the petitioner. It is further stated that it is a disputed question of fact and it cannot be decided in the writ petition and the writ petition is not maintainable.

6. The learned counsel for the petitioner would submit that the petitioner is not able to implement the project successfully due to the failure of the monsoon and the petitioner should not be held responsible for the same. It is further stated that the

petitioner has carried out the work sincerely, and the petitioner distributed the bamboo seeds to 32 villagers totalling 1400 bamboo saplings. Only due to the unfeasible circumstances, the petitioner could not complete the project. In the above circumstances, the respondents cannot sought to refund the entire amount paid to the petitioner. That apart, none of the objections raised by the petitioner was considered by the respondents and the compliance report filed by the petitioner was also not considered.

7. Per contra, the learned counsel appearing for the second respondent would submit that as per the terms and conditions of the contract, the petitioner has to raise bamboo saplings to 196 villages. But, admittedly, the petitioner did not complete the project and they themselves want to close the project on the ground that the project could not be implemented. Even though the petitioner contended that they have partly implemented the contract, there is no material available to prove that. That apart it is a disputed question of fact and it cannot be decided in the writ petition.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. It is an admitted fact that the project was sanctioned to the petitioner to distribute the bamboo saplings to 196 villages and 15000 saplings to be distributed to 1000 beneficiaries and first installment of Rs.11,00,000/- was also paid to the petitioner. It is also an admitted fact that the petitioner could not implement the project as per the terms agreed between the parties. According to the petitioner, the project could not be implemented because of monsoon failure and there is no fault on their side. In the above circumstances, they sought for closure of the project. Even though it is stated that they have partly implemented the project and distributed the bamboo saplings, now the second respondent sought to recover entire sum of Rs.11 lakhs paid to the petitioner, but the same was disputed by the second respondent alleging that it is purely a contractual obligation and the parties are bound by the terms and conditions of the contract, and whether the petitioner completed part of project or not is a disputed question and that cannot be decided in a writ petition.

10. As rightly contended by the respondents, it is the disputed question of fact, whether the petitioner has completed the project partly and the remaining work could not be completed due to the monsoon failure, and it is matter of evidence, the said disputed question cannot be decided in this writ petition. If at all the petitioner has any grievance it is for the petitioner to approach the concerned Civil Court seeking

for appropriate remedy, and the grievance of the petitioner cannot be redressed in this writ petition, and the writ petition only liable to be dismissed.

11. Accordingly, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary,
Ministry of Rural Development,
Government of India,
8-9 Floor, Paryaravan Bhavan,
CGO Complex, Lodhi Road,
New Delhi 110 003.
2. The Director General,
Council for Advancement of People's
Action and Rural Technology (CAPART),
India Habit Centre, Zone-5A (Core-C),
2nd floor, Lodi Road, New Delhi -110 003.

+1cc to Ms.Maliniganesh, Advocate Sr.94134

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srg 19/03/2020

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