

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 11.06.2019****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.25612 of 2009**

K.Govindarajulu

... Petitioner

Vs.

1.The Commissioner,
Hosur Municipality,
Hosur, Krishnagiri District.

2.The Municipal Council,
Rep. by the Chairman,
Hosur Municipality,
Hosur, Krishnagiri District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the proceedings dated 20.11.2009 having reference No.Na.Ka. No.6405/2008/A3 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to refund the entire bid amount Rs.11,84,462/- with 12% interest from the date of the remittance and return the 2 post dated cheques given by the petitioner.

For Petitioner : Mr.C.Uma

For Respondents : Mr.A.Arumugam

ORDER

The petitioner has filed this petition seeking issuance of Writ of

Certiorarified Mandamus to call for the records of the proceedings dated 20.11.2009 having reference No.Na.Ka.No.6405/2008/A3 passed by the first respondent and to quash the same and to consequently direct the first respondent to refund the entire bid amount of Rs.11,84,462/- with 12% interest from the date of remittance and return the 2 post dated cheques given by the petitioner.

2.The case of the petitioner is that he is the highest bidder for the licence to administer and maintain the slaughterhouse for the years 2009-2012. His bid was for Rs.11,84,462/- with 5% increase every year. On 30.04.2009, pursuant to the order dated 23.04.2009 passed by the first respondent having reference number Na.Ka.No.6405/08/A3, the petitioner remitted the auction amount (for 11 months) at Rs.11,84,462/- (including tax) in favour of the Hosur Municipality. On the same day, the petitioner handed over two post dated cheques dated 10.02.2010 and 30.03.2010 drawn on State Bank of India, Hosur Branch, for a sum of Rs.24,730/- (tax) and Rs.2,00,000/- (tender deposit) respectively.

3.It is his further case that the first respondent vide proceedings dated 30.04.2009 permitted the petitioner to collect the toll for

maintenance of slaughterhouse. Thereafter, on the same day the petitioner entered into agreement with the first respondent and the petitioner was permitted to collect Rs.50/- for the slaughter of one goat.

4.It is his further case that the slaughterhouse was handed over to him only after several requests and legal notice and even after handing over of the building, the construction was not completed and due to non-completion of the construction works, nobody came to slaughter their goat in the slaughterhouse. Even after completion of the construction works, there was no collection for the petitioner, due to which he incurred heavy loss.

5.It is his further case that some of the mutton merchants approached this Court by filing W.P.No.5712 of 2009 to set aside the resolution dated 28.12.2007 passed by the second respondent by which the slaughter fee of Rs.5 per sheep was increased to Rs.50 per sheep for the years 2009-2012. This Court vide order dated 08.07.2009 set aside the said resolution.

6.It is his further case that thereafter the first respondent passed an order dated 23.07.2009 directing the petitioner to collect Rs.30/-

per goat instead of Rs.50/- for slaughtering. Hence, the petitioner gave several representations expressing his unwillingness to continue the contract and requesting the first respondent to cancel the licence and refund the tender amount and since there was no action on the part of the first respondent, the petitioner filed W.P.No.22595 of 2009. This Court vide order dated 10.11.2009, directed the first respondent therein to consider the representation of the petitioner dated 07.08.2009, legal notice dated 08.09.2009 and the representation dated 23.09.2009 regarding refund of entire bid amount and to pass appropriate orders on merits and in accordance with law.

7.It is his further case that thereafter the first respondent passed an order stating that if the petitioner wished to continue the contract, he will be refunded Rs.58,946/- and the remaining Rs.4,00,000/- will be retained by the respondent as security and solvency for the next contract period. Aggrieved by the same, the petitioner has filed this writ petition.

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8.The learned counsel for the petitioner would submit that initially, licence was granted to the petitioner on 30.04.2009 and the licence period starts from 01.05.2009, however, possession was handed over to the petitioner only on 15.07.2009 without completion

of construction works and finally, the building was opened on 21.08.2009 and the key of the building was handed over to the first respondent on 30.11.2009. Hence, the calculation made by the first respondent is un-sustainable. Accordingly, he prayed for allowing the writ petition.

9.The learned counsel appearing for the respondents would submit that initially licence period started from 01.05.2009 and the petitioner was operating the slaughterhouse. After construction of the new slaughterhouse, the petitioner was once again handed over possession of new slaughterhouse. However, there was dispute with regard to the change in slaughter fee and hence, the petitioner handed over the key of the building to the first respondent on 30.11.2009. Accordingly, the first respondent calculated the amount and passed the order, which is sustainable. Accordingly, he prayed for dismissal of the writ petition.

10.Heard both sides.

11.The petitioner entered into agreement with the first respondent and he was granted licence to operate the slaughterhouse and the licence period started from 01.05.2009 and the petitioner was

allowed to operate the slaughterhouse. Subsequently, new slaughterhouse was constructed and the petitioner was allowed to operate. Thereafter, the agreement was terminated and an order was passed with the impugned calculation.

12. Admittedly, the petitioner enjoyed the agreement period for some time and he was allowed to collect the toll fees in the slaughterhouse. Hence, the calculation arrived at by the first respondent cannot be faulted with. Once the agreement was terminated inbetween the parties, it is the duty cast upon the respondent to refund the entire amount and refunding Rs.58,946/- and keeping Rs.4,00,000/- is illegal.

13. Hence, I am satisfied that the petitioner is entitled to receive the entire amount mentioned in the impugned order and I direct the respondents to refund the entire amount mentioned in the impugned order i.e., Rs.4,58,946/- within a period of six weeks from the date of receipt of a copy of this order, if not already paid. The petitioner is also entitled for simple interest at the rate of 6% for the sum of Rs.4,00,000/- from the date on which he handed over the key of the building to the first respondent i.e., 30.11.2009.

14. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition, if any, is also closed.

11.06.2019

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

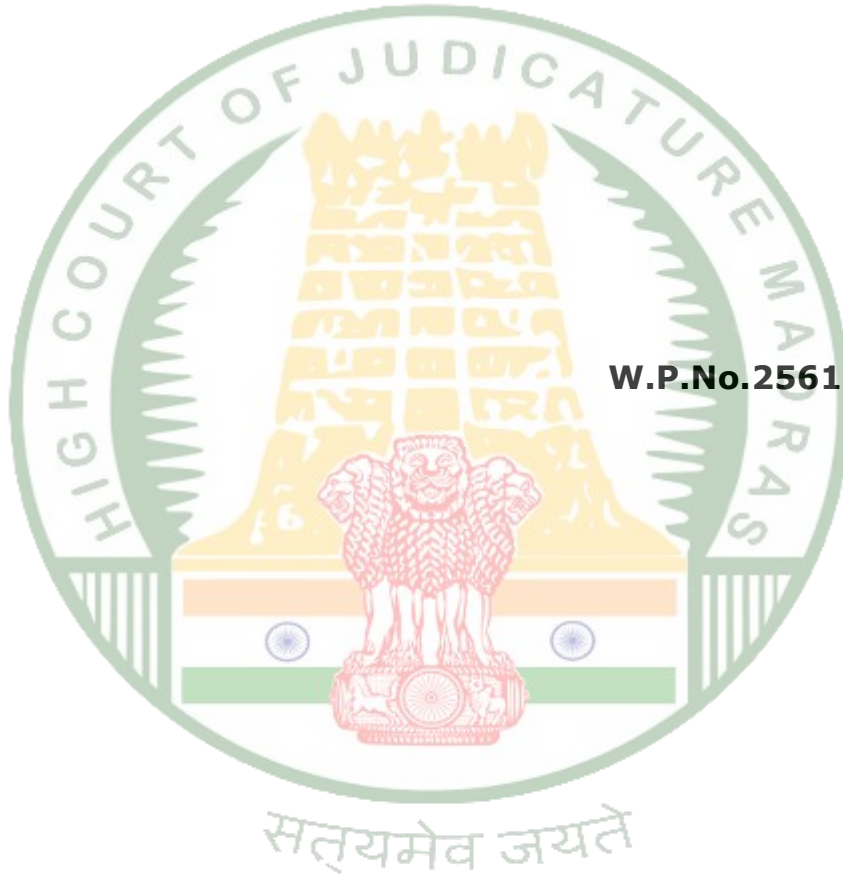
To

1. The Commissioner,
Hosur Municipality,
Hosur, Krishnagiri District.
2. The Municipal Council,
Rep. by the Chairman,
Hosur Municipality,
Hosur, Krishnagiri District.



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