

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26720 of 2005

V.Thangappan

... Petitioner

Versus

- 1.The Government of Tamil Nadu,
Rep.by its Special Commissioner
and Secretary to Government,
Home Department,
Fort St.George, Chennai -9.
- 2.The District Collector,
Kanyakumari District at Nagarcoil,
Kanyakumari District.
- 3.The Executive Officer,
Kanyakumari Special Grade Panchayat,
Kanyakumari,
Kanyakumari District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to refund the sum of Rs.4,01,150/- the bid amount paid by the petitioner to the 3rd respondent, as referred in the order dated 30.11.2004, on the file of the 3rd respondent or pay an equal amount by way of Tsunami Relief as per the petitioner's petition dated 28.06.2005.

For Petitioner : Mrs.S.Sindhu
for M/s. Hemalatha

For Respondents : Mrs.R.Janaki
Addl. Govt.Pleader for R1 & R2
None appeared for R3

O R D E R

The relief sought for in the present writ petition is to directing the respondents to refund the sum of Rs.4,01,150/- the

bid amount paid by the petitioner to the 3rd respondent, as referred in the order dated 30.11.2004, on the file of the 3rd respondent or pay an equal amount by way of Tsunami Relief as per the petitioner's petition dated 28.06.2005.

2. The grievances of the writ petitioner is that, the 3rd respondent invited tenders for grant of contract to collect parking fees for the Tourist vehicles to be parked at Sunset point, Kanyakumari Town, Kovalam Road, Kanyakumari District. The writ petitioner was the highest bidder for Rs.4,01,150/-. The contract period was from 01.12.2004 to 31.01.2005. The bid of the writ petitioner was accepted by the respondent by way of a resolution dated 29.11.2004, passed by the council and the 3rd respondent issued an order in proceedings dated 30.11.2004.

3. The writ petitioner paid an entire bid amount of Rs.4,01,150/- to the 3rd respondent. On account of Tsunami on 26.12.2004, a heavy damage was caused, more particularly, in Kanyakumari Town. In view of the disaster affected the movement of tourists in Kanyakumari Town. Therefore, the writ petitioner sustained heavy monetary loss in respect of collection of parking fees from the tourists in Kanyakumari Town. Under these circumstances, the writ petitioner submitted a representation to the respondents seeking refund of the bid amount.

4. This Court is frequently witnessing the fact that the Government Pleaders who all are appearing in these writ petitions are not having case papers. The Government Pleaders are in the habit of asking frequent adjournments and no steps are taken to secure the case papers and assist the Court enabling the Court to dispose of the matters, which all are now listed after a lapse of many years.

5. The Office of the Government Pleader is responsible for not furnishing the case papers to the respective learned Government Pleaders, who all are appearing in the Courts. The learned Additional Government Pleader also admits that it is the responsibility of the Office of the Government Pleader to ensure that the papers are properly furnished to the Government Pleaders while appearing before the Court. In the event of non-availability of case papers in the Office of the Government Pleader, the Government Pleader is bound to initiate appropriate disciplinary action against all the officials, who all are responsible for the non-availability of case papers in Office of the Government Pleader.

6. It is frequently noticed by the Courts also that the papers already served to the Government Pleaders and the copy of the counter statements are not available in the case papers. Proper maintenance of case files by the Office of the Government

Pleader is of paramount importance and the failure is to be construed as negligence and dereliction of duty on the part of the officials, who all are responsible for such lapses.

7. It is needless to state that the Government Pleader has to initiate disciplinary proceedings whenever there is no case papers are placed before the respective Government Pleaders, who all are unable to argue the case before the Courts. In the absence of case papers, the Government Pleaders are handicapped for assisting the Court.

8. This being the factum noticed by this Court on several occasions, the Government Pleader, High Court of Madras is directed to initiate appropriate disciplinary action against all the officials for their lapses, negligence and dereliction of duty in respect of maintenance of case papers in the Office of the Government Pleader.

9. A circular in this regard is to be issued to all the staff/employees of the Government Pleader's office and counter statements filed ought to be properly served to the learned counsels appearing on behalf of the writ petitioners and other contesting parties and due acknowledgements are also to be secured from the learned counsels appearing for the respective parties. This being the practice prevailing in the High Court of Madras, any dilution or violation must be viewed seriously in future. In this regard, the Government Pleader has to issue circular and initiate necessary action.

10. As far as the present case on hand is concerned, the writ petitioner participated in the bid and as a highest bidder a resolution was passed by the council on 29.11.2004 and accordingly, he started collecting the parking fee from the tourists and the persons who all are parking their respective vehicles in Kanyakumari Town. Once the tender was finalized, confirmed and granted in favour of the writ petitioner and the subsequent loss or damage would not provide or confer any right on the writ petitioner to claim refund of the amount already deposited with the respondent.

11. The counter has been filed by the 3rd respondent stating that the writ petitioner has accepted the tender, signed the agreement and commenced the collection of parking fee. This being the factum, the writ petitioner is not entitle for any relief as such sought for in the present writ petition. However, taking note of the fact that during the relevant period of time, Tsunami affected the inflow of vehicles in Kanayakumari Town. The Competent Authorities shall consider the case of the writ petitioner taking note of the disasters and other factual aspects.

12. However, the lease is for a period of 2 months and during the relevant point of period, on account of Tsunami, the writ petitioner sustained heavy loss. Under these circumstances, the 2nd respondent is directed to consider the representation submitted by the writ petitioner on 20.01.2005 and 28.06.2005 and pass orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. The writ petitioner is directed to enclose a copy of the representation and all other relevant documents if any along with the order passed in this writ petition. Accordingly, the writ petitions stands disposed of. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Government of Tamil Nadu,
Rep.by its Special Commissioner
and Secretary to Government,
Home Department,
Fort St.George, Chennai -9.
- 2.The District Collector,
Kanyakumari District at Nagarcoil,
Kanyakumari District.
- 3.The Executive Officer,
Kanyakumari Special Grade Panchayat,
Kanyakumari,
Kanyakumari District.
4. O/o. The Government Pleader,
High Court of Madras.

+1cc to Mr.Sai Sathya Jith Advocate sr.no.4655

W.P.No.26720 of 2005

rsv(co)
nr 05/02/2019