

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.12.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.3834 of 2012
and
MP No.2 of 2012

M/s.Chandragiri Construction Company,
Partnership Firm,
rep. by its
Managing Partner -
K.M. Moideen Kunhi. Petitioner

Vs

1. Government of Puducherry,
rep. by its Secretary to Government,
Public Works Department,
Secretariat,
Puducherry - 605 001.
2. The Chief Engineer,
Government of Puducherry,
Public Works Department,
Puducherry - 605 001.
3. The Superintending Engineer,
Circle - III,
Public Works Department,
Karaikal - 609 602.
4. The Executive Engineer,
Irrigation and Public Health Division,
Public Works Department,
Karaikal - 609 602. Respondents

Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari to call for
the records relating to the impugned orders / Notice passed by
the 2nd respondent in No.4575/PW/CE/Works /AE(P)2 /
F.No.FHKKL/2011-12, dated 31.01.2012 and quash the same.

For petitioner
For respondents

: Mr.K. Premkumar
: Ms.G.Djearany
Government Pleader

ORDER

This writ petition has been filed challenging the order / Notice, dated 31.01.2012 passed by the 2nd respondent black listing the petitioner company.

2. The learned counsel for the petitioner drew the attention of this Court to the notice, dated 31.01.2012 issued by the Government of Puducherry, Public Works Department, Puducherry which states that the petitioner has committed irregularities in the execution of work at No.3/402-A, Karat Road, West Nadakkav, Kozhikode - 673 011 and in view of his irregularity, the Anti - Corruption Branch(ACB) of Central Bureau of Investigation (CBI), Chennai have registered a case in RC No.46(A)/2008 under Sections 420, 468, 468 r/w 471 IPC and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988.

3. The learned counsel for the petitioner submitted that after investigation, CBI(ACB) has filed a report before the Court of Additional Sessions Judge, Puducherry at Karaikal stating that the FIR against the petitioner has been closed. He drew the attention to the order dated 04.02.2010 passed by the Additional Sessions Court, Puducherry at Karaikal in R.C.S. No.1 of 2010 recording the report of the CBI(ACB), wherein the CBI has filed a report closing the FIR against the petitioner.

4. The learned counsel for the petitioner also drew the attention of this Court to the order dated 12.03.2010 passed by this Court in Crl.OP No.24375 of 2009, which was filed by the petitioner to quash the criminal proceedings initiated by the CBI (ACB), Chennai. In the said order, this Court has recorded the order passed by the Additional Sessions Judge, Puducherry at Karaikal in R.C.S. No.1 of 2010, dated 04.10.2010, wherein the Court has recorded that the FIR against the petitioner has been closed. Recording the endorsement made by the petitioner and considering the fact that the FIR against the petitioner registered by the CBI(ACB), Chennai has been closed, this Court by order dated 12.03.2010 dismissed the Crl. O.P. No.24375 of 2009 as withdrawn at the instance of the petitioner. Therefore, according to the learned counsel for the petitioner, since the Criminal proceedings lodged by the CBI (ACB), Chennai has been closed, the black listing of the petitioner company by the second respondent has to be released.

5. However, the learned counsel for the respondents drew the attention of this Court to paragraph Nos.13 and 15 of the counter affidavit filed by the second respondent on its behalf as well as on behalf of respondents 1,3 and 4. According to her, since the report filed by the CBI is a confidential report,

the same could not have been made available to the petitioner. Further it is their case that the reply furnished by the petitioner company to the show cause notice was evasive and not convincing and hence according to her, the black listing of the petitioner company will have to be continued.

6. As seen from the notice dated 31.01.2012 issued by the Government of Puducherry, Public Works Department, Puducherry to the petitioner, the very basis for initiation of criminal prosecution against the petitioner is that he had committed irregularity in execution of work at No.3/402-A, Karat Road, West Nadakkav, Kozhikode - 673 011, Kerala and a complaint was registered in RC No.46(A)/2008 under Sections 420, 468, 468 r/w 471 IPC and Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1998. Admittedly, as seen from the order dated 04.02.2010 passed by the Additional Sessions Judge, Pondicherry at Karaikal, the FIR registered against the petitioner by the CBI(ACB) has been closed. The same has also been recorded by this Court exercising jurisdiction under Section 482 CRPC and the petitioner has also withdrawn the quash petition.

7. In view of the closure of the criminal case, registered against him by the CBI(ACB) in RC No.46-A/2008, this Court by its order dated 12.03.2010 in Crl.O.P. No.24375 of 2009 passed the following order :-

"The learned counsel appearing for the petitioner has made the following endorsement :

"Since the FIR sought to be quashed in this petition has been closed by the respondents, petition for quash may be permitted to be withdrawn".

2. The extract of the order passed by the Additional Sessions Judge, Puducherry, Karaikkal in R.C.S. No.1 of 2010 dated 04.02.2010 reflects what is confirmed by the learned counsel for the petitioner.

3. In view of the above, the Criminal Original Petition is dismissed as withdrawn. Consequently, the connected miscellaneous petition is closed."

8. It is also to be noted that in Paragraph 10 of the counter affidavit filed by the respondents, the respondents have clearly admitted that the FIR registered against the petitioner has been closed by the CBI(ACB). Since the CBI(ACB) has closed the FIR against the petitioner, black listing of the petitioner's company cannot be allowed to continue as it will deprive the petitioner's right of livelihood to carry on his business.

9. For the foregoing reasons, the impugned order dated 31.01.2012 passed by the second respondent in No.4575/PW/CE/Works /AE(P)2 / F.No.FHKKL/2011-12, is hereby quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vs12

To

1. The Secretary,
Government of Puducherry,
Public Works Department,
Secretariat,
Puducherry - 605 001.
2. The Chief Engineer,
Government of Puducherry,
Public Works Department,
Puducherry - 605 001.
3. The Superintending Engineer,
Circle - III,
Public Works Department,
Karaikal - 609 602.
4. The Executive Engineer,
Irrigation and Public Health Division,
Public Works Department,
Karaikal - 609 602.

+1cc to the Government Pleader (Pondy), S.R.No. 101110

W.P. No.3834 of 2012

BS (CO)
GN(30/01/2020)