

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.28059 of 2014

Srinivas Waste Management Services (P) Ltd.,
Represented by its Managing Director,
Mr.S.Venkateswaran,
No.33, 15th Avenue, Ashok Nagar,
Chennai - 600 083.

... Petitioner

vs.

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Assistant Commissioner,
Corporation of Chennai - Zone XIV,
Perungudi, Chennai - 600 091.

3.The Health Officer,
Zone XIV,
Zonal Officer XIV at Perungudi,
Chennai - 600 091.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Ceriorarified Mandamus calling for the records of the 3rd respondent culminating in their order-cum-Letter ZO.14.Na.Ka.No.H1/4612/2014 dated 25.07.2014 on the file of the Zone XIV, Perungudi, Chennai - 91, and quash the same and to direct the respondents to refund the penalty amount of Rs.23,22,234/- deducted from the Petitioner's two bill amounts of Rs.22,97,165/- (June 2014) and Rs.6,89,120/- (01.07.2014 to 09.07.2014) to the petitioner.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.T.C.Gopalakrishnan,
Standing Counsel

O R D E R

This writ petition has been filed by the petitioner seeking to quash the proceedings of the third respondent in ZO.14.Na.Ka.No.H1/4612/2014 dated 25.07.2014 and to direct the respondents to refund the penalty amount of Rs.23,22,234/- deducted

from the Petitioner's two bills amounting to Rs.22,97,165/- (June 2014) and Rs.6,89,120/- (01.07.2014 to 09.07.2014) to the petitioner.

2. The petitioner was a successful tenderer for the supply of 329 Labourers for attending Mosquito Control, Disease Control, Removal of Pistia Plants in the Canal Storm water Drain Desilting work in Division Nos.168, 169, 183 to 191 in Zone-XIV (Perungudi) and the work order was issued to the petitioner. The petitioner commenced the work from 10.04.2013 and completed the same on 09.07.2014. As per clause (1) in condition No.21 of the terms and conditions of the contract, penalty for shortage of men and other breaches of agreement will be calculated at Rs.100/- (Rupees One Hundred Only) for short deployment of persons on each day, per person. Based on the audit objection, the impugned proceedings had been passed by the respondent corporation on 25.07.2014 directing the petitioner to pay a sum of Rs.17,20,465/-. Challenging the said penalty, the petitioner is before this Court.

3. Heard the rival submissions made by the parties and perused the materials available on record.

4. According to the petitioner, without giving due opportunity to the petitioner, the impugned order has been passed by the respondent corporation, which is in violation of principles of natural justice and on this ground, the impugned order is liable to be set aside. Learned counsel appearing for the petitioner would submit that, moreover, the respondent Corporation cannot deducted the penalty for the whole year at one stroke, when the men were mostly supplied, only at the behest of the authorised officials of the respondents. It is further contended that by passing the impugned order, the respondents have violated condition Nos.21 and 22 of the terms and conditions of the tender contract entered into between the parties hence, the same is liable to be quashed.

5. Learned counsel would further contend that, as per the tender condition, the petitioner has to supply 329 workers for carrying on the aforesaid contract and the petitioner has fulfilled the said condition and submitted his bill for every month promptly. However, without raising any objection at the time of submission of bills the respondents, thereafter, objected the same.

6. Learned standing counsel appearing for the respondents would contend that the petitioner as per terms and conditions of the tender contract, the petitioner has to supply 329 workers per day and the petitioner has not fulfilled the said requirement and has made only short supply of men, hence, the respondents have not violated the terms and conditions of the tender. Therefore, the penalty levied by the respondents Corporation is absolutely in order and no

interference is required in this regard. In this regard, the learned Standing Counsel has relied upon the order dated 18.12.2013 in ZO.14.Na.Ka.No.H1/9942/2013 passed by the respondents Corporation wherein, it is stated that the petitioner has to pay Rs.6,42,465/- to the respondent Corporation on the basis of the Audit Report.

7. The only ground raised in this writ petition is that the petitioner has not been provided with due opportunity of any notice before levying the penalty. It is the case of the respondents that by virtue of proceedings dated 18.12.2013, the respondents have informed the petitioner about the audit report and levying of penalty and only thereafter, the impugned order has been passed. According to the petitioner, the said order dated 18.12.2013 has not been duly served on them. Only after the receipt of the impugned order, dated 25.07.2014, the petitioner came to know about the levy of penalty and hence, challenged the same before this Court.

8. I have gone through the impugned order dated 25.07.2014. Admittedly, the impugned order had been passed after issuance of the previous proceedings dated 18.12.2013. However, nowhere in the impugned order, the earlier proceedings dated 18.12.2013 had been referred. If at all, the respondents have informed the petitioner about the audit report and levy of penalty by virtue of proceedings dated 18.12.2013, they would have made a mention in the impugned order about the earlier proceedings. However, the same has not been done by the respondents. Therefore, it is clear that the respondents corporation have not provided any opportunity to the petitioner to submit his explanation, before passing the impugned order. In the light of the above, this Court has no hesitation to interfere with the impugned order passed by the respondents Corporation.

9. In the result, the impugned order passed by the respondents Corporation is hereby quashed and the matter is remitted to the respondents for fresh consideration after providing due opportunity to the petitioner. The respondent corporation is directed to issue a fresh opportunity to the petitioner by furnishing a copy of the audit report and after obtaining reply, shall pass orders as expeditious as possible on merits and in accordance with law, preferably within a period of twelve weeks from the date of receipt of a copy of this Order. Accordingly, the writ petition is allowed. No costs.

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Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

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To

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Assistant Commissioner,
Corporation of Chennai - Zone XIV,
Perungudi, Chennai - 600 091.

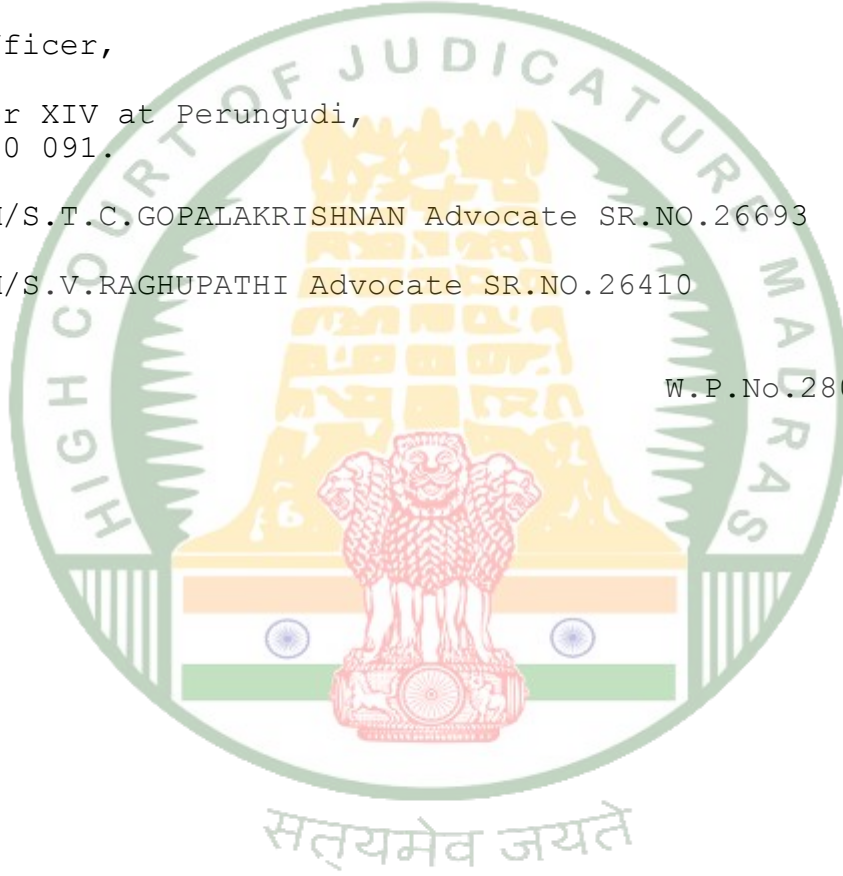
3.The Health Officer,
Zone XIV,
Zonal Officer XIV at Perungudi,
Chennai - 600 091.

+1 CC to M/S.T.C.GOPALAKRISHNAN Advocate SR.NO.26693

+1 CC to M/S.V.RAGHUPATHI Advocate SR.NO.26410

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cm 26/06/2019



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