



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.14880 of 2019
and W.M.P. (MD) No.11378 of 2019

Selvam

... Petitioner

Vs.

The Superintending Engineer
Public Works Department (W.R.O.)
Trichy

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent to renew the registration of the petitioner's certificate of Class - I contractor at once.

For Petitioner :Mr.P.Ganapathi Subramanian

For Respondents :Mr.M.Rajarajan
Government Advocate

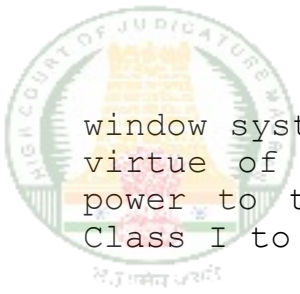
ORDER

The prayer sought for in the writ petition is for a writ of Mandamus to direct the respondent to renew the registration of the petitioner's certificate of Class - I contractor at once.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3.The petitioner is a Class I Contractor under the respondent Department and in order to renew the Class I Contractor Certificate, the petitioner made an application on 05.06.2019 to the respondent and the same has not been considered. Therefore, the petitioner is before this Court with this writ petition.

4.In this context, the learned counsel for the petitioner would submit that, hitherto the renewal of class I Contractor Certificate was done only at the Superintending Engineer Level and at that time, all of a sudden, the Government issued a G.O., in which, the Contractors of class I to V level under the respondent department and their certificates would be renewed as a single



window system only by the Engineer-in-Chief of the department and by virtue of that, the Superintending Engineers concerned lost their power to take up the application for renewal of certificates for Class I to Class V Contractor level.

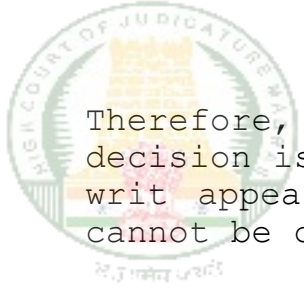
5. It is further to be noted that, the said G.O.Ms.No.221 Public Works (G2) Department dated 16.08.2018, was challenged before this Court in a batch of Writ Petitions in W.P.(MD) Nos.3339 to 3342 of 2019 and by a detailed order, dated 27.03.2019, a learned Judge of this Court, allowed those writ petitions and quashed the said G.O.Ms.No.221 and the relevant/operative portion of the order passed by the learned Judge reads thus:

"14. Applying the aforesaid principles, the impugned government order fails to pass muster. The reasons proffered are no reasons at all. A system that has been in currency for over two decades has been arbitrarily changed. A system that was put in place following the recommendations of a high level committee cannot be casually dislodged or dismantled. It is de-centralisation that will promote efficiency and not centralisation. Hence, I hold that the issuance of the impugned government order is arbitrary and unreasonable. Accordingly, the order impugned in this writ petition in G.O.Ms.No.221 Public Works (G2) Department dated 16.08.2018 stands quashed. These writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed."

6. In view of the said order passed by this Court, whereby, the G.O.Ms.No.221 dated 16.08.2018 having been quashed, the system prevailing prior to issuance of G.O.Ms.No.221 has got restored and according to this prevailing system, the certificate of Contractors, including Class I Contractor, like, the petitioner can be renewed by the Superintending Engineer level Officer and therefore, in that context, the learned counsel for the petitioner seeks indulgence of this Court to give direction to the respondent to consider the application.

7. However, the learned Government Advocate appearing for the respondent, on instructions, would submit that, as against the order passed by this Court referred to above, dated 27.03.2019, the respondent preferred an intra Court appeal and at the SR stage, it is pending before this Court.

8. Notwithstanding the said appeal filed by the respondent, the learned Government Advocate for the respondent, on instructions, would further submit that, the Government is proposing to take a policy decision as to whether the erstwhile system of vesting the power to the Superintending Engineer to renew the certificates of Class I and upto Class V Contractors can be restored and in order to take such a policy decision, it requires a reasonable time.

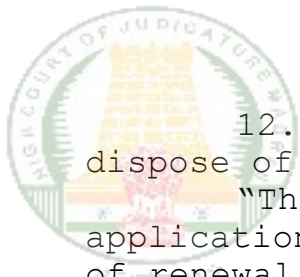


Therefore, the learned Government Advocate submits that, till such a decision is taken by the Government, or till a decision comes in the writ appeal filed by the respondent, the petitioner's application cannot be considered or decided by the respondent.

9. However, the learned counsel for the petitioner submits that, as of now, because of the quashment of the G.O.Ms.No.221 made by this Court in the order referred to above, prevailing law is that, the Superintending Engineer is empowered to take the application of the petitioner and renew the same on its own merits and merely because the Government is proposed to take a policy decision and the Government already filed a writ appeal, which is pending at the SR stage, the right of the petitioner cannot be precluded by thus, the right of the petitioner to participate in the tender called for throughout the State, as he would be eligible and entitled to participate such tenders above Rs.75 lakhs throughout the State is getting infringed. Therefore, the learned counsel for the petitioner seeks indulgence of this Court to give suitable direction to the respondent to consider the application of the petitioner on merits.

10. I have considered the submissions made by both sides and have perused the materials placed before this Court.

11. As has been rightly pointed out by the learned counsel for the petitioner, the G.O.Ms.No.221, which had put an embargo to have the renewal of the Certificate of Class I Contractor at the hands of the Superintending Engineer, since has been quashed by this Court, as of now, the prevailing law is that, the Superintending Engineer concerned is empowered to issue orders of renewal of Certificates of Class I Contractor upto Class V Contractor, since the petitioner, admittedly, a Class I Contractor, his request for renewal of his certificate has to be done only by the Superintending Engineer. Merely because, the Government has a proposal to take a policy decision or merely because the respondent filed an intra Court appeal and the same is pending at SR Stage before this Court, that would not take away the power, as of now, vest with the Superintending Engineer to decide the application of the petitioner. Awaiting a policy decision to be taken by the Government or awaiting a decision to be made in the writ appeal, which is pending in the SR stage, if the respondent delayed the renewal of the certificate of the petitioner, as submitted by the learned counsel for the petitioner, the right of the petitioner would get infringed, as by the time, number of tenders would be floated throughout the State by the respondent Department and in all those tenders, the petitioner's right to participate would get affected. Therefore, in view of the legal position and having regard to the factual matrix, this Court is of the considered view that, the petitioner's application for renewal shall be considered by the respondent unmindful of the proposal of taking a policy decision or awaiting any orders to be passed in the writ appeal claimed to have been filed by the respondent, pending at the SR stage.



12. In that view of the matter, this Court is inclined to dispose of this writ petition with the following directions:

"That the respondent is hereby directed to consider the application of the petitioner dated 05.06.2019 regarding his request of renewal of class I Contractor Certificate and pass orders thereon on merits within a period of two weeks from the date of receipt of a copy of this order." No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

The Superintending Engineer
Public Works Department (W.R.O.)
Trichy.

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