



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.8598 of 2019

and

W.M.P. (MD) No.6714 of 2019

R.Kumar

: Petitioner

Vs.

1.The Nagercoil Municipality,
Represented by its Commissioner,
Nagercoil,
Kanyakumari District.

2.Mr.B.Balasubramaniam,
The Municipal Engineer,
The Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

3.Mrs.Devi,
The Overseer,
The Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.4555/E4/2019, dated 18.01.2019 on the file of the first respondent and quash the same as illegal and consequently, for a direction, directing the first respondent to disburse the payment to the petitioner with regard to the works pertaining to the Renovation of Raju Nagar Park in Nagercoil Municipality under AMRUT (Central Government) Scheme within the time stipulated by this Court.

For Petitioner

: Mr.S.Rajasekar
for Mr.T.Lajapathi Roy

For Respondents

: Mr.P.Athimoolapandian
Standing Counsel for Respondent



ORDER

The petitioner has become a successful bidder in respect of a project launched by the first respondent, when a work order was issued on 03.05.2018. As per the terms of the contract, the bidder shall complete one third of the work within three months and complete the work within six months and in default, the contractor is liable to pay the liquidated damages at 0.1% of the unfinished value of work till the date of completion. If the work is not completed even after 45 days, after the lapse of six months period, the contract will be summarily cancelled and the security deposit would be forfeited, apart from blacklisting the contractor. The petitioner failed to comply with the terms and conditions of the contract. Therefore, the respondent Municipality issued notices on 05.06.2018, 27.04.2018 and 28.08.2018, instructing him to complete the work within the time stipulated in the contract, failing which, liquidated damages will be awarded and his name will be blacklisted from the rolls of the first respondent. The petitioner failed to send any explanation or reply for the same. Thereafter, the first respondent terminated the contract and awarded the work to other Contractor. Hence, the petitioner was blacklisted. Challenging the order blacklisting him, the petitioner is before this Court.

2. On instructions, the learned Standing Counsel appearing for the respondents would submit that the petitioner was given ample opportunities to complete the work and also reminders and warnings were issued by the letters dated 05.06.2018, 27.04.2018 and 28.08.2018, apart from personal information. According to the respondents, the petitioner has given a wrong address and also evaded the communication sent to him through post as well as over phone. Therefore, they have rightly blacklisted him as per the terms of the contract.

3. It is true that as per the contract, if the contractor fails to perform his part, he is liable for blacklisting. But the blacklisting is a drastic penalty, which causes civil consequences on the Contractor. Therefore, the procedure requires that principles of natural justice being followed in the process. Insofar as this case is concerned, the respondents have issued reminders and warnings by the above mentioned letters, but, have not issued any show cause notice, calling for any explanation from the petitioner before imposing the punishment. Therefore, this Court is of the considered opinion that the impugned order dated 18.01.2019 is unilateral and contrary to the principles of natural justice. There is no detail as to the quantification of liquidated damages, additional expenditure incurred in completing the project and liability of the petitioner, which leads to blacklisting him from the rolls of the respondent Municipality. Since the procedure is not followed, the impugned order is liable to be set aside and



initiate the process afresh in conformity with the principles of natural justice to blacklist the petitioner.

4. The Writ Petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

SML

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-86994[F] dated 17/09/2019)

Order made in
W.P (MD)No.8598 of 2019
Dated: 16.09.2019

JMN(27.09.2019) 3P : 2C