



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.19230 of 2019

and

W.M.P. (MD)No.15612 of 2019

K.Kanthasamy

... Petitioner

vs.

1.The District Collector,
O/o District Collectorate,
Dindigul District.

2.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.

3.The Executive Engineer,
Public Works Department,
Nanganjiyar Basin Division,
Palani, Dindigul District.

4.Thangaraj

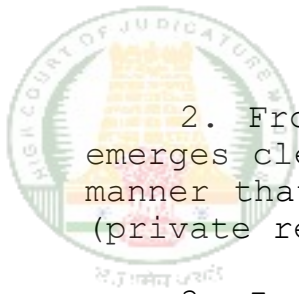
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the third respondent herein to conduct the election for the ayacattudars for Periyakulam Kanmai(Tank), Javvathupatti Village, Ottanchathiram Taluk, Dindigul District by way of ballot papers within the stipulated as fixed by this Court.

For Petitioner : Mr.G.Karthik
for M/s T.Lajapathi Roy
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
assisted by
Mr.B.Bhagavathi
Government Advocate
for R.1 to R.3

ORDER

Mr.G.Karthik, learned counsel on record for writ petitioner and Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, assisted by Mr.B.Bhagavathi, Government Advocate, on behalf of respondents 1 to 3 are before this Court.



2. From the submissions made and the nature of the matter, it emerges clearly that this writ petition can be disposed of in such a manner that no order adverse to the rights of the fourth respondent (private respondent) is passed.

3. In the aforesaid backdrop, with consent of learned Counsel for the writ petitioner and learned State Counsel, the main writ petition is taken up, heard out and is being disposed of.

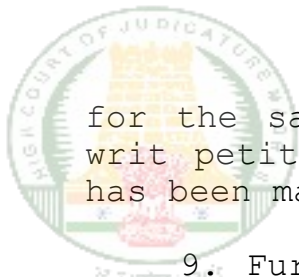
4. Subject matter of the instant writ petition is 'Periyakulam Kanmai' (Tank), at Javvathupatti Village, Ottanchathiram Taluk, Dindigul District (hereinafter, 'said Kanmai' for brevity, clarity and convenience). It is not in dispute that vide G.O.Ms.No.58, dated 13.06.2019, the Government sanctioned expenditure for what is described as Kudimaramathu work as part of 'Kudimaramath Water bodies Restoration with Participatory Approach', which is being implemented on a pilot basis. It is also not in dispute that the funds were allocated to the tune of Rupees Twenty Five Lakhs to the said Kanmai also.

5. Post allocation of funds / sanctioned expenditure for said Kanmai, certain discrepancies and disputation arose *inter alia* amongst to the Ayacattudas qua said kanmai and therefore, a peace committee meeting was held in the office of the second respondent on 21.07.2019. The minutes of the peace committee meeting has been placed before this Court as part of the case file and a perusal of the same reveals that the writ petitioner has participated in the same and has also signed the said peace committee proceedings. In these proceedings, it has been recorded that a consensus amongst Ayacattudars had been arrived at and a separate committee headed by the fourth respondent would do the work is the other consensus limb of the minutes.

6. Notwithstanding aforesaid peace committee proceedings, the writ petitioner has sent a representation to the first respondent (District Collector) on the next day i.e., 22.07.2019 *inter alia* requesting for said work to be done by the Public Works Department (PWD) itself. To be noted, copies of this representation have been marked to the third respondent and other officers of PWD.

7. Under these circumstances, instant writ petition has been presented / filed in this Court on 03.09.2019 with a prayer to mandamus the third respondent to conduct election for Ayacattudars qua the said tank.

8. Learned State Counsel who has accepted notice on behalf of the official respondents submits that the writ petitioner's prayer was clearly not live even as on the date of filing of the writ petition. It was submitted by learned State Counsel that post aforesaid meeting on 21.07.2019, the question of who would do the work qua the said tank and how payments are to be made



for the same stood crystallized / finalized. Thereafter, instant writ petition has been presented/filed on 03.09.2019 with a prayer has been made to revisit the whole exercise.

9. Furthering the submissions in this direction, learned State Counsel produced a photo copy of extract of official records to show that the work has been allocated to the President of Javathupatti Periyakulam Tank Water Users Association, on 02.07.2019 itself. To be noted, peace committee meeting on 21.07.2019 was post such allocation of work. More importantly, adverting to the annexure thereunder, it was pointed out that kudimaramath work qua the said tank is to be carried out in ten different stages and the first stage of clearing Prosopis Juliflora jungle regarding uprooting and removing from the site etc., has been fully completed and that the estimated amount for that work is Rs.3.34 Lakhs and with regard to the completion of work, 71.66% of Rs.3.34 lakhs has been disbursed. On instructions, it was submitted by the learned State Counsel that the payments are being made by way of cheques drawn in favour of the President, Javathupatti Periyakulam Tank Water Users Association of Javathupatti Village.

10. A perusal of column No.7 of work allocation also makes it clear that the guidelines/administrative sanction made vide G.O.Ms.No.171, dated 11.08.2017 and G.O.Ms.No.142, dated 23.05.2018 have been followed. To be noted these two Government Orders have been made as Nos.4 and 5 in aforementioned G.O.Ms.No.58, dated 13.06.2019.

11. This Court also notices that it is not the case of the writ petitioner that the writ petitioner signed in the peace committee meeting involuntarily or that the writ petitioner was coerced / forced into signing the peace committee meeting proceedings. That being the case, this Court is inclined to accept the submission that the prayer is one that attempts to put the check back as allocation of work and mode of disbursement of funds already stands frozen / crystallized in the peace committee meeting which has been minuted.

12. Therefore, issues if any post 21.07.2019 are clearly issues *inter se* the committee referred to therein.

13. Learned Counsel for the writ petitioner pressed into service two orders made by a Honourable Single Judge of this Court and they are the orders dated 07.08.2019 made in W.P.(MD)No.17328 of 2019 and dated 20.08.2019 made in W.P.(MD)No.18030 of 2019. Learned Counsel submitted that the said orders were passed under similar circumstances.

14. A perusal of the aforesaid orders reveal that they were orders which were passed prior to allocation of work, wherein the Honourable Judge has devised some mechanics for allocation of work.

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It is also to be noted that such mechanics have been devised on the



facts and circumstances of that particular case. In the instant case, the matter is well past said allocation of work stage, disbursement of funds has commenced and therefore aforementioned two orders placed before this Court do not come to the aid of the writ petitioner. They are clearly distinguishable on facts. Besides being distinguishable on facts orders are prior to allocation and disbursement of funds and it is also on the peculiar facts and circumstances of that case.

15. At this juncture, learned Counsel for the writ petitioner submitted that he would abridge the scope of the writ petition as well as the scope of the prayer. The learned Counsel made a fervent plea that the aforesaid representation dated 22.07.2019 sent by the writ petitioner may please be directed to be disposed of by the first respondent.

16. As already alluded to supra, the representation dated 22.07.2019 (page No.7 of the typed set of papers forming part of the case file) has been sent to the first respondent and copies have been marked to the third respondent and other officials of Public Works Department.

17. Considering the fact that the request of the writ petitioner is innocuous, this Court is inclined to direct the first respondent to dispose of aforesaid representation dated 22.07.2019 (page No.7 of the typed set of papers forming part of the case file) on its own merits and in accordance with law as expeditiously as possible and in any event, within a period of four weeks from the date of receipt of a copy of this order. In the light of narrative thus far, it is made clear that the first respondent shall put the fourth respondent on notice and give reasonable opportunity to the fourth respondent before disposing of the representation on its own merits and in accordance with law. Post disposing of the representation, the order of disposal shall be communicated under due acknowledgement to the writ petitioner and the fourth respondent within seven working days from the date of disposal.

18. It is made clear that this Court acceding to the abridged prayer of the writ petitioner shall not in any manner interdict or derail the work in progress. In other words, kudimaramath work qua the said kanmai will continue unhindered. To put it differently, this order will not impede the Kudimaramath work qua said kanmai now in progress.



19. Instant Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
O/o District Collectorate,
Dindigul District.
- 2.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.
- 3.The Executive Engineer,
Public Works Department,
Nanganjiyar Basin Division,
Palani, Dindigul District.

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-85819[F] dated 09/09/2019)

W.P (MD) No.19230 of 2019
06.09.2019

SSL

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