



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) .No.22565 of 2019

and

W.M.P. (MD) Nos.19336 & 19337 of 2019

S.M.Subramanian

... Petitioner

vs.

1) The Commissioner Municipal
Administration,
Office of the Commissioner
Municipal Administration,
No.75, Santhom Main Road,
M.R.C.Nagar Raja Annamalaipuram,
Chennai.

2) The Regional Director Municipal Administration,
Office of the Regional Director
Municipal Administration,
Mealakkal Main Road, Kochadai,
Madurai District - 625 016

3) The Commissioner, (i/c)
Keelakarai Municipality,
Keelakarai,
Ramanathapuram District.

4) The Municipal Engineer,
Keelakarai Municipality,
Keelakarai,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records connected with the work cancellation order in Na.Ka.No.1022/2018/E1 dated 09.10.2019 passed by the 3rd respondent and the retender notice in Roc.No.1022/2018/E1 dated 14.10.2019, published on 15.10.2019 in Hindu English Daily News Paper, issued by the 3rd respondent and quash them as illegal, consequently directing the respondents to permit the petitioner to comply his work as per the work order passed by the 3rd respondent in Roc.No.1022/2018/E1 dated 06.03.2019.



For Petitioner : Mr.S.Malaikani
For RR1 & 2 : Mr.P.Kannidevan
Additional Government Pleader
For RR 3 & 4 : Mr.A.Kannan,
Standing Counsel

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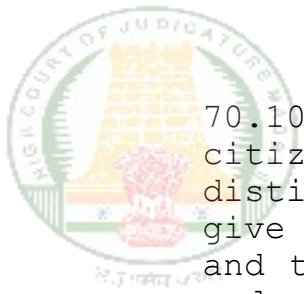
O R D E R

The petitioner has become a successful bidder in respect of construction of Fecal Sludge treatment Plant, 20 KLD capacity, at Municipal Compost yard in Pallamorkulam village and subsequently, on 06.03.2019, work order was issued and an agreement was signed between the petitioner and the third respondent on 08.03.2019. On 09.10.2019, the said work order was cancelled by the respondent for not starting the work and the said cancellation of the Contract is challenged before this Court.

2. The learned counsel appearing for the petitioner has relied upon the judgment of the Division Bench of High Court of Allahabad, Lucknow in Misc Bench No.5024 of 2018 in the case of M/s Reliance Power Limited vs. State of Uttar Pradesh, dated 15.04.2019, wherein the Court had discussed the case of Joshi Technologies Inc vs Union of India and others reported in (2015) 7 SCC 728 in detail and the relevant portion of the order is extracted hereunder:-

"24. ...

70.9.The distinction between public law and private law element in the Contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of Contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.



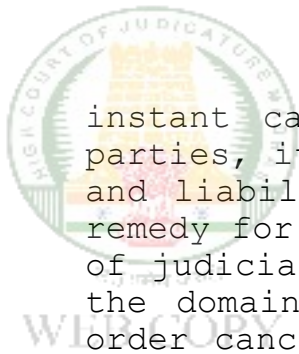
70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

...

27. Applying the principles enunciated by the Apex Court to the facts of the present case, it emerges that the Contract for power supply of 2456 MW which entailed setting up of a power plant, and for the said purpose the entire proceedings have been conducted in accordance with the provision of The Electricity Act 2003, including the detailed guidelines framed by the Central Government. From the perusal of the guidelines, it also emerges that the licensee also does not have any freedom of changing the terms and conditions of the Contract which may deviate from the RFP document, In the event a deviation is proposed, the same has to be approved by the appropriate Commission, and to that extent even the freedom of Contract is extremely limited. The Contract which is under consideration, entails supply of nearly 3000 MW power to the State of Uttar Pradesh, and also setting up of a power plant. The agreement between the instrumentality of State and the licensee in this regard cannot be considered to be just a Contract between two private independent Contracting parties and therefore, in light of the aforesaid, we have no hesitation in holding that Contract of such a nature would have a public law element which is controlled and guided by the relevant statutory provisions and a dispute pertaining to the interpretation or otherwise of such a Contract would be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India and hence writ petition would be maintainable at the instance of the petitioner."

3. In the above mentioned case, licensee did not have any freedom and it was extremely restricted by the provisions of the Statute. It was not like a Contract between two private independent contracting parties, but dominated by Government. Hence, public law element of being controlled and guided by relevant statutory provisions attracted and a writ petition was entertained. But in the



instant case, even though state organ is one of the contracting parties, it is purely an independent contract with individual rights and liabilities. Both the parties are provided with protection and remedy for breach of terms of the contract. In such cases, the scope of judicial review is very limited and it cannot be extended into the domain of contractual obligations. In this case, the impugned order cancels the work order given to the petitioner on the ground that he has not started the work. Whether the petitioner has started the work or has not started the work, is a matter of fact. Whether the parties are entitled to damages and if so, quantum of damage is again disputed questions of fact. Whether the petitioner can enforce his right by a suit for specific performance or other methods also depends on the terms and conditions of the Contract. This Court exercising power under Article 226 of the Constitution of India cannot delve into the disputed questions of fact.

4. As long as public law element is not attracted to the contract, this Court cannot exercise its power or judicial review in a contractual dispute. It is therefore, open to the petitioner to approach the competent Authority to redress his grievances as provided in the Contract and this writ petition is not maintainable and is liable to be dismissed.

5. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

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2) The Regional Director Municipal Administration,
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Municipal Administration,
Mealakkal Main Road, Kochadai,

<https://hcservices.mca.gov.in/hcservices/> District - 625 016



3) The Commissioner, (i/c)
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Keelakarai,
Ramanathapuram District.

4) The Municipal Engineer,
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Keelakarai,
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+1 CC to M/s.S.MALAIKANI, Advocate (SR-94472[F] dated 25/10/2019)

+1 CC to M/s.SPL GP (SR-94909[F] dated 30/10/2019)

Order made in
W.P. (MD) .No.22565 of 2019
Dated: 24.10.2019

JMN(07.11.2019) 5P : 7C