

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.22692 of 2012

M/s.Blue Nile Properties Pvt., Ltd.,
Represented by its director,
M.Virgin,
No.5/12, V.Mount Poonamallee High Road,
Nandambakkam, Chennai-35

.... Petitioner

Vs.

The Secretary to Government,
Animal husbandry, dairying and fisheries department,
Fort St. George,
Chennai

.... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to respondents Letter No.11630/Fs.1/2012-2 dated 03.08.2012 and to quash the same.

For Petitioner :Mr.Adinarayana Rao

For Respondent :Mr.Ansar
Government Advocate

सत्यमेव जयते
O R D E R

This writ petition has been filed challenging the letter No.11630/Fs.1/2012-2 dated 03.08.2012 issued by the respondent.

2. It is the case of the petitioner that the Government of Tamil Nadu called for the construction of fishing harbour at Rajakamangalam, Kanyakumar district on build, own, operate and transfer basis and the said project was earlier awarded to M/s.Rajakamangalam Fishing Harbour Trust consisting of consortium members namely M/s.Rajakamangalam Thurai Development Trust, M/s.Marg & M/s.C.C.C.L. It is the case of the petitioner that consortium agreement was also signed between Fisheries department and above mentioned three entities which formed a

special purpose vehicle known as M/s.Rajakamangalam Fishing Harbour Trust.

3. According to the petitioner, M/s.Marg, one of the consortium members wanted to withdraw from the said project and they approached the petitioner to take up the project as Rajakamangalam Fishing Harbour Trust did not have funds to construct the fishing harbour. It is the case of the petitioner that based on the request made by M/s.Marg, the respondent gave sanction/clearance for exit of M/s.Marg and inclusion of the petitioner as consortium member of the fishing harbour trust vide letter dated 27.01.2011.

4. According to the petitioner, pursuant to the sanction, the petitioner has spent considerable amount of money towards the execution of the fishing harbour project and had also obtained environment clearance from Ministry of Environment, Government of India and also obtained feasibility reports from the Indian Institute of Technology. It is the case of the petitioner that the letter of the petitioner dated 19.09.2011 addressed to the respondent seeking approval for inclusion of M/s.Abba father as an investing partner for implementation of the harbour project as per the consortium agreement is pending clearance by the Government. According to the petitioner, reminder letters dated 25.10.2011 and 07.12.2011 were also sent to the Government seeking for their clearance to include M/s.Abba father as an investing partner.

5. It is also the case of the petitioner that they purchased immovable properties by way of registered documents namely document Nos.1209/2010, 2107/2010, 1609/2010, 1600/2010 vide sale deeds dated 16/4/2010, 26.04.2010, 19.04.2010 etc., anticipating early clearance from the respondent. It is also the case of the petitioner that they have paid the necessary duties for obtaining pollution control board license and the same is still pending.

6. It is the case of the petitioner that the respondent without considering the letter dated 19.09.2011 seeking approval for inclusion of M/s.Abba father as an investing partner, the respondent had issued a show cause notice dated 30.03.2012 stating that there is no progress made in the project. According to the petitioner, without receiving orders from the respondent with regard to the representation made by the petitioner, it is difficult to raise capital for the project and to implement share transfer and substitution of bank guarantee given by M/s.Marg. Hence, according to the petitioner, they were constrained to file a writ petition before this Court in W.P.No.15030 of 2012 for a direction to the respondent to consider and pass orders in the representation dated 19.09.2011

and the same was came up for hearing on 14.06.2012 and this Court admitted the said writ petition and ordered notice to the respondent vide order dated 14.06.2012.

7. It is the case of the petitioner that all of a sudden, as an afterthought, the respondent has sent a letter in reference No.11630/FS.1/2012-2 dated 03.08.2012 rejecting the petitioner's letter dated 19.09.2011 on the ground that the proposed memorandum was not vetted by Rajakamangalam Fishing Harbour Trust, the agreement holder. According to the petitioner, the letter of rejection is illegal and arbitrary as according to him, a copy of the representation dated 19.09.2011 was infact addressed by the petitioner to the agreement holder and the agreement holder is a member of the consortium of Rajakamangalam Fishing Harbour Trust which includes the petitioner.

8. It is also the case of the petitioner that the respondent have themselves in their letter confirmed that the request of the agreement holder to divert its part of shares in favour of the petitioner was rejected which is not the subject matter of letter dated 19.09.2011 and the respondent does not say that there was any objection by the agreement holder namely M/s.Rajakamangalam Thurai Development Trust and hence the letter dated 03.08.2012 is only an eyewash.

9. According to the petitioner, as per clause XI of the consortium agreement dated 30.04.2008, it is very clear that in case of including an associate, the total issued and paid up equity should not be less than 51% for consortium members till three years of Commission of Delivery (COD) and thereafter, it can be reduced to 26% and Rajakamangalam Thurai Development Trust, one of the members shall hold 51% of the reduced 26% for remaining period and only based on the above said clause, the petitioner wanted to include an associate namely M/s.Abba father for the purpose of raising funds and effectively implementing the project and only as a security to the investors the above clause itself has been included and without considering the same, the respondent has rejected the letter dated 19.09.2011 on a frivolous ground that it has not been vetted by the agreement holder.

10. According to the petitioner, unless and otherwise, the impugned letter dated 03.08.2012 issued by the respondent is set aside, the petitioner will be put to irreparable loss and damages as he has already spent considerable amount of money towards implementation of the project. Aggrieved by the impugned order dated 03.08.2012 passed by the respondent, this writ petition has been filed.

11. A counter affidavit has also been filed reiterating the contents of the impugned order which has been referred to above in the petitioner's affidavit.

12. Heard Mr.Adinarayana Rao, learned counsel for the petitioner and Mr.Ansar, learned Government Advocate for the respondent.

13. The petitioner has sought permission of the respondent to be inducted as a partner in the consortium of Rajakamangalam Thurai Fishing Harbour Private Limited by his letter dated 19.09.2011. Even prior to the said letter dated 19.09.2011, the respondent by their letter dated 27.01.2011 had accorded the sanction to the petitioner for their induction as a partner in the consortium agreement for the construction of Rajakamangalam Fishing Harbour at Kanyakumari District.

14. The only ground for the rejection of petitioner's request for inducting them as a partner in the consortium agreement as seen from the impugned letter of the respondent dated 03.08.2012 is that the memorandum of understanding (MOU) submitted by the petitioner to the respondent includes M/s.Abba father as an investing partner. Further it is the case of the respondent that the said draft MOU has not been vetted by the agreement holder M/s.Rajakamangalam Thurai Fishing Harbour Private Limited. M/s.Rajakamangalam Thurai Fishing Harbour Private Limited is not a party to this writ petition. However, it is the case of the petitioner, as seen from the letter dated 19.09.2011 sent by the petitioner to the respondent seeking permission of their induction as a partner to the consortium of agreement, a copy of the said letter was also addressed to the Rajakamangalamthurai Development Trust.

15. Further according to the petitioner, it is only at the request made by the Rajakamangalamthurai Development Trust, the petitioner proposed to be inducted as a partner in the consortium agreement for the development of the Fishing Harbour at Rajakamangalam Thurai. But by the impugned order dated 03.08.2012, by total non application of mind and without properly considering the fact that a copy of the letter dated 19.09.2011 was also marked to Rajakamangalamthurai Development Trust, Kanyakumari district, the respondent has arbitrarily rejected the petitioner's request for induction as a partner made by his letter dated 19.09.2011.

16. For the foregoing reasons, the impugned letter dated 03.08.2012 issued by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders on the petitioner's application dated 19.09.2011 seeking to be inducted

as a partner in the consortium agreement in Rajakamangalam Fishing Harbour project at Kanyakumari after taking into consideration, the necessity for fishing Harbour Project and after hearing other consortium partners and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order.

17. With the aforesaid directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
Animal husbandry, dairying and fisheries department,
Fort St. George, Chennai.

+1cc to Mr. Adinarayana Rao, Advocate Sr.1599

W.P.No.22692 of 2012

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