



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.[MD]No.1444 of 2011

and

M.P.(MD) No.1 of 2011

Against W.P(MD)No.2446 of 2011

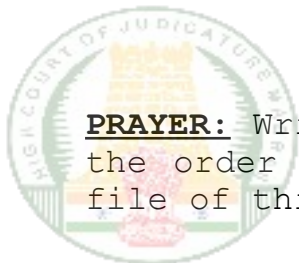
E.Subbiah

: Appellant/ Petitioner

Vs.

- 1) The Director of Town Panchayats,  
Kuralagam,  
Chennai 600 108
- 2) The District Collector,  
Tirunelveli District,  
Tirunelveli.
- 3) The Assistant Director of Town Panchayat,  
Tirunelveli District, Tirunelveli.
- 4) The President,  
Melaseval Town Panchayat,  
Melaseval,  
Tirunelveli District.
- 5) The Executive Officer,  
Melaseval Town Panchayat,  
Melaseval, Tirunelveli District.
- 6) The Junior Engineer,  
Melaseval Town Panchayat,  
Melaseval, Tirunelveli District.
- 7) N.Chelladurai,  
Contractor,  
Melaseval Town Panchayat,  
Melaseval,  
Tirunelveli District.

: Respondents/Respondents



**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 09.11.2011 passed in W.P(MD)No.2446 of 2011 on the file of this Court.

**Prayer in WP(MD).2446/ 2011 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certioraraified Mandamus, to call for the records of the tender notification of the 5th respondent in Na.ka.No. 32/2010 dated 24/08/2010 and quash the same and further forbearing the respondents 4 and 5 from acting against the resolution No. 263 dated 25/09/09 and resolution No. 49 dated 05/10/10.

|                    |   |                                                     |
|--------------------|---|-----------------------------------------------------|
| For Appellant      | : | Mr.H.Arumugam                                       |
| For RR 1 to 4 &, 6 | : | No appearance                                       |
| For R-5            | : | Mr.V.R.Shanmuganthan,<br>Special Government Pleader |
| For R-7            | : | Mr.V.Sukumar                                        |

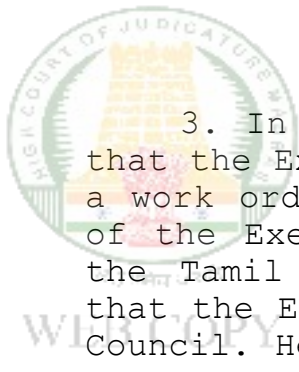
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**J U D G M E N T**

[Delivered by **SENTHILKUMAR RAMAMOORTHY, J.**]

This Appeal is directed against the order dated 09.11.2011 in W.P.(MD) No.2446 of 2011. The appellant is the unsuccessful writ petitioner. We heard Mr.H.Arumugam, learned counsel for the appellant; Mr.V.R.Shanmuganathan, learned Special Government Pleader for the fifth respondent; and Mr.V.Sukumar, learned counsel for the seventh respondent.

2. Mr.H.Arumugam, learned counsel, submitted that the fifth respondent issued the tender notification dated 24.08.2010, which was impugned in the writ petition, in contravention of the Resolution passed by the Panchayat Council, particularly the Resolution dated 05.10.2010. In order to substantiate this contention, he submitted that a new building was constructed and that by Resolution No.263 dated 25.09.2009 it was resolved that a tender should be floated in respect of the necessary U-shape tables, chairs, fans and items ancillary thereto. Instead, the fifth respondent, by communication dated 02.08.2010, proceeded to issue a tender in respect of water facilities, electricity facilities, aluminium doors and windows for a sum of Rs.3,00,000/- In these circumstances, the appellant issued an objection letter on 05.10.2010 and at the meeting of the Council on the same day, a resolution dated 05.10.2010 (Resolution No.49) was passed to stop further action in respect of the tender for the procurement of water facilities, electricity facilities, aluminium doors and windows etc.



3. In spite of Resolution No.49, the learned counsel contends that the Executive Officer acted in contravention thereof by issuing a work order. In addition, he submits that such action on the part of the Executive Authority is directly contrary to Section 13A of the Tamil Nadu District Municipalities Act, 1920, which mandates that the Executive Authority shall carry out the Resolutions of the Council. He also pointed out that Section 15, which pertains to the emergency powers, was not invoked and does not apply in this case. Even if there is a delegation of authority under Section 68, he submits that there are limits imposed under Section 69(2) thereof and that such limits were not adhered to in this case.

4. In response, Mr.V.R.Shanmuganathan, the learned Special Government Pleader, submitted that the work was proceeded with in light of the disposal of the writ petition but that money has not been released. He also submitted that the work order was issued on 29.09.2010. In these circumstances, he submits that the matter may be remanded for an enquiry/ appropriate orders by the second respondent.

5. Mr.Sukumar, the learned counsel appearing for the seventh respondent, submits that the seventh respondent has completed work pursuant to the work order but he has not received payment in respect thereof.

6. Upon considering the submissions of the learned counsel for the respective parties and on examining the impugned order of the learned Single Judge, we find that the learned Single Judge has concluded that the appellant does not have *locus standi* to question the tender process. We find that the appellant was a Councillor, who submitted his objections, on the basis of which the Council passed a Resolution dated 05.10.2010 to stop the tender process. Accordingly, we find that the conclusion of the learned Single Judge that the appellant does not have *locus standi* is incorrect. We also find that the Executive Officer appears to have proceeded with the tender notwithstanding the Resolution No.49 dated 05.10.2010 of the Council.

7. In these circumstances, we are inclined to set aside the impugned order dated 09.11.2011 and remit the matter to the second respondent to conduct an enquiry as to the validity of the tender and the work order, and to take consequential decisions after providing a reasonable opportunity to all the parties concerned. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order. In the event that the District Collector decides that the Contractor is entitled for payment for work carried out, appropriate directions shall be issued for such payment.



8. With these directions, the Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

sts/krk

To

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Melaseval, Tirunelveli District.

**W.A. [MD]No.1444 of 2011**

**Dated:15.10.2020**

VR (CO)

CS (28.10.2020) 4P 7C