



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD)No.24101 of 2019

and

W.M.P. (MD)Nos.20704 of 2019 and 2467 of 2020

Justin Sunder Singh

: Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.
3. The District Collector,
Kanyakumari District,
At Nagercoil.
4. The Assistant Director (Mines and Minerals),
Collectorate Office,
Nagercoil, Kanyakumari District.
5. The Commissioner,
Colachel Municipality,
Colachel Post,
Kanyakumari District.

: Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the fifth respondent in Na.Ka.No.566-1/2018/E1, dated 22.10.2019, quash the same and consequently, direct the respondents 3 to 5 herein to grant quarry permit and transport permit for gravel sand from patta lands in RS.Nos.602/2 and 606/5 in Kadiapattanam Village, Kalkulam Taluk, Kanyakumari District or from any place identified by the fifth respondent for execution of Septage Management Scheme for public purpose, within the stipulated time.



For Petitioner : Mr.A.Rajkumar Sen
For Respondents 1to4 : Mrs.J.Padmavathi Devi,
Special Government Pleader
For Respondent No.5 : Mr.P.Athimoolapandian

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ORDER

This Writ Petition is filed questioning the order of the fifth respondent/Commissioner, Colachel Municipality, in terminating the agreement given to the petitioner - Justin Sunder Singh, who was granted work order on 08.02.2019, for establishment of Faecal Sludge and Septage Management Treatment Plant at Compost yard of 40 KLD Capacity in Colachel Municipality.

2. The execution of the work involved three stages. One, construction of a compound wall over the outer perimeter. The total area was 3 Acres and the wall has to be constructed in the outer perimeter of 3 Acres. Thereafter, the land will have to be filled with gravel sand. The third stage is installation of the plant. The petitioner had received the work order on 08.02.2019. The period for completion of the construction was six months and a further period of three months was granted for operation and maintenance. The bid price was Rs.4,68,55,132.09. The payment schedule for every month was based on the work measurement carried out and counter-signed by the officials of the Commissioner, Colachel Municipality. There are various other stipulations in the work order.

3. It is also seen that for completion of the work, one essential feature was filling up with gravel sand. This required mining of sand. Mining of sand naturally required permission by the necessary authorities. That would be the second stage in execution of the work.

4. The first stage, as stated above, was putting up the compound wall. The compound wall has been put up. Necessary entries have also been made measuring the same and the extract of the measurement book has also been produced in Court. It is seen that the total value of the work so far done was Rs.47,95,256/-. This has also been counter signed by the authorities concerned.

5. The second stage of the work, as stated above, was filling up the land with gravel sand. There were however hindrances even at the very beginning. Even though work order was granted on 08.02.2019, permission for mining of the sand was granted on 30.07.2019 by the fifth respondent/Commissioner, Colachel



Municipality. Unfortunately, the Commissioner was not the proper authority to grant such permission. He did not have any authority to grant permission. It was the Collector, Kanyakumari District, who can grant permission. Therefore, this order of the fifth respondent/Commissioner, Colachel Municipality was interfered with by the Collector, by a circular, which was signed on 30.08.2019 in e.f.vz;.112/g[k.R/2019. Therefore, the petitioner, once again, came back to stage one. He had constructed the wall, but, he cannot fill the land with gravel sand, since permission though granted by the Commissioner/Colachel Municipality, was withdrawn by the Collector.

6. The petitioner gave a representation for permission to mine the sand and since there was a delay, he filed W.P.(MD)No.22058 of 2019 before this Court. It is stated by the learned counsel for the petitioner that the said Writ Petition was filed on 20.10.2019. The date may be a day or too earlier or later, since the learned counsel stated the date from memory. However, it came up before this Court for consideration on 23.10.2019. This Writ Petition was for a direction to permit the petitioner to transport gravel sand from the patta land in Re-Survey Nos.602/2, 606/3 and 606/5 of Kadiapattanam Village, Kalkulam Taluk, Kanyakumari District or from any other place for the work, for which, the petitioner had obtained the contract.

7. When the Writ Petition came up for hearing, in the presence of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 4 and the learned Standing Counsel for the fifth respondent/Commissioner, Colachel Municipality, a learned Single Judge of this Court had passed the order on 23.10.2019. The order is extracted below in extension:

"2.The petitioner has become successful tenderer for the execution of the Faecal Sludge And Septage Management Scheme. Even though the petitioner was awarded with a contract on 25.11.2019, he could not execute it, for want of permission to quarry gravel from patta land for the above said purpose. He made a representation to the District Collector. The District Collector in his proceedings in e.f.vz;.113/g[kR/2019> dated 06.09.2019, informed the petitioner that if it is applied in form Annex VI under Rule 19 by the land owner or the agreement holder of the land, permission will be granted. The petitioner has applied for quarrying permit in form Appendix X under Rule 3 along with the demand draft, other document and lease agreement. However, quarrying permit was not granted. Aggrieved the same, the petitioner has come before this Court.



3. On instructions, the learned counsel appearing for the respondents would submit that the petitioner has to submit his application in form Annex VI under Rule 19, whereas he has made his application in Appendix X under Rule 3.

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4. Be that as it may, when an application is made, the concerned officer shall either process it or return it for rectification of defects and cannot keep it in cold storage 'sine dine.'

5. The petitioner is pressed for time to execute the contract awarded by the Municipality.

6. Considering the paucity of time, it is necessary that a direction is given to the third respondent to process the application of the petitioner. Accordingly, the petitioner is directed to submit his application for quarrying gravel in the proper format within a period of one week from the date of receipt of a copy of this order and on receipt of the said application, the third respondent is directed to pass an order either accepting it or rejecting it within a period of two weeks, therefrom.

7. The third respondent is also directed to accept the demand draft submitted by the petitioner on the earlier occasion as prescribed fee.

8. In view of the above, this Writ Petition is disposed of."

8. In the said order, the learned Single Judge had recorded the observation of the District Collector, dated 06.09.2019, wherein, the petitioner was informed that if he had applied for permission in Annexure-VI under Rule 19, permission will be granted. Unfortunately, the petitioner had applied in Appendix X under Rule 3 along with the demand draft. Therefore, the learned Single Judge had directed that when an application is made, the officer should either process it or return it for rectification of defects, but, cannot keep it in cold storage. A further direction was given that the petitioner should give his application, within a period of one week from the date of receipt of a copy of the order and the third respondent, namely the District Collector, Kanyakumari District should pass orders either accepting it or rejecting it, within a period of two weeks. The third respondent was also directed to accept the demand draft submitted by the petitioner. Unfortunately, the order was rendered infructuous by the Commissioner, Colachel Municipality. The said Commissioner, Colachel Municipality, the



fifth respondent himself had terminated the entire contract, by an order dated 22.10.2019.

9. I am not able to accept the contention that the Commissioner, Colachel Municipality was either not informed about the pendency of the Writ Petition or that even subsequently, this Court had directed the Collector of Kanyakumari District, to grant permission. Once he had been aware of such an order of the High Court, the Commissioner, Colachel Municipality, by all grace with due diligence to the authorities of the High Court, should have withdrawn the impugned order by himself. He should have awaited further orders to be passed by the Collector either accepting or rejecting the application of the petitioner. Rather, the order is maintained even before this Court. Such a stand by the fifth respondent cannot stand scrutiny of this Court and does not stand scrutiny. Thus, the order of the Commissioner, Colachel Municipality, dated 22.10.2019, which is impugned herein, is straightaway set aside. A direction is given to the Collector, Kanyakumari District, to pass orders on the application said to have been given by the petitioner, on or before 27.03.2020 and thereafter, the petitioner may continue with the execution of the work. On completion of the work, if any delay is attributed directly to the petitioner, then while settling the bills, the respondents may take any action at that point of time. But, however, keeping the work in a perpetual hanging nature, which is half-started and neither completed nor permitted to be completed, shows the bureaucratic attitude of the respondents. It is hoped that they would at least now take upon themselves, to address the issue, namely execution of work for which the contract was initially called for and ensure that it is completed within the time. The respondents may also re-work the time frame for completion of the contract, after giving due notice to the petitioner herein.

10. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

SML

To

1.The Secretary to Government,
Municipal Administration,
Esplanade, Chennai-600 009.

<https://hcservices.ecourts.gov.in/hcservices>



2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Kanyakumari District,
At Nagercoil.

4.The Assistant Director (Mines and Minerals),
Collectorate Office,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.A.RAJKUMARSEN, Advocate (SR-11462[F])

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-11472[F])

+1 CC to M/s.SPL.GP (SR-11550[F])

Order made in
W.P. (MD) No.24101 of 2019

Dated:
12.03.2020

SP (06.05.2020) 6P-8C