



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.18622 of 2021

and

W.M.P(MD)No.15357 of 2021

A.Kamaraj

... Petitioner

Vs.

1.The Chief Secretary to Government,
Highways and Minor Ports Department,
Fort St.George,
Chennai.

2.The Chief Engineer,
National Highways,
Guindy,
Chennai-24.

3.The Superintending Engineer,
National Highways,
Madurai.

... Respondents

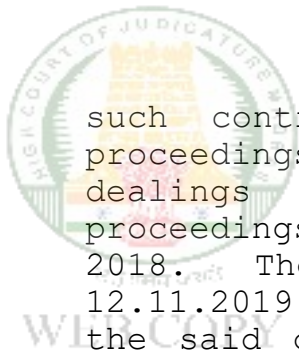
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in G.O.MS.No.72, Highways and Minor Ports (H.V2) Department dated 02.09.2021 and quash the same as illegal, arbitrary and in violation of provisions of Standardized Code for Works Contractors.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.P.Subbaraj,
Counsel for State.

ORDER

The petitioner assails an order dated 02.09.2021 by which he was banned from business dealings with the third respondent.

2. The petitioner states that he is a registered Class-I Contractor with the National Highways Department since 1992. Pursuant to a tender floated by the Superintending Engineer, National Highways, Tirunelveli, he was the successful bidder. Accordingly, a contract was awarded to him on 22.12.2017. In connection with the contract, a bank guarantee furnished by him in relation to



such contract, proceedings were initiated against him. Such proceedings pertained to the banning of the petitioner from business dealings with the National Highways Department. The said proceedings were assailed by filing W.P.(MD).Nos.12763 and 12769 of 2018. The said Writ Petitions were disposed of by order dated 12.11.2019. Several directions were issued under paragraph 20 of the said order with the consent of the parties. The petitioner relies on paragraph 20 (c), whereby it was expressly recorded that the authorities would deal with the matter after providing a reasonable opportunity to all concerned. According to the petitioner, a show cause notice was issued in respect of the suspension of the petitioner. Such suspension was separately challenged and the Writ Petitions relating thereto were withdrawn on account of the expiry of the relevant suspension period.

3. In the said facts and circumstances, the petitioner assails the communication dated 02.09.2021 on the ground that a reasonable opportunity was not provided to the petitioner before issuing a drastic order with severe civil consequences. The petitioner also relies upon the Standardized Code for Works Contractors and, in particular Clause 6.4 thereof, which stipulates that the decision regarding banning from business dealings should be taken after issuing a show cause notice and considering the representation, if any, in response thereto. In addition, the petitioner submits that the impugned order is in violation of paragraph 20 (c) of the order dated 12.11.2019 in W.P(MD).Nos.12763 and 12769 of 2018.

4. Mr.P.Subbaraj, learned counsel for the State, appears on behalf of all the respondents. He refers to a communication dated 07.01.2020 from the third respondent to the petitioner and points out that the said communication qualifies as a show cause notice. He also refers to an explanation dated 23.01.2020 in such regard by the petitioner.

5. In response, the petitioner points out that the show cause notice dated 07.01.2020 was followed by an order dated 28.01.2020 by which the petitioner was suspended for a period of one (1) year. Such suspension was the subject matter of W.P(MD).Nos.2098 and 2103 of 2020. After a *status quo* order was granted in such Writ Petitions, the said Writ Petitions were withdrawn in view of the expiry of the suspension period. Therefore, the petitioner contends that the show cause notice related to the suspension of the petitioner does not qualify as a show cause notice for banning from business dealings.

6. The mandate of Clause 6.4 is categorical. The said Clause is set out below:

"6.4 The decision regarding removal from registration / suspension / banning of business dealings



taken after the issue of a show cause notice and consideration of the representation, if any, the reply thereto should be communicated to the firm concerned, but reasons may not be disclosed in such communications (Kindly see Appendix -I) Copies of such order (Marked "Secret") together with the reasons for the action and the period for which they will be effective, as also the name of partners and list of allied concerns coming within the effective influence of the banned contractor, should be forwarded by the administrative department concerned to all other departments of the Government, who will issue necessary instructions to the heads of the departments under their control for immediate cessation of all future business with the contractor."

7. In addition, in the case at hand, the consent order of this Court dated 12.11.2019 in W.P(MD).Nos.12763 and 12769 of 2018 is also categorical. Even otherwise, the law on blacklisting requires strict compliance with procedural requirements in relation thereto. As such, there is no doubt that any action for banning of business dealings should be preceded by a show cause notice so as to enable the Contractor to provide an explanation in relation thereto. The order to be issued thereafter should also indicate that the explanation in such regard was considered. In the case on hand, the impugned order does not refer to any show cause notice or indicate that the petitioner's explanation was considered. Consequently, the impugned order cannot be sustained and is quashed.

8. However, it is open to the respondents to issue a show cause notice in accordance with Clause 6.4 of the Standardized Code for Works Contractors and proceed to deal with the matter after providing an opportunity to the petitioner to provide an explanation in relation thereto. Keeping in mind the fact that these proceedings were initiated in 2018, the respondents are directed to take steps in such regard at the earliest.

9. Accordingly, W.P(MD).No.18622 of 2021 is disposed of on these terms without any order as to costs. Consequently, W.M.P(MD) No.15357 of 2021 stands closed.

Sd/-

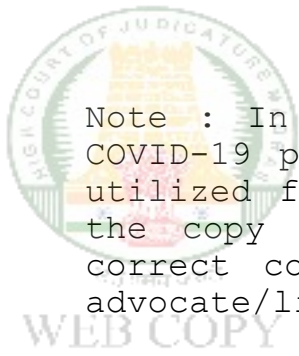
Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)

tsg/LM/nsr



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.

To

1.The Chief Secretary to Government,
Highways and Minor Ports Department,
Fort St.George,
Chennai.

2.The Chief Engineer,
National Highways,
Guindy,
Chennai-24.

3.The Superintending Engineer,
National Highways,
Madurai.

+1 CC to M/s.SPL.GP (SR-33166[F] dated 29/10/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-33400[F] dated 01/11/2021)

W.P (MD) No.18622 of 2021
28.10.2021

MMS (CO)
KB(16.11.2021) 4P 6C