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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.14917 OF 2020
AND W.M.P.NO.18519 OF 2020

K.Chandrasekar

... Petitioner

Vs.

1. The State of Tamil Nadu
rep.by its Secretary to Government,
Public Works Department,
Secretariat, Fort St.George,
Chennai 600 009.
2. The Engineer-in-chief,
Engineer (Buildings),
Public Works Department,
Chepauk, Chennai 600 005.
3. The Engineer-in-chief,
Water Resources Department (WRD) (M)
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai 600005.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records from the third respondent passed impugned order in Letter NO. thavaa /Muva / Ko Pathivu /2020 dated 24.09.2020 (received on 30.09.2020) to quash the same and consequently direct the third respondent to permit the Petitioner to continue the existing works.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.P.Gurunathan
Additional Government Pleader



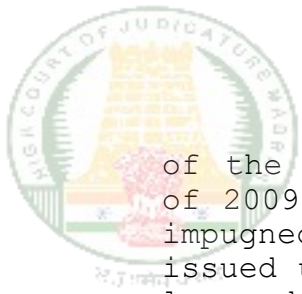
O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus to call for the records from the third respondent passed impugned order in Letter NO. thavaa / Muvaa / Ko Pathivu /2020 dated 24.09.2020 (received on 30.09.2020) to quash the same and consequently direct the third respondent to permit the Petitioner to continue the existing works and Pass.

2. The case of the petitioner is that the petitioner is a Class I Civil Contractor and doing various civil works in the Public Works Department and he obtained the said Class I Civil Contractor license on 24.01.2008 and the same was renewed every year till date. Further the petitioner doing various contract works in various departments without any remarks. While so, the petitioner has obtained Solvency Certificate dated 16.10.2018 for a sum of Rs.50,00,000/- with regard to the property at Door No.1/2, Ithayarajapuram North 3rd Street, Sellur, North Madurai Village and Taluk, Madurai District. In this regard, the Tahsildar, Madurai North had verified all the document and issued the Solvency Certificate and thereafter, the Live Certificate has also been renewed every year. Now all of a sudden, the 3rd respondent issued an order of temporary suspension in Letter dated 24.09.2020, stating that the petitioner suppressing the mortgaged property got renewal for the Contractor till 2018. Aggrieved by the said impugned order, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that the temporary suspension order was issued without any show cause notice or any opportunity to the petitioner. Further as per the power vested with the authority under Clause 4(2), it is for the Suspension of Business and Clause 5, is for the Removal of the Registered Contract List. Both the power for removal from registration and suspension of business are entirely different. Therefore, in the present case, the respondent has wrongly invoked the provision of Clause 4(2) of the Standardised Code for Works Contractors, which is applicable only for suspension of business, whereas in the present case, temporarily the petitioner's name was removed from the list of contractor, for which, the provision of Clause 4(2) is invoked. The learned counsel appearing for the petitioner further submitted that no clause is provided for a temporary suspension of registration or removal of name of the contractor from the approved list and such power is conferred only in suspension of business.

4. In this regard, the learned counsel appearing for the petitioner has drawn the attention of this Court to the decision



of the Hon'ble Division Bench of this Court in W.A.(MD) No.611 of 2009 reported in 2009 SCC Online Mad 2109, wherein the order impugned in the writ petition was set aside, as the same was issued under wrong provision of law. It is the submission of the learned counsel for the petitioner that the said decision is squarely applicable to the present case on hand and therefore the order impugned in the Writ Petition cannot be sustained and prays for allowing of this petition.

5. The learned Additional Government Pleader submitted that admittedly the petitioner mortgaged the property and got renewal till 2018 and suppressing the encumbrance of the property, obtained solvency certificate and when the said fact came to the notice of the authority, they placed the petitioner under suspension from the list of approved contractor and such power is very much available with the respondents. Further, it is only an order of suspension, ultimately the authority has to conduct enquiry and pass orders. The petitioner without participating in the enquiry filing the Writ Petition in the preliminary stage is not sustainable and hence prays for dismissal of this petition.

6. Facts in the present case is not in dispute that the respondents invoked power under Clause 4(2) of the said Code and placed the petitioner under suspension from the list of contractors. However, a perusal of Clause 4(2) of the said Code - Suspension of Business reveals that where a contractor is suspected of disloyalty to the state or where the administrative department concerned, in consultation with the public, (S,O) Department recommend such a course pending investigation into serious allegation, the administrative department concerned may require the Government Department to suspend business with the part. In the present case, the impugned order was passed suspending the petitioner, from the list of contractor, which is not sustainable one, in view of the fact that the suspension from the list of contractors, is available under Clause 5(2) of the said Code, whereas the impugned order, temporarily removing the name of the petitioner from the list of contractor, was wrongly passed under Clause 4(2) of the said Code. Hence, as rightly relied on by the learned counsel appearing for the petitioner, applying the ratio laid down in the above cited case by this Court of Division Bench in W.A.(MD).No.611 of 2009 (K.Kalisamy Vs. The Chief Engineer and Others), reported in 2009 SCC Online Mad 2109, the impugned order is liable to be set aside.

7. For the reasons aforesaid, this Writ Petition is allowed and the impugned order in Letter NO. thavaa /Muvaa / Ko Pathivu /2020 dated 24.09.2020, is set aside and a liberty is granted to the respondent Department to invoke the correct provision of law and issue show cause notice to the petitioner



under the said corrected provision of law and thereafter conduct enquiry and pass appropriate orders. No costs. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Works Department,
Secretariat, Fort St.George,
Chennai 600 009.
2. The Engineer-in-chief,
Engineer (Buildings),
Public Works Department,
Chepauk, Chennai 600 005.
3. The Engineer-in-chief,
Water Resources Department (WRD) (M)
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai 600005.

+2ccs to Mr.I.Abrar Mohamed Abdullah, Advocate, S.R.No.5511
+1cc to the Government Pleader, S.R.No.5606

W.P.No.14917 of 2020

GPL(CO)
PM/07/03/2022