



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. [MD]No.3916 of 2022

and

W.M.P. [MD]No.3368 of 2022

Sakthivel

... Petitioner

Vs.

1.The Block Development Officer,
Kallal,
Sivagangai District.

2.R.Sankara Parmaeswari
The Block Development Officer,
Kallal,
Sivagangai District.

3.The Tahsildar,
Kariakudi Taluk,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.A2/1174/2020 dated 05.01.2022 and consequent order in Na.Ka.A2/1487/2020 dated 06.01.2022 passed by the first respondent and quash the same and consequently directing the first respondent to follow the tender process in respect of the bore-well work at Patharakudi Village, Sivagangai District.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents 1&2 : Mr.S.Kameswaran
Government Advocate

For Respondent No.3 : Mr.B.Saravanan
Additional Government Pleader



O R D E R

This writ petition has been filed challenging the order dated 05.01.2022 and the consequential order dated 06.01.2022 passed by the first respondent under which the petitioner's solvency certificate was cancelled and his contractor's license was also cancelled.

2. According to the petitioner, he has been a contractor with the first respondent for the past several years and he had obtained his license to participate in the auctions conducted by the first respondent from 2012 onwards which has been periodically extended. He has also obtained a solvency certificate on 09.04.2012. However, according to him arbitrarily and illegally by not adhering to the principles of natural justice, the impugned order has been passed on 05.01.2022 and the consequential order dated 06.01.2022 by the first respondent referred to supra.

3. It is the contention of the petitioner that before recommending cancellation of the petitioner's solvency certificate, the third respondent has not given any opportunity of personal hearing to the petitioner. It is also the contention of the petitioner that the subject property mentioned in the solvency certificate is a HUF property and the petitioner has been paying the necessary house tax in his name for the past several years and despite the same, the third respondent has recommended for cancellation of the solvency certificate which is arbitrary and illegal. It is also the contention of the petitioner that for the past 10 years, he has been successfully doing contract works for the first respondent.

4. Heard Mr. RM. Arun Swaminathan, learned Counsel appearing for the petitioner, Mr. S. Kameswaran, learned Government Advocate who accepts notice on behalf of first and second respondents and Mr. B. Saravanan, learned Additional Government Pleader who accepts notice on behalf of the third respondent.

5. Learned Counsel for the petitioner drew the attention of this Court to the impugned order dated 05.01.2022 and the consequential order dated 06.01.2022 and would submit that the said orders have been passed violating the principles of natural justice. According to him, the enquiry reports relied upon for the purpose of passing the impugned order was not furnished to the petitioner and the petitioner was also not afforded an opportunity of personal hearing. Learned Counsel for the petitioner would reiterate the contents of the affidavit filed in support of the writ petition and would submit that the petitioner is in possession of the property which is disclosed in the solvency certificate and he has also been paying the property tax ever since 2009. It is his contention that though an explanation was given by the petitioner, the third respondent has



not considered the said explanation on merits and in accordance with law.

6.Per contra, learned Government Advocate appearing for the first and second respondents would submit that only in accordance with law and only after considering the petitioner's explanation, the impugned orders came to be passed. He would further submit that the property produced by the petitioner for the purpose of obtaining the solvency certificate is not in his name and therefore, by a false representation, the solvency certificate came to be passed in the year 2012, which was rightly cancelled under the impugned order.

7.As seen from the impugned order, the explanation submitted by the petitioner though referred to, has not been considered properly by the third respondent. The petitioner's contention is that his father is no more and though the property earlier stood in the name of the petitioner's father, he is the owner of the said property being a HUF property and the petitioner who is in possession of the property and paying the house tax for the same ever since 2009 onwards, the solvency certificate issued in the year 2012 based on the said property has been correctly issued and he rejects the contention of the learned Government Advocate appearing for the second respondent.

8.As seen from the impugned order, the documents which the petitioner relies upon before this Court has not been considered. Unless and until the documents through which the petitioner claims ownership is considered on merits and in accordance with law, no order can be passed cancelling the solvency certificate which was issued earlier based on the said documents. As the documents have not been considered in the impugned order, this Court is of the considered view that the petitioner must be permitted to produce all the documents in support of his contention and on receipt of the same, the first respondent will have to consider the same and decide as to whether the petitioner is entitled to retain the solvency certificate issued in the year 2012 or not. In view of the non-consideration of the documents and a non-speaking order, this Court will have to necessarily quash the impugned order and remand the matter back to the first respondent for fresh consideration on merits and in accordance with law.

9.Accordingly, the impugned order is quashed and remanded back to the first respondent and the first respondent is directed to pass final orders on merits and in accordance with law after affording a fair opportunity of hearing to the petitioner including granting him the right of personal hearing within a period of twelve [12] weeks from the date of receipt of a copy of this order. The petitioner is permitted to produce all documentary evidence in support of his contentions that he has made in this writ petition before the first respondent and the first respondent shall consider the same on



merits and in accordance with law. It is made clear that the first respondent shall adhere to the principles of natural justice by providing all the copies of the enquiry reports based on which the final order is going to be passed to the petitioner.

7. With the aforesaid direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

MR

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 Block Development Officer,
Kallal,
Sivagangai District.

2. The Tahsildar,
Kariakudi Taluk,
Sivagangai District.

+1 CC to M/s.SPL GP (SR-10171[F] dated 04/03/2022)

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RK(17/03/2022) 4P 4C