



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.14160 of 2021

and

W.M.P.(MD) Nos.11109 & 12449 of 2021

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S.Murugesan

... Petitioner

-vs-

1.The District Collector
Madurai, Madurai District

2.The Assistant Director of Local Fund Audit
Chokkikulam
Madurai, Madurai District

3.The Block Development Officer
(Village Panchayat)
T.Kallupatti
Tirumangalam Taluk
Madurai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order passed by the 1st respondent in Na.Ka.No.468/2021/A3, dated 19.04.2021 and consequential impugned order passed by the 3rd respondent in his proceedings in Na.Ka.No.652/2021/Oo.3, dated 27.07.2021 and consequential impugned recovery order passed by the 1st respondent in his proceedings in Na.Ka.No.11211/2021/OO.Va.10, dated 29.07.2021 (served to the petitioner on 04.08.2021) and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 & R2
Mr.A.K.Manikkam
Special Government Pleader for R3

O R D E R

The order dated 19.04.2021, passed by the first respondent, the consequential order dated 27.07.2021, passed by the third respondent and the order dated 29.07.2021, passed by the first

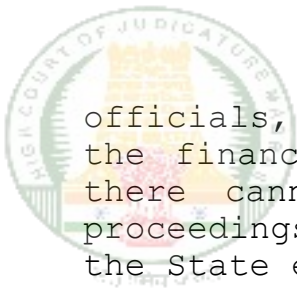


respondent, are under challenge in this writ petition.

2. The learned counsel appearing for the petitioner mainly contended that the order of recovery has been issued to the petitioner without framing any charge or conducting domestic enquiry. This apart, it is contended that the project work is the collective responsibility of the Block Development Officer and the Assistant Engineer (petitioner herein). According to the petitioner, he has already sent a letter to the Block Development Officer to stop the issue orders in respect of purchase of cement bags and other materials in view of the fact that the contractor has not commenced the work at all. However, the Block Development Officer has not taken any action based on the letter of the petitioner. The petitioner states that he is noway responsible for the financial loss caused to the Panchayat and therefore, the impugned orders are liable to be set aside.

3. The learned Special Government Pleader appearing for the third respondent objected the contentions of the learned counsel for the petitioner by stating that even before commencement of the contract work, the petitioner sanctioned 300 bags of cement and 380 Kgs., of iron material in favour of the contractor and the contractor has not commenced or continued the civil works as per the Scheme. Thus, a huge monetary loss had been caused to the Panchayat and therefore, the audit officials raised an objection in respect of the financial loss and accordingly, the impugned order of recovery has been passed. It is a lapse on the part of the petitioner, who was holding the post of Assistant Engineer and he himself sanctioned 300 bags of cement and 380 Kgs., of iron material to the contractor and now, he cannot shift the responsibility by merely citing a letter to the Block Development Officer. It is contended that even such a letter was sent only after sanctioning of the above materials to the contractor. Therefore, the said letter has no relevance as far as the sanction already made by the petitioner in favour of the contractor.

4. A distinction is to be drawn in such circumstances, where a financial loss caused to the State exchequer / Government Institutions / Local Bodies. If any employee involved in misappropriation, fraud or misconduct, then departmental disciplinary proceedings are to be initiated against him. In such circumstances, appropriate charges are to be framed and enquiry is to be conducted and thereafter, a final decision is to be taken by the Authority competent. However, in the event of any such financial loss caused to the Government Institutions and if the Authorities have no other material to establish the fraud or misappropriation or otherwise, then it is suffice to initiate recovery proceedings to make good the financial loss caused. The recovery of financial loss caused may not have any penal consequence. However, such loss is to be recovered from the



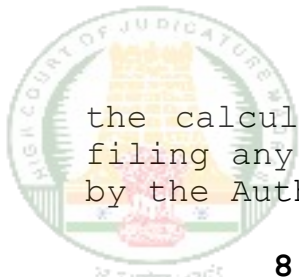
officials, who all are responsible and accountable in dealing with the financial aspects of the Government Institutions. Therefore, there cannot be any comparison in respect of the disciplinary proceedings and the recovery proceedings of financial loss caused to the State exchequer.

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5. In the present case, the petitioner was holding the post of Assistant Engineer, who is responsible and accountable to supervise the activities of the contractors for the purpose of implementing the Government Schemes. In the case on hand, even before commencement of the work by the contractor, the petitioner has sanctioned 300 bags of cement and 380 Kgs., of iron material, which caused financial loss to the Government Institution. The letter, dated 31.10.2012, written by the petitioner to the Block Development Officer was sent only after sanctioning of the above materials in favour of the contractor and therefore, this Court is of the opinion that the action not taken against the Block Development Officer cannot be found fault with. The petitioner has sanctioned the materials in favour of the contractor in advance knowing the fact that the contractor has not commenced the project work. Even if the petitioner pleads that he has no knowledge about the commencement of work, then it is to be construed that he has not supervised the work of the contractor properly. Thus, in either case, the petitioner is responsible and accountable for the financial loss occurred. When the audit objections were raised on account of the sanction of the construction materials, the Assistant Engineer, who is fully responsible for supervising the activities of the contractor, is responsible to make good the financial loss occurred to the Panchayat.

6. In this context, the District Collector has also considered the case of the petitioner and rejected his claim and directed to recover the financial loss to the tune of Rs.2,74,200/-. Thus, this Court do not find any infirmity or perversity in respect of the impugned order. However, the Authorities are always bound to look into these financial loss in different dimensions. There are large scale allegations in the public domain regarding official - contractor nexus in execution of public welfare schemes. Therefore, the Authorities competent in all circumstances are bound to look into the nexus or active or passive collusion of the officials with the contractors in these kind of issues and if any such illegality or otherwise is identified, then action under the Discipline and Appeal Rules also be may be taken. Such action is not a bar for recovering the financial loss occurred to the Government Institutions.

7. At this juncture, the learned counsel for the petitioner raised objection with reference to the calculation and excess amount of recovery. If at all any such grievance exists, the petitioner is at liberty to approach the Authority competent for verification of



the calculation or fixation of financial loss and in the event of filing any such objection, the same shall be verified and considered by the Authority concerned in accordance with law.

8. This being the factum, this Court is of the opinion that the petitioner has not established any acceptable ground for the impugned orders. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The District Collector,
Madurai, Madurai District.

2.The Assistant Director of Local Fund Audit,
Chokkikulam,
Madurai, Madurai District.

3.The Block Development Officer,
(Village Panchayat),
T.Kallupatti,
Tirumangalam Taluk,
Madurai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-7978[F] dated 23/02/2022)

+1 CC to M/s.SPL GP (SR-8047[F] dated 23/02/2022)

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W.M.P. (MD) Nos.11109 & 12449 of 2021
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RD(03.03.2022) 4P 6C