



W.P.(MD)No.13340 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)No.13340 of 2017
and
W.M.P.(MD)No.10398 of 2017**

M/s.Ashok Transport,
Represented by its Proprietor S.Palanivelu,
Plot No.28, LIC Colony,
Malligai Street,
Shanthi Nagar,
Madurai - 625 018.

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk,
Chennai - 600 010.

2. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
Kuruvikaran Road,
Madurai.

... Respondents



W.P.(MD)No.13340 of 2017

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent vide Na.Ka.No.B2/5893/2015 dated 24.06.2017 and quash the same.

For Petitioner : Mr.D.Shanmuga Raja Sethupathi
for Mr.D.Senthil

For Respondents : Mr.K.Balasubramani
Special Government Pleader for R1

Mr.Veerakathiravan
Additional Advocate General
Asst. by Mr.G.Mohankumar for R2

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by Mr.G.Mohankumar, learned counsel for the second respondent / Corporation.

2. The petitioner challenges the impugned order whereby he has been blacklisted. I went through its contents. The operative portion of the impugned order reveals that the petitioner has been implicated as one of the



W.P.(MD)No.13340 of 2017

WEB COPY

accused in C.C.No.44 of 2016 on the file of the learned Judicial Magistrate -III, Madurai for the offences under Sections 120(b), 409, 420, 467, 468, 471 of Indian Penal Code r/w 7(1)(a)(ii) of Essential Commodities Act and r/w Section 109 of the Indian Penal Code and that till the petitioner establishes his innocence in the criminal case, he has to be included in the blacklist. An order blacklisting a contractor has serious civil consequences and it almost amounts to capital punishment. Therefore, the Authority must consider the materials before it and after giving a definite conclusion as regards the culpability of the contractor, proceed to blacklist. In this case, the impugned order is tentative and no definite finding has been arrived at as against the petitioner. Merely because the petitioner has been implicated in a criminal case, that cannot by itself be a ground for blacklisting him. Though earlier it was held that in respect of an employee facing criminal prosecution, on the same set of facts there cannot be a parallel departmental enquiry. This position changed later. It is now open to the employer to hold the departmental enquiry, though the employee is facing prosecution.



W.P.(MD)No.13340 of 2017

Applying the very same principle, I hold that the employer can very well hold an enquiry into the culpability of the contractor and if satisfied, can blacklist him notwithstanding the pendency of the criminal case. But pendency of the criminal case by itself cannot lead to blacklisting. The employer must be satisfied independently about the conduct of the contractor. Since such an approach was not adopted in this case, the impugned order is liable to be quashed.

3. The respondents, had earlier blacklisted the petitioner on 26.05.2017, even without offering him an opportunity. The petitioner filed W.P.(MD)No.10903 of 2017. The said order was set aside and the matter was remanded. In the impugned order, the respondents could not have stated that the earlier order stood confirmed. The order that has been set aside by the Court cannot be once again confirmed by the authorities. I also went through the contents of the show cause notice that was issued following the direction given in W.P.(MD)No.10903 of 2017 dated



W.P.(MD)No.13340 of 2017

13.06.2017. The show cause notice does not spell out the charge made against the petitioner herein. For these reasons, the impugned order is quashed and the matter is remitted to the second respondent. The second respondent shall issue fresh notice to the petitioner herein and after considering the petitioner's explanation, shall pass an order afresh in accordance with law. The second respondent shall not be influenced by the earlier orders of blacklisting. There has to be an independent application of mind. The final order shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

4. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2022

Index : Yes / No

Speaking Order : Yes / No

vji



W.P.(MD)No.13340 of 2017

WEB COPY

To

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk,
Chennai - 600 010.
2. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
Kuruvikaran Road,
Madurai.
3. The Proprietor,
M/s.Ashok Transport,
Plot No.28, LIC Colony,
Malligai Street,
Shanthi Nagar,
Madurai - 625 018.



WEB COPY



W.P.(MD)No.13340 of 2017

G.R.SWAMINATHAN, J.

vji

**W.P.(MD)No.13340 of 2017
and
W.M.P.(MD)No.10398 of 2017**

18.07.2022