



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.10665 of 2023

and

W.M.P.Nos.10595 & 10597 of 2023

D.Sethuraman

... Petitioner

vs.

1.The District Collector
NH-40, Ranipet Collector Office
Ranipet 632 401

2.The Commissioner
Arcot Municipality
No.5, Santhapettai Street
Arcot, Ranipet 632 503

3.Suresh Subramanian
S/o.Subramanian
17-A, Kaikara Street
Arcot, Vellore 632 503

*(R3 - impleaded vide order dated 27.04.2023 made
in WMP.No.12952 of 2023 in WP.No.10665 of 2023)*

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of



India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in Na.Ka.No.0337/2023/E1 dated 23.03.2023 quash the same and consequently forebear the respondents from interfering with the Petitioner's right to participate in the tenders issued by the 2nd Respondent without following the due process of law.

For Petitioner : Mr.M.Elumalai

For Respondents : Mr.C.Selvaraj (for R1)
Additional Government Pleader

Mr.S.Ravichandran (for R2)
Additional Government Pleader

Mr.T.Balaji (for R3)

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent in Na.Ka.No.0337/2023/E1 dated 23.03.2023 and for a consequential direction to the respondents not to prevent the petitioner from participating in the tender process without following the due process of law.



2. The facts of the case and the issue involved in the present writ petition has been captured by this Court while passing the interim order on 06.04.2023 and for proper appreciation, the entire interim order is extracted hereunder :-

Notice to the respondents returnable in four weeks. Private Notice is also permitted.

2. The notice dated 23.03.2023, restraining the writ petitioner from participating in the tenders conducted at Arcot Municipality is under challenge in the present writ petition.

3. The petitioner states that he is a registered Government Class-I Contractor under the office of the Chief Engineer (General) WRD. The petitioner had executed several works in Ranipet District and also other parts of the State of Tamil Nadu, including for the 2nd respondent/Arcot Municipality. The petitioner states that he has completed several flagship projects of the Government of Tamil Nadu and for various Municipalities



and many PWD works. The petitioner has also won several appreciations from several quarters.

4. Admittedly, the wife of the petitioner Smt. S.Jothi Sethuraman is an Elected Councillor of Ward No.26 at Ranipet Municipality. Citing the said reason, the 2nd respondent passed the impugned order by stating that the petitioner is not entitled to participate in the tender process in Arcot Municipality.

5. It is not in dispute that Ranipet Municipality and Arcot Municipality are separate Municipalities and the wife of the petitioner, who is an Elected Councillor in Ranipet Municipality, has no stake or otherwise in respect of Arcot Municipality.

6. Article 19 (1) (g) of the Constitution of India guarantees “to practise any profession, or to carry on any occupation, trade or business”. Carry on in trade or



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business is a Fundamental Right of a citizen. Such a right can be curtailed only with due process of law and therefore, the case of the petitioner is to be tested with reference to his Fundamental Right ensured under the Constitution of India.

7. The petitioner is a registered Class-I Contractor. His wife is an Elected Councillor of Ward No.26 at Ranipet Municipality. Therefore, the petitioner shall not be permitted to participate in any tenders at Ranipet Municipality and he shall be restraining from carrying out any municipal activities within the Ranipet Municipality jurisdiction.

8. However, debarring the petitioner to carry on his trade or business in another Municipality or in any other part of the State of Tamil Nadu or Union Territory of India would infringe the Fundamental Right of the petitioner ensured under Article 19 (1) (g) of the Constitution of India.

9. The reasonableness of the restriction is also to



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be tested with reference to the Fundamental Rights guaranteed under the Constitution to the citizen. A Contractor can be restrained to carry on his trade or business in the Municipality, wherein his wife is an Elected Councillor since there is an interest in respect of the Municipal activities. However, in respect of other Municipalities or other part of the State or Country, the petitioner cannot be prevented from carry on his business or trade. Such a restriction if imposed, it would cause permanent deprivation of the person from carrying on his trade or business, which will result in infringement of the Fundamental Right of a citizen and such restriction if imposed is directly in violation of Article 19 (1) (g) of the Constitution of India. Therefore, the 2nd respondent cannot pass an order, preventing the petitioner from participating in the process of tender or carrying on trade or business in Arcot Municipality, wherein the petitioner or his wife has no administration or other interest.



10. Thus, the order impugned is infringing the Fundamental Right of the petitioner and therefore, it cannot be sustained.

11. Accordingly, there shall be an order of interim stay.

3. The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder :-

4. I deny the allegations in paragraph 3 to 11 and grounds and states that the 2nd respondent denies all the allegations made by the petitioner in the affidavit. The petitioner is not a registered contractor in the Municipality of 2nd respondent. Further, I submit that at the time of contract agreement held on 22.11.2022 in Municipality, the petitioner was participated in the Kalignar Urban Development Ward No.20, Partiban Nagar in the contract for the development of Park. A letter dated 19.12.2022 was sent by the 2nd respondent asking the petitioner to pay additional deposit to be paid within 2 days from the date of the receipt of the letter.



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5. I submit that the petitioner paid the deposit amount to the 2nd respondent herein by wrongly by using the postage seal and stamp to pay within the aforesaid period. Finding that the above petitioner acted unlawfully with an intention of defrauding the Municipality, the 2nd respondent lodged a complaint against the petitioner at Arcot City police station and filed a First information report against the petitioner in Cr.NO.32 of 2023 under section 419, 420, 465, 468, 406 IPC and the case was registered on 15.3.2023 against the petitioner and four others.

6. I state that the petitioner has obtained anticipatory bail for 60 days to sign at the Arcot City police station with a condition in the Honourable Madras High court and now the petitioner is signing at the Arcot City police station daily. Further, it is submit that due to non payment of additional deposit amount for contract work in the stipulated time, contract of the petitioner was cancelled.

7. I state that as the petitioner disobeyed the Municipal rules and regulations and acted with an intention of deceiving the Municipality, the petitioner has lost the



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right to participate in the contracts in future, and due to his above action, the petitioner was recommended for further action and 2nd respondent was passed a resolution for blacklisting which is pending for final proceeding and in this situation with an intention that the petitioner should again trouble to the Municipality in Ward 19, Tamil Nadu Housing Board called for a contract on 12.1.2023 for perimeter wall work for a common kitchen building in a residential area and the petitioner participated in the said contract. Further, the petitioner is not only a already being a banned contractor, and also the petitioner's wife Mrs.S.Jyothi is a member of Council in the Ward 26, Ranipet, and the 2nd respondent placed the matter in the Municipalities Council and action was taken under section 49(2)(c) of Tamil Nadu State Municipalities Act 1920 and the same was approved. Pursuant to the above approval of Council, it was decided to prohibit the petitioner from participating in the contract work and also to take legal action as per the Election commissioner of India rules and regulations adumbrated thereon against Mrs.Jyothi sethuraman, Member of the Council of Ward 26, Ranipet Municipality.

8. I further submit that the municipality sought for new road work at a cost of Rs.48 lakhs on 70 feet project



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road under CFC fund 2020-2021, and the petitioner participated in it. But in the interests of Municipality and already a resolution passed for blacklisting, the tender of the petitioner was cancelled. The petitioner acted with malicious intent to disrupt the good plan of the government. Further, the petitioner contract was rejected because the petitioner who participated in the above contract did not pay the advance amount by 3.00 PM on 17.4.2023. All the contract in which the petitioner participated are works under the control of Regional Executive Engineer of Municipalities. There are 22 Municipalities under Municipal Regional Executive Engineer. It includes Arcot Municipality and Ranipet Municipality. Therefore the petitioner's wife Mrs.S.Jyothi sethuraman, 26th Ward council Member applies to them. Since there is a possibility of abuse of power if the petitioner works as a contractor in the same zone, the petitioner further sought the action of the City council meeting held on 30.1.2023. Only the notice given by 2nd respondent on 23.3.2023 to petition of the above petitioner has been filed in the Honourable court and interim order of stay has been obtained. As the petitioner is not a bonafide contractor, he cannot work as a contractor in Municipal contracts as per the provisions of Tamilnadu Municipal Act. The interim order



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of stay in W.M.P. No.10595 of 2023 in W.P. No.10665 of 2023 dated 06.04.2023 obtained by the petitioner is liable to be vacated.

4. The 3rd respondent has also filed a counter affidavit along with typed set of papers. The 3rd respondent has taken a stand that the petitioner has approached this Court with unclean hands and the petitioner has manipulated documents resulting in the registration of the FIR against the petitioner and others, which is pending investigation in Crime No.94 of 2003. The 3rd respondent has further contended that the petitioner after knowing fully well that there is a investigation pending in a criminal case, suppressed the same and has filed the present writ petition. That apart, according to the 3rd respondent, the tender that was issued covered nearly 22 municipalities and it is a common tender and hence, the petitioner cannot be allowed to participate in the tender since his wife an elected councillor at Ranipet Municipality. That apart, even the Arcot municipality has initiated proceedings for blacklisting the petitioner. In view of the same, the 3rd respondent has sought for the dismissal of this writ petition.



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5. Heard Mr.M.Elumalai, learned counsel for the petitioner and Mr.C.Selvaraj, learned Additional Government Pleader for 1st respondent, Mr.S.Ravichandran, learned Additional Government Pleader for R2 and Mr.T.Balaji, learned counsel for 3rd respondent.

6. In the considered view of this Court, the only proceeding that has been put to challenge before this Court is the proceedings of the 2nd respondent dated 23.03.2023. The legality of the proceedings can be gone into only by taking into consideration what has been stated in the proceedings and nothing more. On carefully going through the proceedings, it is seen that the petitioner is prevented from participating in the tender floated by the Arcot Municipality on the ground that the wife of the petitioner is an elected councilor at Ranipet Municipality. Such a stand taken by the 2nd respondent is unsustainable and the petitioner cannot be prevented from participating in the tender in the other municipalities, apart from the one where the wife of the petitioner



is an elected councilor at Ranipet Municipality. This Court has given sufficient reasons for arriving at such a conclusion even at the time of passing the interim orders. In view of the same, the impugned proceedings dated 23.03.2023 requires the interference of this Court.

7. The other grounds that have been raised by the learned Standing counsel for the 2nd respondent and the learned counsel for 3rd respondent, regarding the manipulation of documents, criminal investigation, initiation of proceedings for blacklisting the petitioner, are not issues which could be gone into in this writ petition. These are matters which could be independently considered and the order passed in this writ petition will not come in the way of the 2nd respondent to take appropriate action after putting the petitioner on notice. It is not necessary for this Court to get into any of the other issues that were raised since the subject matter of challenge only pertains to the impugned proceedings of the 2nd respondent dated 23.03.2023, which has been found to be unsustainable. At the risk of repetition, it is once again made clear



that the order passed in this writ petition will not stand in the way of the 2nd respondent to initiate any other proceedings in accordance with law.

8. In the result, this writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

26.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

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To

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N. ANAND VENKATESH, J.
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