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W.P.No.15124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15124 of 2022
and
W.M.P.Nos.11280 and 14328 of 2022

R.Madhusudhanan

..Petitioner

Vs.

1.The Secretary to the Government,
(Rural Development and Panchayat Raj Department)
Fort St. George, Chennai – 600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Chennai – 600 015.

3.District Collector/ Chairman,
District Rural Development Agency,
Kancheepuram District.

4.Joint Director/ Project Director,
District Rural Development Agency,
Kancheepuram District.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorarified Mandamus to call for the records of the 3rd respondent in Rc.No.2472/2015/A10 dated 11.08.2021,



W.P.No.15124 of 2022

quash the same and further direct the respondents to release the balance payment for the 725 boards installed by the petitioner as per work order dated 20.02.2016.

For Petitioner : Mr.I.Abrar Md. Abdulla

For Respondents : Mr.S.Arumugam,
Government Advocate for R1 and R2

Mr.P.Balathandayutham,
Special Government Pleader for R3 and R4

ORDER

This writ petition has been filed challenging the proceedings of the 3rd respondent in Rc.No.2472/2015/A10 dated 11.08.2021 and for a consequential direction to the respondents to release the balance amount that is due and payable to the petitioner towards the completed works.

2. When the matter came up for hearing on 19.06.2023, this Court passed the following orders:-

This writ petition has been filed to fix an early date for hearing the main writ petition.

2. The learned counsel for the petitioner and the learned Government Advocate appearing on behalf of respondents 1 and 2 made their submissions.



W.P.No.15124 of 2022

3. *It is seen from records that the petitioner was issued with the work order for supply and installation of Information Board. Pursuant to the same, the petitioner claims to have completed the work and had also submitted the completion certificate. The further case of the petitioner is that the total amount that is due and payable runs to the tune of Rs.62,91,830/. The claim made by the petitioner is supported by delivery notes, which has been counter signed by the concerned authorities as contemplated under Clause 17 of the Tender Notification. The concerned authorities certified the completion only after they conducted the inspection in the work site and satisfied themselves that the Information board has been properly installed by the petitioner within the time stipulated and in a proper manner.*

4. *When the petitioner approached this Court and filed WP No.10670 of 2018 for a direction to the respondents to release the payments along with interest in terms of the work order dated 20.02.2016, this writ petition was disposed of by this Court by an order dated 09.10.2018 and the relevant portion in the order is extracted hereunder :-*

4. *Recording the above submission of the learned Special Government Pleader and*



WEB COPY



W.P.No.15124 of 2022

considering the facts and circumstances of the case, this Court directs the respondents to consider the claim of the petitioner on the basis of the completion certificate submitted by the petitioner on 22.01.2017, on merits and in accordance with law and if found fit, the payment be released accordingly. Such an exercise be completed within a period of four weeks from the date of receipt of a copy of this order. It is made clear that any delay caused in effecting payment would attract interest payable according to the terms and conditions of the contract.

5. Pursuant to the above order, the impugned proceedings dated 11.08.2021 of the 3rd respondent came to be issued. On carefully going through the proceedings, it is seen that a site inspection was once again conducted and it was found that there were only 399 Boards installed by the petitioner. In view of the same, the petitioner was found to be eligible only for the payment of a sum of Rs.23,90,160/-. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The main ground that was raised by the learned counsel for the petitioner is that if there was a delay in the supply and installation of the Boards, the agreement itself provides for issuance of a show cause notice for cancellation under Clause 16 and in the present case, no such notice was issued to the petitioner. Therefore, it was contended that the delay



W.P.No.15124 of 2022

in the installation of the information board, cannot be raised after the completion of the work. The next ground that was raised by the learned counsel for the petitioner is that the inspection has already taken place and the concerned authority has gone to the site and satisfied themselves regarding the completion of the work and only thereafter, each and every delivery note was counter signed by them. Therefore, it was contended that availability of only 399 Boards during the year 2021, cannot be put against the petitioner. Hence, the learned counsel for the petitioner submitted that the respondents must be directed to pay the balance amount for the installation of 1124 Boards.

7. The learned Government Advocate submitted that a standing counsel represents the 3rd respondent in this case. There was no representation on the side of the 3rd respondent. However, this Court had the advantage of going through the affidavit filed by the 3rd respondent in the writ petition. This counter affidavit is more a reiteration of the reasons that have been assigned in the impugned proceedings dated 11.08.2021. To provide one last opportunity, post this writ petition under the caption for orders on 26.06.2023.



W.P.No.15124 of 2022

WEB COPY

3. When the matter was taken up for hearing today, the learned Special Government Pleader appearing on behalf of the 3rd respondent made his submissions. The learned Special Government Pleader apart from reiterating the stand taken by the 3rd respondent, submitted that on inspection, it was found that the petitioner had installed only 399 boards. Accordingly, the payment was made for the boards that were installed by the petitioner. For the other claims made by the petitioner, in the absence of any installation of boards, there is no ground for the petitioner to claim for the balance payment.

4. The learned Special Government Pleader further submitted that the delivery notes that have been relied upon by the petitioner is highly questionable and the genuineness of the same has also been considered by the 3rd respondent, while coming to the conclusion that the petitioner had only installed 399 boards and the delivery notes submitted by the petitioner cannot be acted upon. The learned Special Government Pleader on oral instructions and based on the copy of the proceedings of the year 2021 further submitted that as against the officers who had given



W.P.No.15124 of 2022

these delivery notes, disciplinary proceedings have been initiated.

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5. In the considered view of this Court, the legality of the proceedings can be decided only by going through the reasoning that has been given by the 3rd respondent for restricting the claim made by the petitioner and making the payments only insofar as 399 boards are concerned. While undertaking this exercise, it is seen that the 3rd respondent has not really gone into the issue as to the genuineness of the delivery notes that have been relied upon by the petitioner. If the delivery notes that are relied upon by the petitioner are genuine, there is no ground to come to the conclusion that the petitioner did not complete the works within the stipulated time. The delivery notes are counter signed by the concerned officers only after they satisfy themselves that the work has been completed and the board has been properly installed. Hence, if the delivery notes are to be acted upon, there is no occasion to come to the conclusion that the work was not completed within the time. The 3rd respondent cannot be allowed to improve the case by way of filing additional affidavits. Some of the grounds that have been urged by the learned Special Government Pleader, questioning the genuineness of



W.P.No.15124 of 2022

the delivery notes counter signed by the officer and also regarding the so called disciplinary action taken against the officer, cannot be gone into in this writ petition, since those facts are not found in the impugned proceedings as well as in the counter affidavit filed by the 3rd respondent.

6. In the light of the above discussion, the impugned proceedings of the 3rd respondent dated 11.08.2021 made in Rc.No.2472/2015/A10 is liable to be interfered by this Court and the same is hereby quashed. The matter is remanded back to the file of the 3rd respondent. The 3rd respondent shall issue notice to the petitioner and the petitioner shall handover all the materials in support of the balance claim made by the petitioner. If the 3rd respondent has any doubt in acting upon those materials, the petitioner shall be informed about the same to enable the petitioner to put forth his case. That apart, if any other materials are sought to be relied upon by the 3rd respondent adverse to the claim made by the petitioner, the same shall also be furnished to the petitioner. Ultimately, the 3rd respondent shall take a decision on the balance claim made by the petitioner for the installation of the boards. This exercise shall be completed by the 3rd respondent within a period of



W.P.No.15124 of 2022

twelve (12) weeks from the date of receipt of a copy of this order.

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7. In the result, the writ petition is **allowed** in the above terms.

No costs. Consequently, the connected miscellaneous petitions are closed.

26.06.2023

dsa

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order/ Non-speaking order



W.P.No.15124 of 2022

To:-

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(Rural Development and Panchayat Raj Department)
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W.P.No.15124 of 2022

N.ANAND VENKATESH, J.

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W.P.No.15124 of 2022

26.06.2023