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W.P.No.16632 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.16632 of 2021 &

WMP.Nos.17624 & 17625 of 2021

Yanam Peoples Voluntary Service Organisation
Registered No.171/2022], D.No.7-4-055,
Old Age Home Building, Old Rajeev Nagar,
Yanam – 533 464.

Represented by its President M.Ananda Rao

... Petitioner

Vs

1. Union of India,
Represented by the Chief Secretary to Government,
Government of Puducherry, Puducherry.
2. The Secretary to Government,
Local Administration Department, Puducherry.
3. The Director,
Local Administration Department, Puducherry.
4. The Regional Administrator cum The Designated Officer,
Municipal Council, Yanam.
5. The Commissioner,
Yanam Municipality, Yanam.

... Respondents



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Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in relation to the corrigendum issued by the second respondent vide G.O.Ms.No.24/LAS/2021 dated 09.07.2021 and quash the same and consequently direct the fifth respondent to settle the arrears amount to the petitioner a sum of Rs.1,73,19,500/- due from September, 2020 to June, 2021 towards execution of the sanitation work of “Door to Door collection and Transportation of Garbage to Dumping Yard in Yanum Region” done pursuant to the work order issued by the fifth respondent vide No.863/YM/2020/6 dated 01.09.2020 within a time frame as fixed by this Court.

For Petitioners : Mr.R.Thangavel

For Respondents : Dr.B.Ramaswamy
Government Pleader [Pondy]

ORDER

This Writ Petition has been filed to quash the corrigendum issued by the second respondent vide G.O.Ms.No.24/LAS/2021 dated 09.07.2021 and consequently direct the fifth respondent to settle the arrears amount to the petitioner a sum of Rs.1,73,19,500/- due from September, 2020 to June, 2021 towards execution of the sanitation work of “Door to Door collection and Transportation of Garbage to Dumping Yard in Yanum Region” done



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pursuant to the work order issued by the fifth respondent vide No.863/YM/2020/6 dated 01.09.2020 within a time frame as fixed by this Court.

2. It is the case of the petitioner that the petitioner was accorded execution of the sanitation work of Door to Door collection and transportation of garbage to dumping yard in Yanam region in Yanam Municipality for an amount of Rs.56,500/- per day for the period up to the new tender process is completed. According to the Writ Petitioner, the amount of Rs.56,500/- per day was arrived after negotiation. In this regard Order dated 01.09.2020 was also passed by the Government Puducherry Local Administration Department and the work Order has been issued pursuant to the Order. Thereafter, the Government of Puducherry had issued a Government Order in G.O.Ms.No.18/LAS/2021-22 dated 08.06.2021 thereby sanctioning part payment for the months from September 2020 to March 2021 at the rate of Rs.56,500/- per day. The petitioner has sought for clearing all the bills on the basis of the contract and the Government Order referred above. Sanction is also accorded for release of amounts. When the petitioner has sought for clearing all the bills on the basis of the contract, the above corrigendum has been issued by



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the Government on 09.07.2021 wherein the amount of Rs.56,500/- has been reduced to Rs.43,950/- per day. Challenging the corrigendum the present Writ Petition has been filed.

2. Admitting in the counter the allotment of work, it is the contention of the of the respondent that from 01.07.2015 to 30.06.2020, the rate agreed was only Rs.43,950/- per day and payment was settled up to 30.06.2020. However, in par 10 of the counter filed on 15.11.2022, it is the stand of the respondent that the department has sought approval for making payment to the Yanam Peoples Voluntary Service Organisation for the work carried out for the period from 01.09.2020 to 31.03.2021 at the rate of 56,500/- per day and the same was not acceded to by the Government as the rate was found to be on the higher side and hence, payment was released to the concessionaire at the old rate of Rs.43,950/- per day for the above mentioned period. In the additional counter, a stand has been taken since the contract contains dispute resolution clause, the Writ petition is not maintainable. This Counter has been filed on 20.12.2022.



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3. The learned counsel appearing for the petitioner would submit that while fixing the rate at Rs.56,500/- per day, approval has been obtained by the Director, Local Administration for door to door collection and transportation of garbage to the dumping yard in Ynam Region at the rate of Rs.56,500/- per day. The above rate has been finalised for the period up to new tender process is completed. Based on the said Order, the work Order is also issued and Government Order is also passed. Subsequently, for specific period agreed rate has been reduced by issuing corrigendum without assigning any reason.

4. Whereas, the learned counsel appearing for the respondent submitted that the amount has been reduced as it is on the higher side. It is their further contention that dispute resolution is available in the contract. Hence, the Writ Petition is not maintainable.

5. I have perused the entire materials available on record. The contract has been awarded to the petitioner for clearing garbage at the negotiated rate of Rs.56,500/-. The Order dated 01.09.2020 has been issued by the local authority. Pursuant to the same, the work Order has



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been issued on the same date at the negotiated rate of Rs.56,500/- per day until the tender process is completed and Government Order has also been passed in this regard by the Government on 08.06.2022 wherein also the amount of Rs.56,500/- is admitted by the Government and the amount has been released. Thereafter it appears that corrigendum has been issued by the Government on 08.06.2021 reducing the negotiated price of Rs.56,500/- to Rs.43,950/-. This Corrigendum has issued without any reasons. Therefore, this Court is of the view that when the contract has been finalized, there is no reason as to why suddenly the negotiated amount has been reduced by way of corrigendum. Though this Court has granted sufficient time for production of records, no records are forthcoming and the additional counter has been filed at the belated stage stating that since the contract provides for dispute resolution clause, the Writ Petition is not maintainable, this Court is of the view that invoking the dispute resolution does not arise in this case, since the challenge is with regard to very corrigendum and amendment in the Government Order unilaterally.



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6. In such view of the matter, as the dispute is not with regard to the recovery of money in this Writ Petition and the main challenge is only with regard to the Government Order, the respondent cannot now take advantage of the arbitration clause contained in the agreement, as the impugned corrigendum is without any details and passed unilaterally and the same is liable to be set aside, particularly when the concluded contract sought to be modified by unilateral action. As the respondents have not disputed the work done by the petitioner in the counter, the petitioner is entitled to reimbursement as per the Work Order.

7. Accordingly, this Writ Petition is allowed and impugned corrigendum dated 08.06.2021 and Government Order issued thereafter is set aside. Consequently, the respondent is directed to release the funds to the petitioner as per the contract. Consequently, connected miscellaneous petitions are closed. No costs.

23.01.2023

Index: Yes/No

Neutral Citation : Yes/No

vrc



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To,

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1. The Chief Secretary to Government,
Union of India,
Government of Puducherry, Puducherry.
2. The Secretary to Government,
Local Administration Department, Puducherry.
3. The Director,
Local Administration Department, Puducherry.
4. The Regional Administrator cum The Designated Officer,
Municipal Council, Yanam.
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N.SATHISH KUMAR, J.

VTC

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