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Writ Petition No.19972 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.09.2023

PRONOUNCED ON :17.10.2023

**CORAM
THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

Writ Petition No.19772 of 2023
and WMP.Nos.19059 and 19061 of 2023

S.M.Constructions,
Rep. by its Proprietor,
S.M.Selvam,
Somanahalli Post,
Indoor Via,
Nallampalli Taluk,
Dharmapuri District – 636 803.

... Petitioner

Vs

1.The Commissioner,
Rural Development and Panchayat Department,
Secretariat,
Fort St.George,
Chennai – 600 009

2.The District Collector,
Chairman District Rural Development Agency,
Dharmapuri,
Dharmapuri District.

3.The Additional Collector (Rural Development),
Project Director,
District Rural Development Department,
Dharmapuri District.



Writ Petition No.19972 of 2023

4.The Block Development Officer, (BP),
Karimangalam Block,
Karimangalam,
Dharmapuri District.

5.The Executive Engineer,
Rural Development,
District Rural Development Agency,
Dharmapuri District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the impugned order in Na.Ka.No.2000/2021/R2, dated 14.06.2023 passed by the 2nd respondent and quash the same, consequently direct the 2nd respondent to extend the tender issued by the 2nd respondent dated 16.05.2022 to complete the work allotted to the petitioner.

For Petitioner : Mr.M.R.Jothimanian
for M/s.K.Balu

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
for R1 to R3 and R5
Mr.G.Krishna Raja,
Additional Government Pleader for R4

ORDER

This writ petition is filed challenging the order passed by the 2nd respondent cancelling the work order issued to the petitioner for construction of a new bridge across Poolapatti River at Ponnathanahalli



Writ Petition No.19972 of 2023

Road to A.Sapparipatti Via Kothadimai Colony Road (R200) HO of
Addilam Panchayat, Karimangalam Union Panchayat.

2. The petitioner participated in the e-tenders invited by the respondents for construction of the above said bridge under NABARD under Rural Infrastructure Development Fund, XXVII scheme (2021-2022). The petitioner became successful bidder and was issued with a work order for construction of the bridge on 16.05.2022. It is specifically stated by the petitioner due to continuous water flow in the river, the petitioner could not substantially start the construction work. In these circumstances, the 2nd respondent issued a notice on 02.03.2023 stating that as per the work order, after lapse of eight months, the construction work should have reached the deck level, but the work has not progressed substantially.

3. It was further mentioned in the notice that if the construction work failed to reach the desired level within a month, the petitioner would be imposed with a fine. The petitioner submitted an explanation stating that work order was issued to him on 13.05.2022 and he completed the earth work. However, from the day one onwards, there was



Writ Petition No.19972 of 2023

continuous flow of water in the river and therefore, he could not start the actual construction work due to the continuous flow of water. Thereafter, another notice was issued by the 2nd respondent on 27.04.2023, intimating the petitioner that if the petitioner failed to commence the construction work, the work order issued to him would be cancelled. Subsequently, on 23.05.2023 another notice was issued to the petitioner intimating that the fine of Rs.500/- per day was imposed on him from 18.05.2023 onwards. The petitioner was directed to submit a bar chart for execution of the work within three days and in case of failure the work order would be cancelled. In response to the said notice, the petitioner submitted a representation stating that inspite of continuous water flow, the construction work was started by him on 08.05.2023 and the old bridge was demolished on 22.05.2023. However, the work was stalled by Panchayat President and Vice President and due to the obstructive attitude of the local Panchayat President, the petitioner could not proceed with the work.

4. The said stand of the petitioner was reiterated in his representation dated 29.05.2023 and 01.06.2023. Thereafter, the impugned order came to be passed by the 2nd respondent on 14.06.2023, mainly on the



ground that there was no substantial progress in the construction work.

Aggrieved by the same, the petitioner has come before this Court.

5. The learned counsel appearing for the petitioner assailed the impugned order on following grounds:

(a) There was continuous flow of water in the river from the date of issue of work order, therefore, the petitioner could not start the work for several months;

(b) When the petitioner started the work by demolishing the old bridge during May 2023, there was obstruction by local Panchayat President. When the same was reported to the respondents, no action was taken and hence the petitioner could not proceed with the construction work;

(c) By relying on reference No.8 in communication of 2nd respondent dated 02.03.2023, the learned counsel appearing for the petitioner submitted though the work order was issued on 13.05.2022, the agreement was entered into between the parties only on 15.11.2022. Therefore, the reason given in the impugned order, as if there was no substantial progress in the work, even after lapse of eleven months is not correct.



Writ Petition No.19972 of 2023

6. The learned Additional Government Pleader appearing for the respondents by taking this Court to the counter affidavit filed by the 2nd respondent submitted that though work order was issued to the petitioner as early as on 16.05.2022, the construction work has not proceeded substantially and it remains in the ground levelling stage even after eleven months. The construction of bridge is for the benefit of the general public and delay on the part of the petitioner in execution of the work, which is required to be completed within eighteen months, brought dis-repute to the District Administration and therefore, the 2nd respondent was constrained to cancel the work order issued to the petitioner by taking into consideration the public interest.

7. The learned Additional Government Pleader also submitted that as per the water level statement issued by Assistant Engineer, Public Works Department, Dharmapuri District, there was flow of water in the river only during the five months period from September 2022 to January 2023. Therefore, the contention raised by the petitioner, as if, there was continuous water flow from May 2022 to May 2023 is not acceptable. The learned Additional Government Pleader further submitted that inspite of



three show cause notices issued to the petitioner from March 2023, there was no substantial progress in the construction work and work completed by the petitioner remained in the stage of ground levelling and therefore, the 2nd respondent was constrained to cancel the work order, considering the public interest. It was further submitted that the petitioner failed to lay diversion road, as per the project estimate. Further the petitioner has not made any attempt to seek police protection and continue his contract work and therefore, the reason assigned by the petitioner, as if, there was obstruction by local Panchayat President cannot be accepted.

8. During the course of the arguments, the learned Additional Government Pleader produced the original contract agreement entered into between the petitioner and 2nd respondent for execution of the work. As per the original agreement, the same was executed on 23.05.2022. However, the learned counsel appearing for the petitioner by relying on the communication of the 2nd respondent dated 02.03.2023 submitted that agreement was entered into only on 15.11.2022. The learned counsel appearing for the petitioner by pointing out the absence of signature of the petitioner in the stamp paper, wherein, the date of the agreement was



mentioned as 23.05.2022 submitted that the 2nd respondent had inserted a new stamp paper without signature of the petitioner by typing the date suitable to him.

9. As per the admitted case, the work order was issued to the petitioner on 16.05.2022, as per the averment found in paragraph 4 of affidavit filed in support of the petition, the petitioner admitted work order was issued on 16.05.2022 and he had started the construction work immediately and due to continuous flow of water, he could not continue with the work. In the affidavit, the petitioner has not pleaded that though the work order was issued on 16.05.2022, the agreement between the petitioner and the 2nd respondent was entered into only on 15.11.2022. The learned counsel advanced his arguments mainly by relying on reference No.8 in communication of 2nd respondent dated 02.03.2023, wherein, the date of agreement was mentioned as 15.11.2022. In order to clarify the same, the 2nd respondent was directed to produce the original agreement. In original agreement date of execution was mentioned as 23.05.2022 in a stamp paper. However, in the stamp paper, the petitioner's signature is not available though the signature is found in all other papers of the agreement.



Therefore, the learned counsel for the petitioner submitted a stamp paper is inserted by the 2nd respondent as per his convenience. In the counter affidavit filed by the 2nd respondent, it is clearly mentioned in page No.6 work order was issued on 16.05.2022 and agreement was entered on 23.05.2022. In the affidavit filed in support of the writ petition, the petitioner has not mentioned agreement was entered into only on 15.11.2022. However, after production of the original agreement, the petitioner filed a reply affidavit stating that the stamp paper found in the agreement is inserted by giving antedate.

10. First of all, the petitioner failed to mention in his original affidavit that the agreement was entered into only in November 2022. The alleged delay in execution of agreement is not at all pleaded in the original affidavit filed by the petitioner in support of the writ petition as a reason for delay in commencing construction work. Further in response to the communication of the 2nd respondent dated 02.03.2023, the petitioner submitted a representation on 13.04.2023, wherein he mentioned continuous water flow as the reason for delay in commencing the work. The petitioner never mentioned delay in execution of the agreement as a reason for



Writ Petition No.19972 of 2023

commencement of the work in his explanation. Even, in the subsequent explanations of the petitioner dated 23.05.2023, 29.05.2023 and 01.06.2023, the petitioner has not mentioned the delay in execution of agreement as the reason for delay in commencement of work. Therefore, the contention now raised by the petitioner, as if, the agreement was entered into only on 15.11.2022 cannot be accepted. The submission made by the learned Additional Government Pleader for respondent that the date mentioned in reference No.8 in communication of the 2nd respondent dated 02.03.2023 is a typographical error is acceptable to this Court in the light of specific averments made by the respondent in his counter affidavit and also production of original agreement before this Court. Therefore, the petitioner cannot raise a new ground of delay in execution of agreement as the reason for his failure to commence the substantial work.

11. The water flow details furnished by the Assistant Engineer, Public Work Department (Water Resource Organisation, Dharmapuri) which is included in page No.84 of typed set of papers of the respondent would suggest that there was water flow in the river only from September 2022 to January 2023. Therefore, it is clear that there was no water flow in



Writ Petition No.19972 of 2023

the river from May 2022 to August 2022 and from February 2023 to June 2023. It is the specific case of the petitioner there has been water flow in the river from the date of issue of work order namely May 2022 and therefore, he is unable to commence the construction work. The said contention of the petitioner is falsified in the light of the certificate issued by the Assistant Engineer of Public Works Department. Absolutely, there is no explanation on the part of the petitioner for his failure to commence the work from May 2022 to August 2022 and from February 2023 to May 2023. The petitioner tried to explain the delay by stating when he started the work in May 2023, there was obstruction by local Panchayat President and Vice President. As rightly contended by the learned Additional Government Pleader appearing for the respondent, the petitioner could have given a police complaint, if there was illegal obstruction by local people. The petitioner has not produced any documents to show that there was an obstruction by local village President and Vice President and he had preferred a police complaint and sought for police help for execution of the work. The petitioner only in his explanation dated 29.05.2023 informed the 2nd respondent, as if, there was obstruction by local President. Even though, the work order was issued in May 2022, the petitioner appeared to have



17.10.2023

Note:

13/14



Writ Petition No.19972 of 2023

S.SOUNTHAR, J.

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To

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Sub-Collector,
Chidambaram,
Cuddalore District.

3.The Revenue Tahsildar,
Kattumannarkoil Taluk,
Cuddalore District.

4.The Executive Officer,
Kattumannarkoil Town Panchayat,
Kattumannarkoil Taluk,
Cuddalore District.

Writ Petition No.19772 of 2023

17.10.2023