



WP Nos.532 of 2020, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP Nos.532 of 2020 and 17312, 18360, 23448,
23157, 27314 and 27316 of 2022

W.P. No. 532 of 2020:-

Arappor Iyakkam

Represented by its Managing Trustee Jayaram Venkatesan

140A, Rukmini Lakshmipathy Salai,

Egmore, Chennai - 600008

.. Petitioner

-VS-

1. The Director

Directorate of Vigilance and Anti Corruption

No.293, MKN Road

Alandur, Chennai – 600 016.

2. The Commissioner

Corporation of Chennai

Ripon Building, Chennai – 600 003.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to register an FIR on the basis of the petitioner's complaint dated 01.11.2018 and to constitute a Special Investigation Team by this Hon'ble Court and consequently direct that Special Investigation Team



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to conduct a time-bound, independent, High Court monitored fair investigation under the Prevention of Corruption Act, 1988, Indian Penal Code and other connected Acts.

For the Petitioner

WP.532/2020 : Dr.V.Suresh
WP.17132/2022 : Mr.R.Velusamy

WPs.27314 & 27316/2022
and in WP.23448/2022
and for 5th Respondent in
WP.17312/22

: Mr.E.Om Prakash, Sr. Counsel
and Mr.R.Parthasarathy,
Sr. Counsel,
for Mr.P.Giridharan

WP.23157/2022 : Mr.S.Siva Shanmugam

For the Respondents

R-1 in WP.532/2020 and
for R-5 in WPs.27314
& 27316/2022

: Mr.R.Shanmugasundaram,
Advocate General assisted by
Mr. Hasan Mohammed Jinnah,
State Public Prosecutor for R-1

For R-2 in WP.532/2020,
For RR 1 to 4 in WPs.17312,
27314 & 27316, 23157,
18360 and 23448/2022

: Mr. J.Ravindran,
Additional Advocate General
assisted by Mrs. P.T.Ramadevi and
Mr.D.B.R.Prabhu

* * * * *



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COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard learned counsels for the respective petitioners, Mr.R.Shanmugasundaram, learned Advocate-General appearing for the Directorate of Vigilance and Anti-Corruption and Mr.J.Ravindran, learned Additional Advocate General appearing for the Greater Chennai Corporation.

2. W.P. No. 532 of 2020 is filed in the nature of public interest litigation alleging large scale illegalities in the tender and the tender work and seeking directions to register an FIR against erring party. Writ Petition Nos. 23448, 27314 and 27316 of 2022 are filed by the contractor on the ground that without following the principles of natural justice, the contractor is blacklisted. The other writ petitions are by the unsuccessful tenderer and the consortium.

3. The learned Advocate General submits that the public interest litigation is filed in the year 2020. In the year 2019, the State had initiated preliminary enquiry in the matter. Now, the enquiry is

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concluded. However, the State is not in a position to take further steps in view of the order dated 25.02.2020 passed by this Court wherein this Court had observed that until further orders from this Court, the Director of Vigilance and Anti-Corruption, Chennai, shall not take any further proceedings/call in the event of finalisation of preliminary enquiry report.

4. According to the learned Advocate General, the preliminary enquiry report has been finalised and he requests that the State may be permitted to take further course of action.

5. The State being the principal employer, even in matters of contract, cannot be restrained from setting the law in motion. The State and its authorities are at liberty to take further steps in accordance with law pursuant to the enquiry report. There would be no prohibition for the State authorities to take further action. The order dated 25.02.2020 shall accordingly stand modified.

6. In view of the above, the purpose of the Writ Petition No.532 of 2020 would now stand served.



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7. The writ petition filed by the contractors against the blacklisting also needs to be considered. The paramount contention of the learned counsel for the petitioners is that the impugned orders were not communicated to them nor any notice was issued to the contractors calling for their say before blacklisting them. Another ground of challenge is that blacklisting cannot be perennial and in perpetuity. The orders do not further state the period of blacklisting.

8. We have heard the learned Additional Advocate General on this aspect also.

9. The blacklisting entails civil consequences. It is the cardinal and fundamental principle of civil jurisprudence that when any action adverse to the interest of any party is to be taken, the principles of natural justice are required to be adhered to. At this stage, the learned Additional Advocate General submits that in fact the impugned orders are not the orders of blacklisting. It is only in the present tender they were not allowed to participate on the ground that preliminary enquiry report was pending. A separate show cause notice has been issued to them on 10.08.2022. They have not replied and no final decision has been taken on blacklisting the contractors.



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10. We have perused the notice dated 10.08.2022. The said notice very clearly states as under:

".. Now complaints have been received against your firm stating that M/s.SGS India Pvt Ltd was debarred by Greater Chennai Corporation vide file no.B.R.R.C.No.B3/spl/2019 dated 05.12.2019 from participating in any tender till the final verdict of the preliminary enquiry being conducted by DVAC."

In the same letter, a show cause notice was also directed to be issued as to why the tender should not be cancelled and the company should not be blacklisted.

11. In fact, the Greater Chennai Corporation had already taken a decision debarring this Contractor from participating in any tender till the final verdict of the preliminary enquiry. In the next breath, it has also been show cause noticed as to why the said company should not be blacklisted. The learned Additional Advocate General, on instructions, submits that this Contractor, that is M/s.SGS India Pvt. Ltd., is not blacklisted and no final decision has been taken on it as yet.



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12. In view of the said statement made by the learned Additional Advocate General, the Contractor, M/s.SGS India Pvt. Ltd., may file its reply to the communication dated 10.08.2022 within a period of fifteen days from today. Upon reply being filed, the authority may take a final decision with regard to the blacklisting of M/s.SGS India Pvt. Ltd. or otherwise, naturally upon considering the reply filed by M/s.SGS India Pvt. Ltd., as the letter dated 10.08.2022 would only be construed as show cause notice and no decision blacklisting the said Contractor has been finally taken.

13. As far as W.P.No.17312 of 2022 is concerned, the petitioner therein claims to be the successful tenderer, but subsequently, the work was allotted to M/s.SGS India Pvt. Ltd. The same was stayed. The learned Additional Advocate General, on instructions, submits that the said work was a project consultancy work. As there was an order of stay, the Corporation has carried out the said project consultancy work on its own and the work is completed. In light of that, nothing survives in W.P.No.17312 of 2022 also.



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With the aforesaid observations and directions, all the writ petitions stand disposed of. There will be no order as to costs. In view of the directions and observations given above, the impleading petitions, W.M.P.Nos.3008 of 2023 and 4519 of 2020 are dismissed. The other miscellaneous petitions are closed.

(S.V.G., CJ.)

(P.D.A., J.)

07.06.2023

Index : No
Neutral Citation : No
sra

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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU, J.

(sra)

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