



WP (MD) No.19236 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.19236 of 2022

B.Pandi

... Petitioner

Vs

1.The Commissioner,
Madurai Corporation,
Madurai – 2.

2.The Assistant Engineer,
Zone-I, Madurai Corporation,
Madurai -2.

3.K.Thiraviyam
Ex-Deputy Mayor,
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the impugned proceedings of the 1st respondent vide Ref.No.Ma.Po-1/18625/18, dated 15.10.2018 and quash the same, as illegal and direct the 1st respondent to settle the bill amount to the paver block road works completed by the



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petitioner pertaining to estimate in Ma.Po.1/EST/1032/15-16, within the stipulated time with accrued interest until the payment.

For petitioner : Mr.N.Karthik Kannan

For Respondent : Mr.Vinayak

No.1

For Respondent : No representation

No.2

ORDER

This writ petition is filed challenging the order of the 1st respondent dated 15.10.2018, wherein the representation of the petitioner dated 21.06.2017 seeking to settle the bill amount for the work executed by him was rejected.

2.The learned Counsel for the petitioner submits that the petitioner is a registered Contractor in Madurai Corporation. He laid the Paver Block road in Ward 20 (erstwhile Ward 23), Pon Nagar -2 as per the work estimate in Ma.Po.1/EST1032/15-16 issued by the 2nd respondent dated 10.12.2016.



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While the petitioner was waiting for the tender work order from the 1st respondent, in view of the campaign for the Tamil Nadu Assembly Election 2016, the 2nd and 3rd respondents have directed the petitioner to execute the work as per the approved work estimate dated 10.12.2016. During emergency situation like this, it is a practice of executing the contract even before the issuance of the work order. However, even though the petitioner has completed the work in time, the respondents did not settle the bill amount. Therefore, the petitioner earlier he has filed WP(MD)No.12825 of 2018 before this Court for a mandamus directing the respondents to consider his representation dated 21.06.2017, wherein, a stand was taken on behalf of the Corporation that the work executed by the petitioner had certain defects and therefore, the Corporation has not disbursed the bill amount. Recording the submissions of the Corporation, this Court disposed of the said writ petition on 18.06.2018 with a direction to the respondent to consider the petitioner's representation and pass orders within a period of three months. However, the petitioner's representation was not considered even after the directions of this Court. Therefore, the petitioner



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filed a contempt petition in Cont.P(MD)No.162 of 2022. Only thereafter, the respondent corporation has passed the impugned order rejecting the claim of the petitioner.

3.The learned Counsel for the petitioner has referred the typed set of papers and also relied on the letter of the third respondent and the estimate which was approved by the Assistant Engineer.

4.The learned Standing Counsel for the Corporation by relying on the counter affidavit filed by the 1st respondent submits that the Corporation during the year 2015-16 proposed to lay a Paver Block road at Ward No.23, Zone 1, Pon Nagar, Madurai at an estimated cost of Rs.9,97,000/- and accordingly tender was called for. The petitioner, who participated in the tender was short-listed, but, due to some administrative and other reasons, the tender could not be finalized and confirmed. The Corporation has not awarded any road works to the individual without work orders. The petitioner without work order cannot be permitted to lay a road. In the absence of any



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work order authorising the petitioner, the petitioner has no legal rights to demand the alleged bills.

5.The learned Counsel for the respondent Corporation submits that the petitioner in the earlier occasion was awarded with a contract in Ward No.93, Zone – IV with an estimate number 68/11-12 and 17/11-12 during inspection it was found that there were a lot of defects in executing the work. Hence the Corporation has sent a communication to the petitioner dated 22.12.2017 to rectify those defects. It was in those circumstances in WP(MD)No.12825 of 2018, the learned Standing Counsel for the Corporation has brought to the knowledge of the Court regarding the defects of his earlier contract. The Corporation did not admit before the Court that there are some defects in the work claimed to have been done by the petitioner in accordance with estimate No.1032/15-16. Therefore, there is no reason to interfere with the impugned order.



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6. This Court considered the rival submissions and perused the materials placed on record.

7. Admittedly the petitioner is a registered contractor. The petitioner claims that he has participated in the tender called for by the respondent Corporation for laying of a paver block road in Ward No.23, Pon Nagar, Madurai and he was short-listed for the contract. The respondent Corporation has also passed the work estimate in Ma.Po/1EST 1032 /15-16 and the estimate assessed amount is Rs.9,97,000/-. The claim of the petitioner is that even though the respondent Corporation did not issue any work order, due to the emergent situation of the Tamil Nadu Assembly Election 2016, the respondents 2 and 3 directed the petitioner to commence the work immediately and to complete the work. Being a regular Contractor, the petitioner on believing that during emergency situation it is an usual practice of executing the work before issuance of any work order. However, the petitioner's bill was denied by the respondents that no work order has been issued to the petitioner. The learned Counsel for the petitioner has also relied



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on the letter of the 3rd respondent dated 10.03.2016 that 3rd respondent has acknowledged the work completion of the petitioner. On the other hand the respondent Corporation has taken a stand that without any work order, is not authorised to lay the road and they have disputed that no road has been laid as claimed by the petitioner.

8.The petitioner has given representation to the respondents as early as on 21.06.2017 to disburse his bill amount for the work executed by him as per the work contract estimate in Ma.Po/1EST 1032 /15-16. Since the representation was considered by the respondent, the petitioner filed a writ petition in WP(MD)No.12825 of 2018 and this Court by order dated 18.06.2018 disposed of the writ petition as under:

“4.The learned Additional Government Pleader appearing for the respondent Corporation would submit that in the works executed by the petitioner there are certain defects. In the earlier occasion, his representation dated 16.09.2017 pursuant to the orders passed by this Court in WP(MD)No.18558 of 2017 dated 06.10.2017 was considered



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and communication in reference No.Ma.Po.4/28682/17, dated 22.12.2017 was communicated to the petitioner.

6. ... a direction is issued to the respondent to communicate the reason for non-consideration of his request and afford an opportunity of personal hearing to the petitioner and pass orders on his representation dated 21.06.2017. In the event of return of bills for rectification, the petitioner is directed to rectify the defects, if any, pointed out by the respondent Corporation and on such rectification, the respondent Corporation is directed to consider disbursement of money due to the petitioner. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.”

9.A perusal of the above order of this Court reveals that this Court directed to consider the representation of the petitioner dated 21.06.2017. This representation was given in respect of the work executed by the petitioner in in Ward No.20 (then Ward No.23), Zone 1, Pon Nagar, Madurai for the contract estimate Ma.Po-I/EST 1032 /15-16. However, the respondent Corporation has now taken a stand before this Court that the earlier stand taken by the respondent Corporation in WP(MD)No.12825 of



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2018 that the defects in the execution of work mentioned, are in respect of the earlier work order issued to the petitioner in the year 2011-2012 and it is not in respect of the work claimed to have been executed by the petitioner in this writ petition.

10. When the earlier order dated 18.06.2018 is very clear that the representation of the petitioner dated 21.06.2017 was given for settlement of the bill amount for the work executed by him in the year 2015-2016 and directions were also given only in respect of the representation of the petitioner dated 21.06.2017. Admittedly the respondent Corporation did not file any review application as against the order dated 18.06.2018 to clarify that the defects pointed out by the respondent Corporation are only with respect to the work done in the year 2011-2012. Only after filing of the contempt petition the impugned order has been served to the petitioner rejecting the claim of the petitioner, as there is no work done by the petitioner. The petitioner has produced photographs before this Court, which shows that the petitioner has completed the work of laying paver block road



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and the respondent Corporation has also produced photographs that shows that there is no road at all in the area. However, the 3rd respondent the Deputy Mayor of Madurai Corporation by his letter dated 10.03.2016 has acknowledged the completion of road work done by the petitioner.

11.The petitioner claims that he has laid a road on the direction of the respondent Corporation. The 3rd respondent has acknowledged the completion of the work by the petitioner. The respondent Corporation has taken one stand in WP(MD)No.12825 of 2018 and has now taken another stand in this writ petition and both stands are contradictory to each other. From the affidavit of the petitioner, it appears that the work was directed to be carried out in the wake of the announce of the election. If the election notification has been issued, the respondent is not expected to issue work orders for any contract. It is not known whether the contract has been awarded during the election or not. Therefore, this Court is inclined to order for an investigation by the Vigilance and Anticorruption Department for enquiry.



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12. Accordingly, this writ petition is disposed of with a direction to the Deputy Superintendent of Police, Vigilance and Anticorruption, Madurai to conduct investigation in this issue and file a report before this Court within a period of three months. No costs.

29.09.2023

dsk

To

1. The Commissioner,
Madurai Corporation,
Madurai – 2.

2. The Assistant Engineer,
Zone-I, Madurai Corporation,
Madurai -2.

3. K. Thiraviyam
Ex-Deputy Mayor,
Madurai Corporation,
Madurai.

Copy to:

The Deputy Superintendent of Police,
Vigilance and Anticorruption Department,
Madurai.



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B.PUGALENDHI, J.

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