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W.P.(MD)NO.16440 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16440 of 2015 AND
M.P.(MD)Nos.1 & 2 of 2015

M/s.J.K.Builders,
Rep. by its Partner J.John Kennedy,
2/85, East Street,
Kalyanapuram,
Thanjavur.

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Special Secretary to Government,
Public Works Department,
Secretariat, Chennai – 9.
2. The Director of Vigilance and Anti Corruption,
Chennai.
3. The Engineer-in-Chief (Buildings),
Chief Engineer(Buildings),
Chennai Region and Chief Engineer(General),
Public Works Department,
Chennai -5.
4. The Chief Engineer(Buildings),
PWD,
Trichy Region,
Trichy.
5. The Superintending Engineer,
PWD,
Building and Maintenance(Medical Works),
Trichy.



6. The Executive Engineer,
PWD,
Building and Maintenance,
Court Road,
Thanjavur.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the records pertaining to the impugned letters issued by the first respondent in his letter in Letter No.30242/G1/2013-1, dated 05.12.2013 and the consequent letter issued by the sixth respondent in Letter No.Ko.3/2013-3/the3/dated 11.08.2014 and quash the same as illegal.

For Petitioner : Mr.T.A.Ebenezer

For Respondents: Mr.S.Shanmugavel,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner John Kennedy is a registered Class-1 contractor. He was awarded with the contract for carrying out certain special repair works in Additional Inspection



bungalow, Thanjavur. During the relevant time, a number of allegations were made. PWD executed the said works in quite a few Government buildings such as Public Relations Office building, Thanjavur, Circuit House, Thanjavur etc. during the year 2009. Complaints were made and an enquiry was conducted by DVAC. They submitted the report dated 01.10.2013. The report reads that the accused officers along with the petitioner had swindled the Government fund to the tune of Rs.40,083/-. Based on the said report, the Special Secretary to Government, Public Works Department, Secretariat, Chennai passed the impugned letter dated 05.02.2013 to respondents 3 and 4 calling upon them not only to take steps for recovering the loss from the petitioner but also blacklisting the petitioner. Pursuant to the said communication, the sixth respondent issued the impugned demand dated 11.08.2014 calling upon the petitioner to pay a sum of Rs.40,083/-. The Government letter as well as the consequential demand have been put to challenge in this writ petition.

3. The petitioner reiterated all the contentions set out



in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He called upon this Court to sustain the impugned orders and dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The demand raised by the sixth respondent is only consequential in nature based on the letter dated 05.12.2013 sent by the first respondent. The said letter entailed serious consequences to the petitioner. He was blacklisted. It was issued behind his back and without notice to him. It has been consistently held that an order of blacklisting cannot be passed without putting the contractor on notice. On this sole ground, the impugned letter dated 05.12.2013 is set aside. Since the



demand raised by the sixth respondent is only consequential to the impugned letter dated 05.12.2013, the consequential demand is also set aside.

7. This writ petition stands allowed. The matter is remitted to the file of the first respondent to pass an order afresh after issuing notice to the petitioner herein. Merely because the matter has been remanded to the file of the first respondent, that does not mean that the first respondent is obliged to revive the issue. This is for more than one reason. The amount involved is not high. The DVAC did not charge the petitioner for any specific act of misconduct. The petitioner has also been examined as a witness.

8. I went through the contents of the report of DVAC. It is true that DVAC has highlighted that there was loss to the tune of Rs.40,083/-. But there is no material to come to the conclusion that there was any conspiracy between the petitioner on the one hand and some Government officials to cause loss to the State exchequer. Therefore, the issue of blacklisting can be given a quietus. It is open to the first



respondent to issue show cause notice to the petitioner seeking his explanation as to how he should not be called upon to pay a sum of Rs.40,083/- for the loss allegedly caused. If the petitioner's explanation is satisfactory, the matter can be dropped. If the first respondent wants to conduct any enquiry, the enquiry can be delegated to the sixth respondent. It is for the sixth respondent to satisfy himself. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To:

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3. The Engineer-in-Chief (Buildings),
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G.R.SWAMINATHAN,J.

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