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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.29677 of 2023 & W.P.(MD).No.23513 of 2023

and

**W.M.P.Nos.3912 of 2024, 29284 of 2023, W.M.P.(MD).Nos.19714,
19716 & 22184 of 2023**

J.Senthil Kumar

... Petitioner in both WPs

Vs.

- 1.The Superintending Engineer (Highways),
Construction and Maintenance,
Tiruppur District.
- 2.The Deputy Superintending Engineer (Highways),
Construction and Maintenance,
Tiruppur District. ... Respondents in W.P.No.29677 of 2023
- 3.The Superintending Engineer,
National Highways,
No.5, Besant Road, Chinna Chokkikulam,
Madurai – 2.
- 4.The Superintending Engineer (Highways),
Construction and Maintenance,
Alagarkovil Road, K.Pudur,
Near Thamaraihatti,
Madurai – 2. ... Respondents in W.P.(MD)No.23513 of 2023

Prayer in W.P.No.29677 of 2023: Writ Petition filed under Article 226
of the Constitution of India for issuance of a Writ of Certiorarified



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Mandamus, calling for the respondents in issuance of communication dated 25.09.2023 in Reference No.Ma.Ku.No.51/2023/24/Va.A-1 and quash the same and thereby direct the respondent to issue work order to the petitioner in respect of the contract, wherein, the petitioner is the L1 tenderer.

Prayer in W.P.(MD)No.23513 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in issuance of the order of debarment bearing proceeding No.Se.Mu.Ka.N.C.r.(10va): 1024/2023/Va A/dated 12.09.2023 and quash the same.

For Petitioner : Mr.S.R.Rajagopal
(in both WPs) Senior Counsel
for M/s.G.Thalamuthuarusu

For Respondents : Mr.P.S.Raman
(in both WPs) Advocate General
Assisted by
Mr.L.S.M.Hasan Fizal
Additional Government Pleader

COMMON ORDER

Since the issue involved in these writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and disposed of by this common order.



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2. According to the petitioner, he was a registered as State Level First Class Contractor and renewed his registration for the period 2022-23, approved by the 2nd respondent and later on 22.05.2023, the 2nd respondent approved the renewal for the year 2023-26. On 08.11.2022, the petitioner was inducted as partner to M/s.Thalapathy Construction, a registered firm and later on 18.04.2023, the petitioner retired from the said partnership firm and the same was also approved by the 2nd respondent.

3. On 16.08.2023, the petitioner participated in the tender floated by the respondents for widening from intermediate lane to the two lane and other related works pertaining to public roads in Madathukulam, Tiruppur. On 24.08.2023, the price bid was opened and the petitioner was approved as L1 bidder. On 01.9.2023, the 2nd respondent issued a show cause notice, calling upon him to show cause why the petitioner should not be blacklisted for all time since the petitioner was involved in false declaration while he was a partner of M/s.Thalapathi Construction for a period from 08.11.2022 to 18.04.2023 at the time of renewal. On 11.09.2023, the petitioner sent his reply to the show cause notice. However, on 12.09.2023, order was issued debarring the petitioner from



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participating in any future tenders and on 25.09.2023, the respondents also terminated the contract without affording an opportunity to the petitioner, which prompted the petitioner to file a Writ Petition in WP (MD) No.23513 of 2023 before the Madurai Bench of Madras High Court, wherein, he obtained interim stay against his debarment. While so, the grievance of the petitioner is that vide tender notice, dated 25.09.2023 issued by the 1st respondent, inviting for fresh tenders for the works which were already awarded to the petitioner. Challenging the said tender notice dated 25.09.2023 issued by the respondents, the petitioner has filed the present writ petition.

4. A counter affidavit has been filed on behalf of the respondents 1 and 2, wherein, it is stated that while the tender proposal of the petitioner was under scrutiny, the contractor registration of the petitioner was permanently cancelled by the Registering Authority and hence, the tender of the petitioner was cancelled by the first respondent vide proceedings dated 25.09.2023. Further, no tender was awarded to the petitioner on 24.08.2023 and no work order has been issued to the petitioner. It is also stated that after receipt of the information regarding cancellation of contractor registration of petitioner, the 1st respondent



cancelled the tender submitted by the petitioner on 25.09.2023 even before receiving the information regarding interim stay order granted by the Madurai Bench of this Court since it was received at the office of the 1st respondent only on 04.10.2023. After cancellation of the first tender, the second tender notice was issued on 26.09.2023. Therefore, the Writ Petition is not maintainable and the same is liable to be dismissed.

5. Heard the learned Senior Counsel for the petitioner and the learned Advocate General, assisted by the learned Additional Government Pleader appearing for the respondents and perused the entire materials available on record.

6. It appears that the 1st respondent issued show cause notice to the petitioner, stating that the petitioner has suppressed the fact that he joined as a Partner in Thalapathi Constructions and obtained the renewal of his licence as registered Contractor. Though the petitioner submitted his reply, not satisfied with the same, the 1st respondent by order, dated 12.09.2023, block-listed the petitioner. Challenging the same, the petitioner moved the Madurai Bench of this Court in W.P.(MD) No.23513 of 2023 and obtained interim stay vide order dated 26.09.2023.



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7. However, it is pertinent to note that when he joined as a Partner in Thalpathi Construction Limited, the petitioner has not applied for cancellation of his existing registration with the respondents, however, he continued until next renewal of registration. Having failed to seek cancellation of his existing registration when he joined as Partner in Thalpathi Construction Limited, he got the renewal of his licence which is in violation of Clause 5 of Standardised Code for Works Contractors. While so, it is not fair on the part of the petitioner to allege that the 1st respondent was aware of the fact that he was inducted as a Partner in Thalpathi Construction Limited and issued show cause notice with *mala fide* intention and abusing his power, which, this Court does not find any merit and substance in the stand taken by the petitioner. Therefore, the 1st respondent has rightly passed the impugned order dated 12.09.2023, debarring the petitioner from participating in tenders, which requires no interference by this Court. Accordingly, the Writ Petition in WP (MD) No.23513 of 2023 is dismissed.

8. As far as Writ Petition in W.P.No.29677 of 2023 is concerned, the petitioner has challenged the impugned communication dated



25.09.2023 in and by which, the respondent cancelled the tender which was already awarded to the petitioner and called for fresh tender.

According to the respondents, while the tender proposal of the petitioner was under scrutiny, the contractor registration of the petitioner was permanently cancelled by the Registering Authority and hence, the tender of the petitioner was cancelled by the 1st respondent vide proceedings dated 25.09.2023. Further, no tender was awarded to the petitioner on 24.08.2023 and no work order has been issued to the petitioner as alleged by him. Therefore, once his licence has been cancelled and the petitioner was block-listed from participating in any tenders, the relief sought for in the Writ Petition, cannot be granted. Hence, this Writ Petition also deserves to be dismissed. Accordingly, the Writ Petition in W.P.No.29677 of 2023 is dismissed.

9. However, it is made clear that dismissal of these Writ Petitions would not be a bar for the petitioner to approach the 1st respondent to seek for re-registration of his licence for Class I Contractor. Hence, the petitioner is at liberty to make an application in accordance with law and rules to the 1st respondent, seeking for re-registration and licence for Class I Contractor. On such application being made by the petitioner, the



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1st respondent is directed to consider the same and pass appropriate orders in accordance with law, after affording an opportunity to the petitioner.

10. In the result, both the writ petitions are dismissed. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

22.08.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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W.P.No.29677 of 2023 & W.P.(MD).No.23513 of 2023

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