



Cont. P(MD)No.1109 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cont. P(MD)No.1109 of 2022

in

W.P.(MD)No.21801 of 2018

M/s.S.K.Engineering Construction Company,
Rep. by its partner,
R.Elavarasan,
Unit B4, TNHB Flats,
IV Floor,
Fairlands,
Salem-636 016.

... Petitioner / Petitioner

Vs.

Pramila
Deputy General Manager (Materials Management),
M/s.Bharat Heavy Electricals Limited,
(MM/SDC),
Tiruchirappalli-620 014.

... Respondent / Respondent

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent for willful, wanton and deliberate violation of the orders of this Court dated 04.06.2019 in W.P. (MD)No.21801 of 2018.



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For Petitioner : Mr.T.Sai Krishnan

For Respondent : Mr.Raguvaran Gopalan

ORDER

Heard the learned counsel on either side.

2. The petitioner filed W.P.(MD)No.21801 of 2018 questioning the ban order dated 30.07.2018 issued by BHEL (Trichy). The writ petition was allowed by me on 04.06.2019 in the following terms:-

“9.More than anything else, the punishment handed out to the writ petitioner appears to be grossly disproportionate. No doubt there was a very serious lapse on the part of the writ petitioner while submitting the tender documents. But then the petitioner did not stand to gain in any manner as a result. The petitioner has put the entire blame on one Velu an employee, who has since been dismissed from service. The petitioner obviously will have to pay some price rather substantial price for their lapse. But by the impugned order, the petitioner has not only lost the contract and that there is no mention of EMD of Rs.7,00,000/- paid by them. They have been blacklisted for a period of three years. Even the pending contract stands closed. There is no automatic restoration of the registration after the ban. The petitioner will have to once again apply for registration. These appear to be rather too harsh. If the writ petitioner had not had any good track record and if he was not possessing a valid and correct solvency certificate during the



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relevant time, this Court would have taken a different decision. But since the petitioner does not appear to gain out such submission of bogus solvency certificate, this Court is of the view that the respondent will have to show some leniency. This Court is conscious of the fact that the respondent will have to decide on the proportionate penalty to be imposed on the writ petitioner. This is because, it has been admitted by the writ petitioner themselves that a bogus solvency certificate was submitted. Therefore, even while quashing the impugned order, the matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The authority who is going to impose the penalty will have to necessarily hear the petitioner in person before passing the final orders. The orders to be passed by the respondent will have to necessarily deal with the defence of the writ petitioner. The respondent cannot pass an non-speaking order like the one impugned in this writ petition.”

3. The grievance of the petitioner is that this order has not been complied with till date. The learned standing counsel for BHEL clarifies that EMD of Rs.7,00,000/- deposited by the petitioner has since been refunded. It is also stated that the authorities had not revisited the issue. That means that after allowing the writ petition on 04.06.2019, the status of the petitioner was that he was not a banned or blacklisted contractor. It is of-course true that in the web portal maintained by the head office of BHEL, the petitioner was shown as a banned entity. This was the



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position till July 2022. This technically is a clear breach of the order passed by this Court. But then, I am not able to take any action thereon because the petitioner did not bring it to the notice of the Court immediately. The learned standing counsel for the respondent clarifies that the Trichy unit had treated the petitioner as non-blacklisted entity since 04.06.2018 and that they were not aware about the mentioning of the petitioner's status in the web portal maintained by the head office. As and when the petitioner pointed out, needful was done. The petitioner has to blame himself for the delay. When this Court had passed an order on 04.06.2019, nothing prevented the petitioner from moving this Court within a reasonable time thereafter. The contempt petition itself came to be filed only in June 2022. It is well settled that a person can be held guilty of contempt, only if the willful element present. In this case, I do not find any such element. It is for this reason I decline to take cognizance of the contempt pointed out by the petitioner.

4. The contempt petition is closed.

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G.R.SWAMINATHAN, J.

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