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W.P.(MD)NO.16412 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

PRONOUNCED ON: 16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16412 of 2024

V.Jeyachandran

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government of PWD,
Fort St. George,
Secretariat, Chennai.

2. The District Collector,
O/o.the District Collector,
Kokkirakulam Road,
Kokirakulam,
Tirunelveli District.

3. The Superintending Engineer,
WRO/PWD Projects Circle,
Tirunelveli -2.

4. The Executive Engineer,
PWD/WRO, Special Project Division,
Tirunelvlei -11.

5. The Assistant Director,
Mines and Minerals Department,
Tirunelveli District.

... Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India, to issue a Writ of Mandamus, to direct the



respondents to extend the time reasonably to remove the blasted materials remaining 37,699.145 Cubic Meters as per agreement executed by the fourth respondent by considering the representation given by the petitioner dated 25.05.2024 and subsequent email representation sent by the petitioner on 17.06.2024 within a stipulated time period that may be fixed by this Court.

For Petitioner : Mr.M.Sricharan Rangarajan,
Senior Counsel,
for Mr.Niranjan S.Kumar.

For Respondents : Mr.P.Thambi Durai,
Government Advocate.
* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Government Advocate appearing for the respondents.

2. The writ petitioner is a class-I contractor. The third respondent floated tender inviting applications for removal of excavated blasted hard rock stones. The petitioner turned out to be the successful bidder. The petitioner entered into an agreement with the authorities in



June 2017. The petitioner remitted the material cost to the Department.

The agreement stipulated that the petitioner should remove the rocks within three months. For various reasons, the petitioner could not remove the rocks. On 25.02.2020, the third respondent herein issued a fresh tender notification for removal of the very same rocks which had already been given away of tender in favour of the writ petitioner herein. Aggrieved by the said move, the petitioner's power agent filed W.P. (MD)Nos.7604 & 7606 of 2020. The writ petitions were disposed of by me on 17.07.2020 in the following terms:-

“2. What is under challenge in these writ petitions are the tender notifications calling for tenders for removal for blasted rocks.

3. The learned Senior Counsel appearing for the petitioner states that the petitioner had already been awarded with tenders on the previous occasion and if the impugned tender process is allowed to go on, he will be prejudiced and his rights will be affected.

4. The learned Additional Advocate General appearing for the official respondents had submitted on the last occasion that the petitioner's rights will not be affected.

5. This Court called upon the learned Additional Advocate General to direct the respondent concerned to file an affidavit in this regard. Accordingly, today when



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the matter was taken up for hearing, the second respondent has filed an affidavit. The said affidavit reads as under:

“i. It is submitted that Thiru R.Vishnuraj and Thiru V.Jeyachandran the principals of the Petitioner herein were the successful tenderers to remove the quantity of excavated hard granite stone in Stage I and II from LS 3000 m to 4200 m and 4200 m to 4800 m, respectively of Thamirabarani, Karumeniyar and Nambiyar River Linking project as per the tender notification issued by the Executive Engineer, Public Works Department / WRD, Special Project Division, Tirunelveli in 2EE/2015-16/F5/dt 16.02.2016. Though as per the agreement condition, a time of three months was given to complete the work of removing 190468.07 and 67879.873 cubic meters excavated upto the year 2016, the principals of petitioner have removed only 38% and 65% of the quantity respectively upto 6/2020. The petitioner has sought for further time to remove the same by remitting the requisite seigniorage fees. The same is being dealt separately by the Department as per the terms and conditions of the said agreements.

ii.The tender notification challenged



by the petitioner issued in 1SE/PC/TNY/2019-2020 dated 25.02.2020 and published on 26.02.2020 does not relate to the quantity covered in the tender notification dated 16.02.2016 and the work and quantity covered in the present tender is in no way connected with the works.”

I am therefore, of the view that the petitioner's grievance no longer survives for any adjudication further.

6. The learned Senior Counsel states that a direction may be given for expediting the petitioner's request for extension of time.

7. The learned Additional Advocate General, on instructions, states that the application seeking extension of time filed by the petitioner will be disposed of in accordance with law within a period of four weeks. Of course, he added that the petitioner may have to pay seigniorage fee and other statutory dues for removal of blasted rocks from the site in question.

8. Recording the said submission made by the learned Additional Advocate General and the affidavit filed by the second respondent, these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.”



3. The petitioner obviously could not have removed the mineral without a specific order extending time. The learned Senior counsel for the petitioner categorically asserts that the authorities did not pass any extension order as agreed by them before this Court.

4. Left with no other option, the present writ petition has been filed for directing the respondents to extend the time to remove the aforesaid materials.

5. My attention is drawn to the order dated 26.06.2023 made in W.P.(MD)No.13496 of 2020 etc. Paragraph Nos.5,6 and 7 of the said order read as follows:-

“5. I carefully considered the rival contentions and went through the materials on record. As already noted, the petitioner had paid close to Rs.2.5 Crores. The learned senior counsel for the petitioner has demonstrated that though the original time lines set out in the contracts had expired, on every occasion, finding justification in the petitioner's request for extension of time, the PWD engineers have recommended for further extension of time. This is because the PWD engineers are not competent to issue transit passes. Mines and Minerals department as well as the District Collector are involved in the process.



When a recommendatory proposals were sent by PWD for grant of one year extension, by the time the files reached the District Collector and orders issued, the operating time enjoyed by the petitioner was substantially and considerably lessened.

6.It can be seen from the materials on record that the extension of time had been issued in almost all the cases upto 30.10.2020. Once the authority had satisfied himself that a case for extension of time has been made out and extension of time has also been granted, it cannot be once again reviewed. In these cases, extension of time had been granted upto 31.10.2020. This could not have been cancelled by passing the impugned orders. The petitioner had specifically urged that this was done without notice to him. The violation of principles of natural justice is evident. For non-issuance of show cause notice, the impugned orders deserve to be set aside. They also suffer from an apparent lack of jurisdiction. The third respondent could not have unilaterally issued the impugned orders of cancellation. It is seen that the petitioner had substantially completed the work of removal of the rocks. The petitioner cannot be blamed for the delay that occurred due to the pendency of these writ petitions. The learned senior counsel for the petitioner would submit that the petitioner apart from paying a sum of Rs.2.5 Crores to the department towards purchase of rocks had also invested substantially.

7.Therefore, even while setting aside the



impugned orders, I direct the second respondent to consider the petitioner's representation and grant him reasonable time to remove the remaining rocks. The second respondent will associate the petitioner before deciding on the time limit. The writ petitioner will have to work round the clock and adhere to the time limit to be stipulated by the second respondent.”

6. The petitioner in my view is on a better footing. He has not been visited with any rejection order. The authorities have not adhered to the undertaking given before this Court in W.P.(MD)Nos.7604 and 7606 of 2020. It was indicated before this Court that it was only a matter of payment of additional seigniorage fee. Since the petitioner had already remitted the agreed amount and since the authorities had not adhered to the directions given before this Court, the petitioner has made out a case for grant of relief.

7. The third respondent is directed to pass an order granting reasonable time in favour of the petitioner to remove the remaining rocks. It is seen that the petitioner has carried out only 38% of the work. The third respondent will therefore associate the petitioner before deciding on the time limit. The petitioner will have to pay appropriate



seigniorage fee and he has to necessarily adhere to the time limit that may be stipulated by the third respondent. This writ petition stands allowed on these terms. No costs.

16.08.2024

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

To:

1. The Secretary to Government of PWD,
Fort St. George,
Secretariat, Chennai.
2. The District Collector,
O/o.the District Collector,
Kokkirakulam Road,
Kokirakulam,
Tirunelveli District.
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G.R.SWAMINATHAN,J.

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