

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2010

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.24442& 24443/2009 & M.P.Nos.1&1 &2&2/2009 &  
M.P.Nos.1&1/2010

R.Ramasamy ... Petitioner in all W.Ps.

-vs-

- 1.The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Rural Development Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The District Collector/Chairman DRDA  
Uthagamandalam,  
The Nilgiris District.
- 3.The Project Officer,  
Rural Development Agency,  
Uthagamandalam,  
The Nilgiris District. ... Respondents in all W.Ps.

Prayer in W.P.No.24442/2009 : The Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the tender document dated 16.11.2009 having reference number No.5242/2006/A2 on the file of the 3<sup>rd</sup> respondent and quash the same and consequently direct the 3<sup>rd</sup> respondent to permit the petitioner to complete the remaining work of improvements in Bettati Sungam to Hadathorai Road at KM 4/0 - 5/2.

Prayer in W.P.No.24443/2009 : The Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 28.10.2009 having reference No.Na.Ka.A2.No.5242/2006 on the file of the 2<sup>nd</sup> respondent and quash the same and consequently direct the 2<sup>nd</sup> respondent to allow the petitioner to participate in the future tenders.

For Petitioner: M/s.C.Uma  
Mr.N.R.R.Arun Natarajan  
M/s.Kavitha Deenadayalan

For Respondents : Mr.P.Subramani Addl. Govt. Pleader for R1-2

#### COMMON ORDER

By consent the main Writ Petitions itself are for taken up for disposal. In W.P.No.24442/2009, the challenge is to an order passed by the third respondent dated 16.11.2009 calling for fresh tenders in respect of a road contract and for a consequential direction to permit the petitioner to complete the remaining road improvement work. In W.P.No.24443/2009, the challenge is to an order dated 28.10.2009 passed by the second respondent by which the road contract work, which was awarded to the petitioner was cancelled and the petitioner's name was included in the list of blacklisted contractors.

2. The petitioner is a registered Class -I contractor with the Rural Development Department and is stated to be performing contracts for various Government Departments, since 1970 and there has been no allegation against the petitioner. The third respondent by notification dated 10.01.2008 called for tenders from eligible contractors for certain contract work, which were road development works at an estimated cost of Rs.34.46 lakhs. The petitioner's submitted his tender on 31.01.2008 by quoting Rs.34,28,259/- and after negotiation, the quote was accepted and the contract was awarded in favour of the petitioner by the second respondent, by order dated 12.02.2008. The agreement was executed between the petitioner and the department on 14.03.2008, after the execution of the agreement, it came to the notice of the petitioner that the site condition was not conducive and therefore a request was made to the third respondent to pay additional amount for carrying out the work, which was not within a scope of the agreement inspection was also conducted by the authorities on 15.01.2009 and subsequently on 19.01.2009 and they assessed the value of the works done by the petitioner at Rs.7,70,619/-.

3. On 22.04.2009 a sum of Rs.2,21,441/- was given as part payment after deducting the fine amount of Rs.1,71,413/-, which according to the respondent was deducted for slow progress of work. The second bill was partly approved on 08.08.2009 and this was due to a recommendation by the Assistant Executive Engineer, one Mr.Senthil Kumar to withhold 50% of the total bill amount. At that stage, the petitioner received a show cause notice dated 16.10.2009, which was based on the letters of the Assistant Executive Engineer Senthil Kumar, dated 14.09.2009 and 02.10.2009

recommending for cancellation of the contract awarded in favour of the petitioner. The petitioner not being aware about such recommendation of the Assistant Executive Engineer completed the Culvert work on 25.10.2009 for a value of Rs.1,12,240/-. It is further stated that though inspection for the Culvert was over on 26.10.2009, the petitioner's bill was not settled. In the show cause notice explanation was sought for the slow progress in work and stating that it is proposed to remove the petitioner's name from the list of registered contractors. The petitioner by reply dated 22.10.2009, submitted his explanation for the delay, which has been stated in his earlier representations dated 05.01.2009 & 13.07.2009 followed by another reminder dated 23.05.2009. It was further stated that the petitioner was not able to complete one Culvert work as per schedule as he had to construct let out drainage for 20 metres in Tea Estate belonging to a private person, who had not permitted the petitioner's workman to enter the property. But, however the petitioner subsequently completed the work and these facts were well within the knowledge of the Assistant Executive Engineer and Block Engineer. However, by the impugned order dated 28.10.2009, the petitioner's contract was cancelled and the petitioner was also blacklisted. Subsequently, a re-tender was called for by the third respondent by notification dated 16.11.2009 and this re-tender notification is impugned in W.P.No.24442/2009, the cancellation of the contract and blacklisting by order dated 28.10.2009 is impugned in W.P.No.24443/2009.

4. The petitioner would contend that the impugned order of cancellation of tender and blacklisting the petitioner is arbitrary and illegal and violative of Article 14 and Article 19(1)(g) of the Constitution. That the order has been passed without proper application of mind and without assigning the real reason and the order has been passed without observing the principles of natural justice, since no site inspection was conducted before concluding that there is delay in execution of work. Further even in the show cause notice, it was pre-decided to blacklist the petitioner and such pre-decision vitiates the entire proceedings. The various letters given by the petitioner explain the reasons for slow progress was not considered. Further the site condition was not revealed to the petitioner, which involved additional expenses for the petitioner to transport gravel from outside. The petitioner's past blemishness conduct in performing various works for the Department from 1970 onwards was not taken into consideration before the blacklisting. That due to pressure of the authorities, the petitioner was compelled to perform certain works, which were out side the scope of the agreement. The fine amount of Rs.5000/- per day is exorbitant and against the principles of natural justice and violative of Rule 57.1 and Rule 57.2. The petitioner has not been paid the bill and has been waiting for more than 8 months to



get amount, the petitioner alone has been singled out, when one other contractor by name Mr.Gopal, who was awarded the road improvement work from Kukkalthurai - Anna Nagar K.M 0/0 - ¼ but did not complete the work on time, but allowed to carry out the work. On these grounds, the petitioner would contend that the order of cancellation of the contract awarded, and blacklisting is illegal and the re-tender at the risk and cost of the petitioner is also arbitrary.

5. A counter affidavit has been filed by the third respondent stating that there were some remarks against the petitioner in respect of a scheme, which was implemented during 2007-08. It is submitted that the impugned order of cancellation was issued after carefully monitoring the progress of road work and after observing the procedures as required. It is further stated that the contractors is expected to inspect the road, availability of stone jelly, gravel etc., and then quote his rates for tenders. It is further submitted that under the scheme, if the work is not completed the Government will have to incur loss by way of additional interest amount and as per the agreement, the petitioner had to complete the work on or before 14.06.2008 as per the program of work under clause 23 of the agreement. The rate of progress for the first month 30%, second month 70% & third month 100% should be completed and that the petitioner did not commence the work, even after the expiry of the agreement period of three months and the work was started only after the agreement period, after lapse of seven months from handing over the site and in terms of clause 54 of the tender notice time is the essence of the contract. It is further submitted that after following the proper procedure the contract was determined and the petitioner was also blacklisted for the poor performance in the subject contract as well as considering the bad remark in an earlier work. It is submitted that the writ petition is not maintainable, since it is a non-statutory contract and if at all the petitioner is aggrieved, he can work out his remedies by invoking the arbitration clause in the agreement. It is further submitted that the proposed road is an important link road and because of the interim order the re-tender cannot be called for and the public or put to great difficulty, since they have to take an circuitous route. Therefore, it has been stated that the writ petition is devoid of merits.

6. Having considered the submissions on either side before examining the controversy in the present case, it is necessary to first consider whether the petitioner would be entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India in the given facts and circumstances. Admittedly the present contract between the petitioner and the third respondent is a non statutory contract and the only difference being that one of the contracting parties is a limb of

the Government of Tamil Nadu. In terms of clause 55 & 56 of the agreement dated 14.03.2008 executed between the petitioner and the department contemplates settlement of disputes and resolution of disputes and the same reads as under:-

**"55. SETTLEMENT OF DISPUTES:-**

If any dispute or difference of any kind whatsoever shall arise between the engineer of employer and the contractor in connection with, or arising out of the contract, of the execution of the works whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the contract, it shall in the first place, be referred to and settled by the Engineer who shall within a period of thirty days after being requested by the contractor to do so, give written notice of his decision to the contractor. Upon receipt of the written notice of decision of the Engineer the contractor shall promptly proceed without delay to comply with such notice of decision.

If the Engineer fails to give notice of his decision in writing within a period of thirty days after being requested or if the contractor is dissatisfied with the notice of decision of the Engineer, the contractor may within thirty days after receiving the notice of decision appeal to the employer who shall afford an opportunity to the contractor to be heard and to offer evidence in support of his appeal. The employer shall give notice of his decision within a period of thirty days after the contractor has given the said evidence in support of his appeal. Subject to arbitration, as hereinafter provided, such decision of the Employer in respect of every matter so referred shall be final and binding upon the contractor and shall forthwith be given effect to by the contractor who shall proceed with the execution of the works with all due diligence whether he requires arbitration, as hereinafter provided or not if the Employer has given written notice of his decision to the contractor and no claim to arbitration has been communicated by him by the contract within a period of thirty days from receipt of such notice the said decision shall remain final and binding upon the contractor. If the Employer shall fail to give notice of his decision, as aforesaid, within a period of thirty days after being decision, requested as aforesaid, or if the contractor be dissatisfied with any such decision then and in any such case the contractor within thirty days after the expiration of the first named period of thirty days at the case may be required that the matter or matters in dispute be referred to arbitration as hereinafter provided.

**56. RESOLUTION OF DISPUTES:**

Settlement of claims by Arbitration:

All disputes of differences in respect of which the

decision is not final and conclusive if the claims monetary value is less than Rs.2.00 lakhs (Rupees Two Lakhs only) shall be referred for arbitration to a sole arbitrator. The District Collector, Trichy or the successor to his office. The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and conciliations Act 1996 or any statutory modifications thereof. The decision of the sole arbitrator shall be final and binding on the parties thereto. The arbitrator shall determine the amount of arbitration to be awarded to either parties.

Performance under the contract shall continue during arbitration proceedings and payments due to the contractor by the owner shall not be withheld. Unless they are the subject matter of the arbitration proceedings.

All awards shall be in writing and such a words shall state reasons for the amounts awarded.

Neither party is entitled to bring a claim to arbitration if the Arbitration has not been appointed before the expiration of thirty days after defect liquidity period.

If the claims exceed monetary value of more than Rs.2.00 lakhs (Rupees two lakhs only) the same shall be referred to the civil court having jurisdiction for decisions."

7. Therefore in respect of all disputes and difference which may arise out of the contract, of the execution of the works even after their completion, before or after termination is required to be settled/resolved in terms of the procedure agreed to by the parties under clause 55 & 56 of the agreement.

8. With this factual backgrounds, if the law on the subject regarding maintainability of writ petitions in contractual matters is examined. There are several decisions of the Hon'ble Supreme Court dealing with this issue some of which are stated hereunder.

9. In National Highways Authority of India v. [Ganga Enterprises](#) (2003 (7) SCC 410) , the Hon'ble Supreme Court held as follows:

6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.: (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The



High Court instead considered Question (a) and then chose not to answer Question (b). In our view, the answer to Question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil (2000 (6) SCC 293), State of U.P. v. Bridge & Roof Co. (India) Ltd. (1996 (6) SCC 22) and Bareilly Development Authority v. Ajai Pal Singh 1989 (2) SCC 116. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon the cases of Veriganto Naveen v. Govt. of A.P. (2001 (8) SCC 344) and Harminder Singh Arora v. Union of India 1986 (3) SCC 247). These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.

10. In Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors. (2000 (6) SCC 293), the Hon'ble Supreme Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was held as follows:

"10. We find that there is a merit in the first contention of Mr Raval. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the

contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

11. Reference can also be made to *State of Gujarat and Ors. v. Meghji Pethraj Shah Charitable Trust and Ors.* (1994 (3) SCC 552). In para 22 the Hon'ble Supreme Court observed as follows:

"22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alteram partem*) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was -- as has been repeatedly urged by Shri Ramaswamy -- a matter governed by a contract/agreement between the parties. If the matter is



governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

12. In *State of U.P. and Ors. v. Bridge & Roof Company (India) Ltd.* (1996 (6) SCC 22), the Hon'ble Supreme Court dealt with the issue in paras 15 and 16 in the following manner:

"15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, maybe, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer."

13. In *India Thermal Power Ltd. v. State of M.P. and Ors.* (2000 (3) SCC 379), the Hon'ble Supreme Court observed as follows:

"11. It was contended by Mr. Cooper, learned Senior Counsel appearing for appellant GBL and also by some counsel appearing for other appellants that the appellant/IPPs had entered into PPAs under Sections 43 and 43A of the Electricity Supply Act and as such they

are statutory contracts and, therefore, MPEB had no power or authority to alter their terms and conditions. This contention has been upheld by the High Court. In our opinion the said contention is not correct and the High Court was wrong in accepting the same. Section 43 empowers the Electricity Board to enter into an arrangement for purchase of electricity on such terms as may be agreed. Section 43A(1) provides that a generating company may enter into a contract for the sale of electricity generated by it with the Electricity Board. As regards the determination of tariff for the sale of electricity by a generating company to the Board, Section 43(1)(2) provides that the tariff shall be determined in accordance with the norms regarding operation and plant-load factor as may be laid down by the authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined from time to time by the Central Government by a notification in the Official Gazette. These provisions clearly indicate that the agreement can be on such terms as may be agreed by the parties except that the tariff is to be determined in accordance with the provision contained in Section 43A(2) and notifications issued thereunder. Merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing the prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties. Therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section 43A(2). Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore, merely because PPAs contemplate maintaining escrow accounts that obligation cannot be regarded as statutory."

14. Therefore as per the law declared by the Hon'ble Supreme Court the present contract would not become statutory merely

because it has been awarded by the State. That apart a dispute resolution mechanism has been provided for under the contract itself and the petitioner being a party to the said agreement, consciously agree to such procedure. Therefore, at this stage of the matter, the petitioner cannot be allowed to wriggle out of the binding arbitration agreement between the parties. Therefore, the writ petition challenging the cancellation of such non-statutory contract cannot be entertained.

15. Under the same impugned order dated 28.10.2009, the petitioner has been blacklisted from the list of contractors. Blacklisting a registered contractor that too a contractor who has been registered with the department from 1970 onwards is of serious consequences to the petitioner and before the same is resorted to the petitioner is entitled to the afforded adequate and effective opportunity to put forth his defence. In the instant case, the aspect regarding the cancellation of the contract as well as blacklisting were rolled into a common show cause notice and a common order came to be passed. This in my view may not be an appropriate procedure, since the matter pertaining to a blacklisting of contractor is an independent issue, since a person who is the tender awarding authority would be entitled to cancel a contract awarded, but may lack the power to blacklist the contractor, since his registration would be by another authority at a higher level. In any event the department may not resort to blacklisting based on a solitary instance and several factors have to be gone into before such power is being invoked.

16. It is an admitted fact that black listing of a contractor is a serious matter as it involved civil consequences and the contractor is shut out from being able to participate in any of the bids or auction. Therefore, the Honourable Supreme Court and this Court have consistently held that when a department or an agency decides to black list a contractor, it is incumbent that the principles of natural justice should scrupulously followed.

17. The said proposition has been emphasised by the Honourable Supreme Court in the following decision;

(i) In *Erusian Equipment & Chemicals Ltd. v. State of West Bengal* reported in [MANU/SC/0061/1974](#) : 1975 1 SCC 70 the Honourable Supreme Court has held in paragraph 20 as follows;

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purpose of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the



person concerned should be given an opportunity to represent his case before he is put on the blacklist.

(ii) In *J. Vilangandan v. Executive Engineer (P.W.D.), Ernakulam* reported in [MANU/SC/0034/1978](#) : AIR 1978 SC 930 while following the judgment in *Erusian Equipment* case (cited supra), has stated that while conceding that the State can enter into contract with any person it chooses and no person has a fundamental right to insist that the Government must enter into a contract with him, held that the fact that a disability is created by the order of black listing indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair-play require that the person concerned should be given an opportunity to represent his case before he is put on the black-list.

(iii) In *Raghunath Thakur v. State of Bihar* reported in [MANU/SC/0392/1988](#) : 1989 1 SCC 229 while considering a case where the person granted a right to vend liquor was placed in a black listing in respect of future contracts, the Honourable Supreme Court has observed that even if the rules do not express so, it is an elementary principle of nature justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law.

18. The decisions in the case of *Raghunath Thakur* and *Erusian Equipment* as referred supra have been followed by the Honourable Supreme Court in *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and Ors.* reported in (2006) 2 SCC 548 and reiterated the principles laid down.

19. Therefore in view of the ratio laid down by the Honourable Supreme Court as stated above an order of black listing has civil consequences for future business of person concerned and the person affected by an order has a right of being heard and making a representation against any order even though the Rules do not provide specifically.

20. The learned Special Government Pleader would submit that the petitioner had been afforded with an opportunity and a show cause notice was issued, reply was received and thereafter, an

order has been passed. Therefore, the learned Special Government Pleader submits that there has been substantial compliance of principles of natural justice and the impugned order is perfectly legal and valid. On the other hand, the learned Counsel appearing for the petitioner would submit that the impugned order is devoid of reasons .

21. It is relevant to note that the Honourable Supreme Court in a decision reported in S.N. Mukherjee v. Union of India [MANU/SC/0346/1990](#) : AIR 1990 SC 1984 observed that in view of the expanding horizon of the principles natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi judicial functions the legislator, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement.

22. The respondents being an administering authority is bound to act fairly and reasonable and all the actions of the respondents have to satisfy the touchstone of reasonableness. The requirement to record reason is incumbent and Courts have consistently held that an order devoid of reasons is in violation of principles of natural justice and liable to be set aside.

23. Thus, in view of the law laid down by the Hon'ble Supreme Court, I am of the clear view that the petitioner has not been afforded adequate opportunity before he was blacklisted and therefore, the impugned order to that extent has to be held to be illegal.

24. The impugned order in W.P.No.24442/2009 is a re-tender notification dated 16.11.2009. This re-tender notification is a consequence of the cancellation of the contract awarded to the petitioner. In the previous part of this order, it has been held that the remedy for the petitioner against the cancellation of the contract is under clause 55 & 56 of the agreement and Writ Petition is not the remedy. In such circumstances there will be no justification for the petitioner to prevent the department from

conducting a re-tender for the work. It is relevant to note that the work relates to a road development work in Nilgiris District and it is common knowledge that owing to recent lands slides in the area, these works cannot be withheld for indefinitely long period of time, that to the instance of the petitioner. It has been stated in the counter affidavit that the proposed road work is an important link road and the public are suffering without proper link road and taking circuitous route for the conveyance of agricultural products to market centres and the school going children are also put to great difficulty and if there is delay in completion of the road work on time, it would result in escalation the cost and interest. In view of the said submissions, I am of the clear view that the petitioner is not justified in withholding the re-tender pursuant to the notification dated 16.12.2009. It is needless to state that though this work is at the risk and cost of the petitioner, such claim of risk and cost would be subject to the arbitration proceedings, which the petitioner is bound to raise in terms of the conditions of the agreement. Therefore, I find that there are no valid grounds to quash the re-tender notification.

25. In the result the Writ petitions are disposed of with the following directions:-

- i) The writ petition filed challenging the impugned order dated 28.10.2009 in W.P.No.24443/2009 challenging the cancellation of contract awarded to the petitioner is not maintainable and the remedy for the petitioner is only under clause 55 & 56 of the agreement dated 14.03.2008, and accordingly the Writ Petition challenging that portion of the order canceling the contract is dismissed.
- ii) The order of blacklisting of the petitioner from the list of registered Class I contractors under the same order dated 28.10.2009 is held to be illegal and bad in law and in gross violation of principles of natural justice. Therefore, the impugned order dated 28.10.2009 in so far as it relates to blacklisting the petitioner is quashed, leaving it open to the Department to initiate fresh action in accordance with law if so advised.
- iii) The W.P.No.24442/2009 filed challenging the re-tender notification dated 16.11.2009 is dismissed.
- iv) The petitioner shall be entitled to invoke the procedure for settlement/resolution of dispute under clauses 55 & 56 of the agreement dated 14.03.2008 and in such proceedings, the petitioner would also be entitled to contest the cancellation of the contract, the justifiability of the fine levied as well as the aspect regarding risk and cost contemplated on account of re-tender dated 16.11.2009, and all other matter which are covered within the scope of clause 55 & 56 of the agreement.



- v)Consequently, the respondents are directed to proceed further with the re-tender notification dated 16.11.2009 and finalise the tender in accordance with law.
- vi) Consequently, connected miscellaneous petitions are also closed. No costs.

Sd/-  
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

pbn

To

- 1.The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Rural Development Department,  
Fort St. George,  
Chennai - 600 009.
  - 2.The District Collector/Chairman DRDA  
Uthagamandalam,  
The Nilgiris District.
  - 3.The Project Officer,  
Rural Development Agency,  
Uthagamandalam,  
The Nilgiris District.
- 1 cc to M/s. Uma Advocate, SR. 5188  
1 cc to M/s. Uma, Advocate, SR. 5189  
1 cc to Government Pleader, Sr. 5493

सत्यमेव जयते

W.P.Nos.24442& 24443/2009

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