

Success Software Vs. 1.The Director of Rural Development and

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Court : Chennai

Decided On : Aug-14-2014

Judge : T.S.Sivagnanam

Appellant : Success Software

Respondent : 1.The Director of Rural Development and

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

14. 08.2014 CORAM THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM W.P.(MD) No.9333 of 2014 and M.P.(MD) Nos.1 & 2 of 2014 Success Software rep. Through one of it's partners K.Sivakumar Having office at 82/347, 2nd floor Arcot Kodambakk, Chennai and residing at 110, E.B.Colony Main Road Bethaniapuram, Madurai-16 ... Petitioner -vs- 1.The Director of Rural Development & Panchayat Raj Directorate of Rural Development & Panchayat Raj Department Panagal Building, Chennai-600 015 2.The Assistant Director of Rural Development and Panchayat Raj (SECC-2011) Directorate of Rural Development & Panchayat Raj Department Panagal Building, Chennai-600 015 3.The District Collector Office of Madurai Collectorate Madurai 4.The Personal Assistant To the District Collector (Development) Office of Madurai Collectorate Madurai 5.The Commissioner Madurai Corporation 6.The Block Development Officer Panchayat Union, Madurai East 7.The Block Development Officer Panchayat Union, Madurai West 8.The Block Development Officer Panchayat Union, Melur Madurai District

9.The Block Development Officer Panchayat Union, Kottampatti Madurai District
10.The Block Development Officer Panchayat Union, Alanganallur Madurai District
11.The Block Development Officer Panchayat Union, Vadipatti Madurai District
12.The Block Development Officer Panchayat Union, Usilampatti Madurai District
13.The Block Development Officer Panchayat Union, Chellampatti Madurai District
14.The Block Development Officer Panchayat Union, Thirumangalam Madurai District
15.The Block Development Officer Panchayat Union, Kallikudi Madurai District
16.The Block Development Officer Panchayat Union, Thirupparankundram Madurai District
17.The Commissioner Melur, Madurai District
18.The Commissioner Municipality Thirumangalam Madurai District ... Respondents
PRAYER Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the third respondent, dated 26.05.2014, in proceedings Na.Ka.No.3325/2014/U.Va.8, quash the same, consequentially direct the respondents 1 to 4 to pay a sum of Rs.1,36,82,900/- calculated from 01.04.2012 till the month of 31.05.2014 for the supply of 88 computers, 42 printers, 44 UPS to perform the Socio Economic Caste Census (SECC-2011).
!For Petitioner : Mr.R.G.Shankar Ganesh For Respondents : Mr.K.Guru, Addl.Govt. Pleader for R1 to R4, R6 to R16 & R18 Mr.J.Gunaseelan Muthiah Govt. Advocate for R5 & R7 :

ORDER

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus, to quash the order, dated 26.05.2014, passed by the third respondent and to direct the respondents 1 to 4 to pay a sum of Rs.1,36,82,900/- calculated from 01.04.2012 till 31.05.2014 for the supply of 88 computers, 42 printers, 44 uninterrupted power supply systems for the conduct of the Socio Economic Caste Census (SECC-2011).

2. With the consent of both the parties, this writ petition is taken up for final hearing at the admission stage itself.

3. The facts being that pursuant to the order, dated 09.02.2012, passed by the first respondent, a direction was issued to hire computers and peripherals for the conduct of the Socio Economic Caste Census (SECC-2011) and to that effect

work order for supply of computer and peripherals was given to the petitioner M/s.Success Software and all the equipments were supplied and utilized for the conduct of SECC-2011 for the period from 01.04.2012 to 28.02.2013 and after the period of contract was over, the petitioner requested for payment of the lease rent in respect of the equipments, which were supplied and utilized by the respondents in the census operation. The request was not considered by the respondents and therefore the petitioner filed a writ petition in W.P.(MD) No.369 of 2014. The said writ petition was disposed of by order, dated 03.02.2014, by taking into consideration that a proposal has been sent to the Government, with a direction to the third respondent District Collector, Madurai, to consider the request of the petitioner and pass appropriate orders in accordance with law, after giving opportunity to the petitioner, within a period of three months from the date of receipt of a copy of that order. Accordingly, an opportunity of personal hearing was granted to the authorized signatory of the petitioner Company on 14.03.2014. By the impugned proceedings, the third respondent has taken a decision to pay the petitioner a sum of Rs.65,69,000/- which is far less than the amount claimed by the petitioner on the ground that the rent claimed by the petitioner is higher than the rent prevailing the market. Challenging the said order, dated 26.05.2014, the present writ petition has been filed.

4. A preliminary objection has been raised by the learned Additional Government Pleader and Government Advocate by contending that the writ petition is not maintainable, since the petitioner has sought for issuance of a writ of mandamus in respect of a money claim and when disputed questions are involved, writ of mandamus cannot be issued to settle the money claim.

5. Before we venture into the factual aspect, the prime issue, which has to be dealt with, is as to whether the writ petition is maintainable for the relief sought for and whether there is any dispute as regards the claim made by the petitioner. The undisputed facts are that the first respondent gave a direction to hire computers and peripherals for SECC-2011, work order was issued to the petitioner for the supply of computers and peripherals, the petitioner submitted his quotation separately for the central processing unit and other accessories apart from printers and uninterrupted power supply systems. The quote was given item wise and the

quotation was in pursuant to the direction issued by the third respondent. On receiving the quotation, it was processed and on 01.04.2012 an order was passed directing to effect supply and the said order passed with the consent of the Block Development Officers pursuant to the direction of the District Collector, dated 03.02.2012. In that order, the monthly rent payable for each of the items has been specifically mentioned. Similar orders have been passed by all the respondents namely respondents 6 to 18. The date on which the equipments were supplied is not in dispute. After the completion of the work, the petitioner raised the bill for payment on the rates, which was accepted and based on which supply of equipments were effected. The respondents would now state that the rates quoted by the petitioner is far above than the prevailing market rate and therefore they will pay lesser amount than what was quoted. Thus, the nature of contract and the amount quoted are not in dispute and the only issue, which is in dispute, is as to whether the third respondent is now justified in stating that they will pay lesser amount than the amount quoted by the petitioner. In such circumstance, this Court is of the view that there is no dispute regarding money claim and what is disputed by the third respondent is regarding payment to be effected. Even in that regard, the claim made by the petitioner was not disputed at any earlier point of time. But, as an after thought, the third respondent would now state that the claim made in the quotation, which is accepted and implemented, appears to be on the higher side. Therefore, on the facts stated above this writ petition is held to be maintainable.

6. Though the agreement with the petitioner is in effect of a contract for supply of equipment to the Government, it cannot be stated that the action of the respondents cannot be tested by the Court under Article 226 of the Constitution of India, when the action is being challenged as being arbitrary, unreasonable and in violation of Article 14 of the constitution of India. In this regard, it is beneficial to refer to the decision of the Honourable Supreme Court in the case of *Srilekha Vidyarthi v. State of U.P.*, reported in AIR 1991 SC537 wherein the Honourable Supreme Court pointed out that the personality of the State requiring regulation of its conduct in all spheres by requirements of Article 14 does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article

14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusion of Article 14 in the contractual matters is not permissible in constitutional scheme. The scope and permissible grounds of judicial review in such matters and relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or a public interest, the requisite public element for this purpose is present also in contractual matters. Therefore, it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

7. It is contended by the learned counsel for the petitioner that though in the impugned order it is stated that an opportunity of personal hearing was granted, the petitioner was made to be a mute spectator before the third respondent and no effective opportunity was given to raise objections. In the counter affidavit, the third respondent would state that the petitioner approached the third respondent and agreed to supply the equipments on rental basis and agreed to fix the rent for the supply in future according to the Government norms and Rules. However, this statement is not supported by any undertaking given by the petitioner to agree upon rates to be subsequently fixed. Therefore, the allegation made in Paragraph No.3 of the counter affidavit has not been established to the satisfaction of this Court. In Paragraph No.9 of the counter affidavit, it is stated that the petitioner is claiming rent for various heads i.e., computers, uninterrupted power supply systems and printers and he is claiming huge amount more than the rates quoted by the other suppliers in other districts and hence the first respondent has fixed the rate as stated in the impugned order, which would be hire charges payable. Further, it is submitted that there is no mala fide intention against the petitioner and the respondents 3 and 4 are duty bound to protect the public money. Further, the third respondent stated that the lease amount fixed at Rs.65,69,000/- is the fair rental amount payable for the computers and peripherals and the claim made by

the petitioner is exorbitant. Further, it is stated that the fair rent claim is more than the value of the equipments and therefore the impugned order is fully justified.

8. In the typed set of papers filed by the third respondent, quotations from other computer suppliers obtained between September, 2013 and March, 2014 have been filed with a view to establish that the rate quoted by the petitioner is on the higher side. It is to be noted that orders were passed by the respondents 6 to 18 for effecting supplies. Copies of all those orders are enclosed in the typed set filed along with writ petition, from which it is evident that the respondents 6 to 18 have referred to the proceedings of the District Collector, dated 03.02.2012 and the rate quoted by the petitioner was intimated by the respondents 6 to 18 individually to the third respondent. This fact cannot be disputed. On receiving the same, the equipments were supplied and each of the respondents 6 to 18 have submitted a proforma for usage of computers, printers and UPS. Thus, the facts that the rates quoted and intimated by the respondents 6 to 18 through the third respondent and they also certified that the proper usage of the computers and peripherals to the third respondent by submitting a proforma report. In such circumstances, it is too late for the third respondent to contend that the rate offered by the petitioner is on the higher side and they will constitute a Committee to examine the petitioner's offer, which were made in 2012, based on which orders were issued for supply, supplies effected, equipments fully utilized and thereafter now to say that the rate quoted, which was intimated by the respondents 6 to 18 to the third respondent, is on the higher side is most arbitrary, unreasonable action on the part of the third respondent and fails to satisfy the tests laid down under Article 14 of the Constitution of India. The third respondent, at the first instance, ought to have made these things explicitly clear. Even prior to the offer of the work or issuing order for effecting supply of equipments, terms and conditions could have been clearly spelt out, the rates decided in advance. The third respondent has not placed any record to show that the petitioner would agree to receive payment as per the rates fixed by the third respondent at a later point of time, after the conclusion of the rental period. In the absence of any such records, the contentions pleaded by the third respondent cannot be accepted.

9. The crucial fact is that the petitioner did not make offer directly to the third respondent, as per the directions issued, each of the respondents 6 to 18, who are the persons, who organized and conducted census, have implemented the directions of the third respondent, received the quotation, forwarded the same to the third respondent, thereafter on receipt of appropriate directions taken the materials, fully utilized the same during the rental period and thereafter returned the same to the petitioner. In such circumstances, the quotation submitted by the respondents 6 to 18 has been deemed to be accepted and the entire contract has been fulfilled and at this distance of time, the question of refusing to accept the rates quoted by the petitioner based on quotations collected from open market, after the contract was fully implemented and the equipments returned, is farfetched plea on the part of the third respondent and absolutely arbitrary and unreasonable. It is settled legal principle that decision making process is open to judicial review and even though the Court cannot act as an appellate authority but if the process is violative of Article 14, then the Court can strike down the decision and the action taken pursuant thereto.

10. In the result, this writ petition is allowed and the impugned order, dated 26.05.2014, passed by the third respondent, is quashed and the third respondent is directed to settle the petitioner's bill based on the rates, which were offered and submitted by the respondents 6 to 18, within a period of four weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed. No costs. 14.08.2014 Internet : Yes / No Index : Yes / No krk
To:

1. The Director of Rural Development & Panchayat Raj, Directorate of Rural Development & Panchayat Raj Department, Panagal Building, Chennai-600 015.
2. The Assistant Director of Rural Development and Panchayat Raj (SECC-2011), Directorate of Rural Development & Panchayat Raj Department, Panagal Building, Chennai-600 015.
3. The District Collector, Office of Madurai Collectorate, Madurai.
4. The Personal Assistant, To the District Collector (Development), Office of Madurai Collectorate, Madurai.
5. The Commissioner, Madurai Corporation.
6. The Block Development Officer, Panchayat Union, Madurai East.
7. The Block Development Officer, Panchayat Union, Madurai West.
8. The Block Development

Officer, Panchayat Union, Melur, Madurai District. 9.The Block Development Officer, Panchayat Union, Kottampatti, Madurai District. 10.The Block Development Officer, Panchayat Union, Alanganallur. Madurai District 11.The Block Development Officer, Panchayat Union, Vadipatti, Madurai District. 12.The Block Development Officer, Panchayat Union, Usilampatti, Madurai District. 13.The Block Development Officer, Panchayat Union, Chellampatti. Madurai District 14.The Block Development Officer, Panchayat Union, Thirumangalam, Madurai District. 15.The Block Development Officer, Panchayat Union, Kallikudi, Madurai District. 16.The Block Development Officer, Panchayat Union, Thirupparankundram, Madurai District. 17.The Commissioner, Melur, Madurai District. 18.The Commissioner, Municipality, Thirumangalam, Madurai District. T.S.SIVAGNANAM, J krk PRE-DELIVERY

ORDER

IN W.P.(MD) No.9333 of 2014 14.08.2014

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