A. Vedachala Mudaliar Vs. Divisional Engineer, Highways, Saidapet, Madras and anr.

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SooperKanoon Citation : sooperkanoon.com/788485

Court : Chennai

Decided On : May-07-1954

Reported in : AIR1955Mad365; [1955]27ITR494(Mad)

Judge : Rajamannar, C.J. and ;Rajagopala Ayyangar, J.

Acts : Constitution of India - Article 19(1)

Appeal No. : Writ Appeal No. 45 of 1953

Appellant : A. Vedachala Mudaliar

Respondent : Divisional Engineer, Highways, Saidapet, Madras and anr.

Advocate for Def. : Adv. General for Special Govt. Pleader and ;C.S. Rama Rao Sahib, Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Disposition : Appeal dismissed

Judgement :

Rajamannar, C. J.

1. This, is an appeal against the order of Balakrishna Aiyar J. dismissing the application filed by the appellant under Article 226 of the Constitution for the issue of a writ of mandamus or other suitable directions calling upon the Divisional Engineer, Highways, Saidapet, Madras, to send the records relating to the Black top work on Thirupporur-Mahabalipuram Road from Mile 4-0 to 7-5 and to direct the withdrawing of the order made by him on 11-5-1953.

2. The appellant is a contractor doing the business of laying of roads and making improvements to roads. The Highways Department of the Government of Madras called for tenders for Black topping Thirupporur-Mahabalipuram road from mile 0-0 to 4-0 and from 4-0 to 7-5. The appellant's tender for the road from 4-0 to 7-5 was accepted and he was directed to pay a sum of Rs. 415 as additional security and also to produce the necessary income-tax clearance certificate at the time of filing the agreement. Though the tender notice in respect of the particular contract is not before us, we have the tender notice for another part of a highway in the same area which contains as one of its conditions the following:

'Necessary Income-tax clearance certificate is to accompany the tender.'

The appellant paid the sum of Rs. 415 but he did not produce the income-tax clearance certificate. By a letter dated 11-5-1953, the appellant was informed that he should produce the income-tax clearance certificate and execute the agreement within three days from the date of receipt of the letter and that failure to do so would entail the forfeiture of the earnest money deposit paid by him. Forthwith, the appellant rushed to this Court with the above writ petition. The ground on which the appellant challenges the action of the Highways Department in Insisting upon the production ofan income-tax clearance certificate is thus stated in paragraph, 7 of the affidavit in support of the writ petition:

'I am a citizen of India and I have the fundamental right to carry on a trade which I have been doing without any let or hindrance. The order of the first respondent amounts to an infringement of my fundamental right to carry on the said business. The fact that I am in arrears of income-tax is not germane to the issue and the Income-tax Act provides ample machinery for realising the arrears of tax due from me. The order of the first respondent therefore amounts to a denial of the fundamental right and is therefore wrong.'

Balakrishna Aiyar J. dismissing the petition 'inlimine' by a short order:

'The Executive Engineer is entitled to say thathe would not entrust to a person who isheavily Indebted and particularly one againstwhom the summary procedure under the Revenue Recovery Act could be enforced. Thoughhe has not said so in so many words, this is ineffect what his order amounts to. The petitionis dismissed.'

There is no substance in the appeal. The appellant undoubtedly has a fundamental right to carry on a trade or business, but he has no fundamental right to insist upon the Government or any other Individual doing business with him. The Government, as well as any individual, has got a right to enter or not into a contract with a particular person. The Government, as well as any individual has the right to decide on the terms of the contract. For instance, a private body can say that it will entrust its work only to a solvent person who should file a statement of his immoveable properties and produce a nil encumbrance certificate. It cannot be said that an insistence on such a term being fulfilled in any way infringes the fundamental right of the person with whom the contract is being entered into. Learned counsel for the appellant was unable to cite any authority in support of his contention that an insistence by the Government on the production by a party of proof of solvency or an income-tax clearance certificate would amount to a restriction on the right to carry on a business.

3. The appeal is, therefore, dismissed.