SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Packiyam Vs. Divisional Engineer

Packiyam Vs. Divisional Engineer

SooperKanoon Citation : sooperkanoon.com/964088

Court : Chennai

Decided On : Feb-05-2013

Judge : P.R.Shivakumar

Appellant : Packiyam

Respondent : Divisional Engineer

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

05. 02.2013 CORAM: THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR W.P. No.34476 of 2007 Packiyam .. Petitioner Vs.

1. The Divisional Engineer (Highways) Thiruvannamalai.

2. The Assistant Divisional Engineer (Highways) Vanthavasi.

3. The District Collector Thiruvannamalai. .. Respondents PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari and to call for the records on the file of the first respondent in Ka.No.2879/2007/A2 dated 24.10.2007 and quash the same and pass further orders. For Petitioner : Mr. V,. Raghavachari For Respondents : Mrs. P. Kavitha, Government Advocate O R D E R The writ petitioner, who is a contractor registered with the Highways Department, Tamil Nadu has come forward with the present writ petition seeking a direction in the nature of writ of Certiorari calling for the records of the first respondent relating to his impugned proceedings

Ka.No.2879/2007/A2 dated 24.10.2007 and quash the same.

2. The petitioner is doing the works for the Highways department allotted to her, on contract. While so, her husband M. Ramalingam seems to have been penalised by the District Collector of Thiruvannamalai in his proceedings Rc. No.481/Kanimam/99 dated 24.03.2005 imposing a penalty of Rs.36,60,640/- for alleged smuggling of sand. As against the proceedings of the District Collector, Thiruvannamalai the said Ramalingam filed a writ petition before this court in W.P. No. 12697 of 2006. The District Collector, Thiruvannamalai, the third respondent herein, after the disposal of the said writ petition filed by Ramalingam, has issued a communication to the first respondent in his proceedings Rc. No.481/Kanimam/99 dated 11.10.2007 requesting the first respondent to deduct a sum of Rs.31,23,700/- towards the arrears of penalty to be remitted by the above said Ramalingam, from the bills raised by the writ petitioner. Pursuant to the said communication of the third respondent, the first respondent has issued the impugned proceedings Ka.No. 2879/2007/A2 dated 24.10.2007 directing the writ petitioner to see that the arrears of penalty payable by her husband was remitted and to produce the challan in proof of such remittance to the office of the first respondent. The said impugned order is challenged in the present writ petition as erroneous, arbitrary and illegal.

3. The second respondent alone has filed a counter affidavit on behalf of the respondents 1 and 3. No separate counters was filed on behalf of the third respondent. In the counter affidavit filed by the second respondent, besides narrating the facts leading to the issuance of the impugned proceedings, it has been stated that no bill for payment to the writ petitioner is pending and as such the request made by the District Collector is beyond implementation of the Highways Department.

4. The arguments advanced by Mr.V.Raghavachari, learned counsel for the petitioner and Mrs.P. Kavitha, learned Government Advocate representing the respondents are heard and the materials available on record are also taken into consideration.

5. The short ground on which the proceedings of the first respondent dated 24.10.2007 impugned is that the said proceedings has been issued arbitrarily on the assumption that the wife will be responsible for the payment of a penalty to be paid by her husband regarding his independent illegal act. The learned counsel for the petitioner also pointed out the fact that though the writ petitioner is doing contract works for the Highways department in her own name as a registered contractor, without any basis whatsoever, the District Collector chose to assume that the husband was doing the contract work binami in the name of the writ petitioner and hence the writ petitioner and her husband were jointly and severely liable to pay the penalty imposed on the husband of the writ petitioner for his alleged illegal lifting of sand. Learned counsel for the petitioner would submit that a totally arbitrary proceedings came to be issued by the third respondent, the District Collector, requesting the first respondent to deduct the balance amount of penalty to be recovered from the husband of the writ petitioner, from the bills of the writ petitioner, which was also sought to be given effect to by the first respondent by issuing the impugned proceedings.

6. Of course, the first and second respondents have come forward with a contention that no bill of the writ petitioner is pending and that the request made by the District Collector namely the third respondent for deduction of the unpaid penalty is beyond the implementation of their department. The language of the counter has been couched in such way that though bills are not pending as on the date of filing of the counter, if bills would be raised in future, deductions from the said bill amount will be made as per the request made by the third respondent, the District Collector. Absolutely there is no justification on the part of the first respondent to take such a stand. Of course, it is true that actually the writ petitioner will be aggrieved by that order of the District Collector, namely the third respondent. But, since the said order was not communicated to the writ petitioner and it was only an inter-departmental communication, the petitioner could not be expected to challenge that order and the petitioner has rightly challenged the proceedings issued by the first respondent.

7. For the above said reasons, this Court comes to the conclusion that the impugned proceedings of the first respondent in Ka.No.2879/2007/A2 dated

24.10.2007 is totally unreasonable, arbitrary and beyond the powers of the first respondent and is hence set aside.

8. Accordingly the writ petition is allowed and the impugned proceedings of the first respondent issued in Ka.No.2879/2007/A2 dated 24.10.2007 is quashed. No order as to costs. 05.02.2013 avr Index: Yes/No Internet: Yes/No To 1. The Divisional Engineer (Highways) Thiruvannamalai.

2. The Assistant Divisional Engineer (Highways) Vanthavasi.

3. The District Collector Thiruvannamalai. P.R. SHIVAKUMAR J., avr W.P. No.34476 o

05. 02.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com