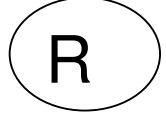




IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF NOVEMBER, 2023
BEFORE
THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO.3893 OF 2023 (LB-BMP)



BETWEEN:

1. M/S. OM SLV CONSTRUCTIONS
12/188, VEERABADRAPPA LAYOUT
THINDLU VIDHYARANYAPURA
BENGALURU 560097
REP BY ITS PROPRIETOR
SRI. VENKATESH V.

...PETITIONER

(BY SRI. A. NAGARAJAPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT
VIKASA SOUDHA, BENGALURU 560001
REP. BY ITS PRINCIPAL SECRETARY.
2. THE BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE, BENGALURU 560002
REP BY ITS CHIEF COMMISSIONER.
3. THE JOINT COMMISSIONER
HEALTH AND SOLID WASTE MANAGEMENT
N R SQUARE, BBMP, BENGALURU 560002.
4. THE JOINT COMMISSIONER
RAJARAJESHWARI DIVISION
BRUHAT BENGALURU MAHANAGARA PALIKE
BENGALURU 560098.
5. THE SUPERINTENDENT ENGINEER
RAJARAJESHWARI DIVISION





BRUHAT BENGALURU MAHANAGARA PALIKE
BENGALURU 560098.

6. THE ASSISTANT EXECUTIVE MANAGER
SOLID WASTE MANAGEMENT
OFFICE OF BBMP, RAJARAJESHWARI DIVISION
BEHIND SATHYANARAYANA SWAMY TEMPLE ROAD
3RD MAIN ROAD, GORAGUNTEPALYA
BENGALURU 560022.
7. THE KARNATAKA LOKAYUKTHA
BENGALURU CITY DIVISION
M S BUILDING, BENGALURU 560001.

...RESPONDENTS

(BY SMT. B.P. RADHA, AGA FOR R1
SMT. NAMITA MAHESH, ADVOCATE FOR
SRI. S.N. PRASHANTH CHANDRA, ADVOCATE FOR R2 - R6
SRI. VENKATESH S. ARABATTI, ADVOCATE FOR R7)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO QUASHING THE COMMUNICATION DATED 19/01/2023 AT ANNEXURE-P ISSUED BY THE JOINT COMMISSIONER OF RAJARAJESHWARI NAGARA OF BBMP R-4 IN NO.VA.JUM.HAA/RA.RA.NAVA/PR/3889/2022-23. DIRECTING THE RESPONDENT BBMP TO MAKE A PAYMENT OF PENDING BILLS AS PER ANNEXURE-F TO F4 SERIES DATED 08/10/2017, 10/10/2017, 10/01/2018 AND 27/02/2018 RESPECTIVELY AND ANNEXURE-N TO N3 & ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 26.10.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a) *Issue an order or a direction or writ in nature of writ of certiorari quashing the communication dated 19.01.2023 at Annexure-P, issued by the Joint Commissioner of Rajarajeshwari Nagara of BBMP respondent No.4 in No.VA.JUM.HAA/RA.RA. NAVA/PETITIONER/3889/2022-23.*
- b) *Issue an order or a direction of writ in nature of writ of mandamus directing the respondent BBMP to make a payment of pending bills as per Annexure-F to F4 series dated 08.10.2017, 10.10.2017, 10.01.2018 & 27.02.2018 respectively and Annexure-N to N3 dated 28.11.2022.*
- c) *Issue any order or orders as deems fit and proper including the cost of the proceedings.*

2. The petitioner is a civil contractor having obtained registration with the Labour Department, the petitioner was issued a supply order by respondent No.4-Joint Commissioner, BBMP on 30.11.2006 for supply of pushcart, 131 pourakarmikas, 2 compactors and drivers and helpers, 9 autos for Solid Waste Management. A revised supply order is stated to be issued on 16.06.2017. The petitioner



submitted the bills from time to time for clearance claiming that the work awarded to him has been discharged effectively. The petitioner further claims that the discharge of his work was satisfactory. While the petitioner was carrying on his work, the Mayor and the District Minister had opined that frequent change of contractor would hamper the garbage segregation and that the contractor appointed would have to be continued. Similar allegedly being the view of the Corporator, the petitioner's contract was allegedly extended.

3. The petitioner claims that respondent No.5 - Assistant Executive Engineer made a false allegation against the petitioner that there was a shortage in the autos supplied by the petitioner and as such, threatened to terminate the contract. There being a Writ Petition in the case of ***M/s.OM SLV Constructions vs. The Bruhat Bengaluru***



Mahanagara Palike and others¹ filed as regards certain discrepancies, the Anti-Corruption Bureau was directed to enquire into the same. While the said proceedings were pending, the petitioner submitted various bills and called upon the BBMP authorities to release the payments. When he was informed by the Joint Commissioner that all the records have been seized and are in the custody of the City Civil Court and as such, until those documents are returned, the request of the petitioner cannot be considered. It is in that background that the petitioner is before this Court seeking for the aforesaid reliefs.

4. Sri.A.Nagarajappa, learned counsel for the petitioner would submit that the petitioner having submitted the bills, it was required of the respondent-BBMP to process the same and make payment and not have issued the endorsement/communication as done on

¹ 2022:KHC:32369 : W.P.No.32241/2018 dated 23.09.2022



19.01.2023 at Annexure-P that the documents were now seized by the ACB/Lokayukta and now available with the Court and on that ground, he submits that the Writ Petition is required to be allowed directing the Corporation authorities to process the bills and make payment thereof.

5. Smt.Namita Mahesh, learned counsel for respondents No.2 to 6 /Corporation would submit that the documents are not available with the Corporation to process the same inasmuch as all the documents available with the Corporation have been seized firstly by the Anti-Corruption Bureau, secondly by the Hon'ble Lokayukta and are now in the custody of the Court. Until and unless those documents are released, the Corporation cannot process the bills and it is for that reason that the petitioner is required to await the return of the documents.



6. Sri.Venkatesh S.Arabatti, learned counsel for Hon'ble Lokayukta submits that there could be four scenarios which could be considered insofar as the request for copies of the originals of the documents seized could be made

6.1. Firstly, where the proceedings terminate, the Court could return the documents.

6.2. Secondly, if the documents were to be treated as property, the same could be dealt with in terms of Section 451 and 452 of Cr.P.C.

6.3. Thirdly, on termination of the proceedings, an application for return of documents could be made under Section 452 of Cr.P.C. and

6.4. Fourthly, a party or a person could make an application for issuance of certified copies of the documents seized in terms of Rules applicable.



7. He thus submits that if the party does not wish to wait until the termination of the proceedings, an application could be made to the Hon'ble Lokayukta for issuance of certified copies if the documents are in possession of the Hon'ble Lokayukta. If the documents have been seized and submitted to the Court, then such application would have to be made to the Court since the Hon'ble Lokayukta would not have custody or being in control of the documents. Thus, he submits that any of these methodology being followed, any one could get certified copies of the documents or await for the proceedings to culminate when the originals would be returned.

8. Heard Sri.A.Nagarajappa, learned counsel for the petitioner, Smt.B.P.Radha, learned AGA for respondent No.1, Smt.Namita Mahesh, learned counsel for respondents No.2 to 6 and Sri.Venkatesh S.Arabatti, learned counsel for respondent No.7 and perused papers.



9. The points that would arise for determination are as under:-

(1) Whether the Corporation can deny processing of the bills submitted by a contractor on the ground that the documents available with the Corporation have been seized by the Hon'ble Lokayukta and/or in the custody of a Court?

(2) What are the modes and methodologies available for a party to obtain certified copies which could be submitted to the BBMP for due consideration?

(3) What order?

10. I answer the above points as under.

11. **Answer to Point No.1: Whether the Corporation can deny processing of the bills submitted by a contractor on the ground that the documents available with the Corporation have been seized by the Hon'ble Lokayukta and/or in the custody of a Court?**

11.1. In the present case BBMP by contending that files of the BBMP have been seized by the ACB initially and subsequently by the Hon'ble Lokayukta and are now in the custody of the Court has contended that in the absence of



those documents, the bills submitted cannot be processed inasmuch as the veracity of those bills cannot be checked and without checking, the payment cannot be made. There is substance in the arguments made by Smt.Namita Mahesh, learned counsel for the Corporation inasmuch as it cannot be expected of the Corporation to process the bills without necessary supporting documents which are apparently seized and are now not in the custody of the Corporation. Thus, *exfacie* it appears that the Corporation can deny the processing of any bills submitted on the ground that it does not have necessary supporting documents.

11.2.The above being *exfacie* view, if the matter is looked at a little more deeper, there is an obligation on the Corporation to process the bills once it is submitted since the last



custodian of those documents was the Corporation. The Corporation cannot take a contention that it does not now have the custody of the documents. In such a situation, it would be for the Corporation to make necessary applications to secure either inspection of those documents from the office of the Honb'le Lokayukta or from the Court or to obtain certified copies thereof in order to enable the Corporation to process the bills.

11.3. The seizure of the documents has been made in terms of Section 102 of Code of Criminal Procedure which provides for any police officer to seize any property which may be found under the circumstances to create a suspicion of the commission of any offence in terms of sub-Section (1) of Section 102 of Cr.P.C. On such seizure in terms of sub-section (3) of Section 102 of Cr.P.C., such police officer would



have to immediately forward the report of the seizure to the jurisdictional Magistrate along with the documents accompanied by property form or else the police officer if finding it difficult to continue to retain the property or documents make over the custody thereof to any person on executing a bond or undertaking.

11.4.If such a return is made, then the return would have to be made to the immediate preceding custodian who would be the Hon'ble Lokayukta from whom the seizure was made. However, if no such return is made then the documents and/or property would have to be deposited in a Court.

11.5.Section 102 of Cr.P.C. is reproduced hereunder for easy reference:-

102. Power of police officer to seize certain property.



- (1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.*
- (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
- (3) Every police officer acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.*

Provided that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

11.6. Insofar as criminal matters are concerned in the State of Karnataka the same are also



regulated as regards procedure by the Karnataka Criminal Rules of Practice, 1968 (for short, 'Rules'). Chapter VII thereof deals with enquiry and trial before the Magistrate or Court of Session. Part C of the said Chapter deals with documents.

11.7. Rule 12 and 14 of the Karnataka Criminal Rules of Practice, 1968 reads as under:

12. *Only documents admitted in evidence shall be marked as Exhibits and they shall be serially numbered as hereinafter provided.*

14. *Subject to any order passed by the Court in that behalf, any person, whether a party to a proceeding or not, desirous of receiving back any document produced by him in the proceedings and placed on the record shall, unless the document is impounded under Section 104 of the Code, be entitled to receive back the same;*

(a) where the proceeding is one in which an appeal is not allowed, when the proceeding has terminated; and

(b) where the proceeding is one in which an appeal is allowed, when the Court is satisfied that the time for preferring the appeal has elapsed and that no appeal has been



*preferred, or, if an appeal has been preferred,
when the appeal has been disposed of.*

11.8. In terms of Rule 12 of the Rules, it's only the documents which are admitted in evidence which will be marked as exhibits. In terms of Rule 14 of the Rules, any person whether a party to the proceedings or not desirous of receiving back any document produced by him and placed on record shall be entitled to receive back the same upon the termination of the proceedings or in the event of an appeal being filed on the culmination of the appeal. Thus, in terms of Rule 14 of the Rules, the Corporation can make an application to the concerned Court for receiving back the documents after culmination of the proceedings but that would mean waiting till the end of the proceedings which could delay the matter and would bring all other actions to a stand-still till then.



11.9. The documents could also be property in a criminal proceedings. Part B of Chapter X of the Rules deals with property more particularly Rule 10, 11, 13 and 15 thereof. In terms of Rule 10 of the Rules, whenever a seizure of property made under Section 102 of Cr.P.C., such seizure shall be reported to the Magistrate at once who shall make such orders as may be required in that regard. In terms of Rule 13 of the Rules, the said documents may be kept in safe custody.

11.10. Chapter XIII of the Rules deals with records. Section 1 deals with arrangement, Section 2A deals with transmission, Section 2B with maintenance, Section 3 with Preservation and Destruction of records and Section 4 with Search of records.



11.11. In terms of Rule 35 thereof, where a Government servant is an accused person and the Head of such Government Department wishes to obtain copies of deposition, exhibits or judgment in that case, he could make an application to the Presiding Judge or Magistrate and send an officer or clerk for that purpose who would be permitted to take copies of the relevant documents.

11.12. Thus, if any officer of the BBMP were to be arrayed as an accused in a proceeding before any Court, the Head of Department to which such person belongs to and/or the Chief Commissioner could always make an application for copies.

11.13. Chapter XIV of the Rules deals with copies. In terms of Rule 1 every application for copy should be made to a Court having custody of



the records. In terms of Rule 2, parties to a case are entitled to at any stage of the proceedings to obtain copies of the records including exhibits which have been admitted in evidence, which shall be certified and delivered to such applicant. Thus, reading Rule 35 of Chapter XIII in conjunction with Chapter XIV, it is seen that the Head of the Department can make an application for copies, which shall be processed and made available to such Head of the Department. The said Rules also provide for a third party to make similar application which would have to be considered by the Magistrate and only if the Magistrate were to allow the same, the application would be processed.

11.14. The above would indicate that the Departmental Head or Chief Commissioner of the Corporation could always seek for copies



from a Court so also could an accused. In the present case, the petitioner also being an accused, the petitioner could make such an application.

11.15. Instead of making such an application, the Corporation as also the petitioner have been blaming each other and neither having obtained copies to process the bills, the petitioner is before this Court seeking for aforesaid reliefs.

11.16. Law always provides for a remedy and the manner of obtaining the remedy. It is for the parties to avail such remedy by following the due process.

11.17. Thus, I answer Point No.1 by holding that the Corporation cannot without taking any steps to secure copies of the documents seized from it contend that in the absence of those documents or on account of the seizure of the documents,



the bills submitted by the petitioner cannot be processed.

12. **Answer to Point No.2: What are the modes and methodologies available for a party to obtain certified copies which could be submitted to the BBMP for due consideration?**

12.1.Smt.Namita Mahesh, learned counsel for respondents No.2 to 6, at this stage, submits that if the petitioner were to obtain certified copies from the Court, the said certified copies would be processed by the Corporation without insisting on production of originals. If that be so, then as dealt with Answer to Point No.1 above, the petitioner can always make an application to the concerned Court for issuance of certified copies, receive such certified copies, for submission to the Corporation for processing.

12.2.In the unlikely event of the said Court not issuing certified copies, then the Corporation could approach the said Court either for



certified copies or for taking inspection of the documents in order to process the bills submitted by any contractor like the petitioner. Thus, even a contractor would not be required to keep quite awaiting return of the documents after culmination of the proceedings but can make an application for issuance of certified copies and produce it before the jurisdictional authority who processes the bills of the petitioner.

12.3.Thus, I answer Point No.2 by holding that as aforestated there are modes and methodologies available for a party to obtain certified copies to submit the same to the BBMP for due consideration.

13. **Answer to point No.3: What Order?**

13.1.In the above circumstances having come to a conclusion that either Corporation or a



contractor like the petitioner could approach the Court seeking for certified copies, either of them are free to do so. However, on account of the submission made by Smt.Namita Mahesh, learned counsel for respondents No.2 to 6 which is acceptable to Sri.A.Nagarajappa, learned counsel for the petitioner, I pass the following:

ORDER

- i. The petitioner to approach the jurisdictional Court seeking for certified copies of the relevant documents that the petitioner wishes to rely upon.
- ii. On furnishing of such certified copies, the petitioner to furnish the same to BBMP which shall be considered and acted upon by the BBMP.
- iii. In the event of application made by the petitioner being rejected by the Court for any reason, then in such circumstance, the Corporation is directed to either make an application for certified copies and/or an application for inspection of the documents



to process bills submitted, which the said Court would be duty bound to do so. Needless to say, while processing the said bills, the allegation made against the petitioner in the pending criminal proceedings will also have to be taken into consideration and those aspects would be subject to the result of the pending criminal proceedings.

- iv. With the above observations, the Writ Petition stands ***disposed***.

**Sd/-
JUDGE**

PRS
List No.: 1 Sl No.: 84