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(2003) 04 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 44432 of 2002, WPMP No. 65115 of 2002 and WVMP No. 911 of 2003

N. Selvakumaaran, M. Subramaniam and D.V. Murugan — APPELLANT

Vs

The Special Commissioner, Hindu Religious and Charitable Endowment and The Deputy Commissioner/Executive Officer, Arulmigu Subramania Swamy Temple — RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 3 CTC 287 : (2003) 4 LW 65

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : K. Selvaraj, for the Appellant; R. Muthukumaraswamy, A.A.G. Assisted by G. Sugumaran, Spl. Govt. Pleader For Respondent-1 and M. Venkatachalapathy for M. Sundar, For Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The petitioner filed the above writ petition Challenging the tender notice dated 8.11.2002 and to direct the

respondents to allot the construction of Rajagopuram at Arulmigu Subramania Swamy Temple, Maruthamalai, Coimbatore only to the empanelled

Sthapathis directly.

2. The petitioners have been selected to include their name in the panel of Sthapathis. They have filed the above writ petition questioning the tender

dated 8.11.2002 under which offers were called for construction of footsteps leading to Rajagopuram with Shopping cum Office complex and

construction of seven Nilai Rajagopuram for Arulmigu Subramaniya Swamy Thirukoil, Maruthamalai. Since some work was done by the Tamil

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Nadu Construction Corporation, it is stated that for the remaining part of the said work, the said tender was called for. The said tender was

challenged on the basis of Rule-30 of the Management & Preservation of Properties of Religious Institution Rules. Learned counsel for the

petitioners submits that according to Rule-30, it is mandatory on the part of the respondents to entrust the work regarding construction of any

Gopuram including Rajagopuram, Vimanam, Stone Mandapam or other stone structures with ''stucco'' works or repairs to such construction of

which engineers have no specialised knowledge, to any able stapathi selected from the panel of stapathis approved by the Government from time

to time. According to the learned counsel for the petitioners, the said Rules deal with the ordinary construction work and construction of Gopuram

etc., and with respect to the lands of the temple. Learned counsel on that basis has submitted that only with respect to the construction work, and

any work with respect to the development of land can be entrusted to the contractors. But, with respect to the construction of any Gopuram etc.,

as contemplated in Rule-30 should be given only to the stapathis. According to him, the tenders for doing such work could be called for only from

the empanelled stapathis. Referring to Rule-41, learned counsel submitted that though the Commissioner is having power to exclude the said

temple viz, Arulmigu Subramania Swamy Temple, Maruthamalai from the operation of any of the Rules, no order was passed by the

Commissioner specifically under Rule-41.

3. Learned Additional Advocate General while answering the said submission has submitted that Rule-30 does not compel the authorities to call

for the tenders only from Stapathis. The scope of the said rule is that the work regarding construction of Gopuram etc., should be handed over to

the stapathis. So, the question of calling for tenders for construction of Gopuram etc, only from stapathis does not arise. On the basis of the

counter filed by the 2nd respondent, the Additional Advocate General submitted that originally tender was called for from the contractors to do the

work including the construction of Gopuram and that it was sent for approval of the Commissioner. Since the authorities have not complied with

the requirements under Rule-30, the Commissioner had directed to re-issue the tender incorporating the condition to entrust the work with the

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stapathis regarding construction of Gopuram. Learned senior counsel appearing for the 2nd respondent has submitted that the question of getting

exemption under Rule-41 from the Commissioner would not arise in this case, because the tender now called for is strictly in compliance with

Rule-30. This submission was made on the basis of the direction given by the Commissioner to re-issue the tender in accordance with Rule-30.

4. Before considering the above submissions, it is beneficial to extract the relevant portion of Rule-30 which runs as follows:

The construction of any Gopuram, Vimanam, stone, Mantapam or other stone structure with stucco works or repairs to such construction of

which engineers have no specialised knowledge shall, with the specific sanction of the appropriate authority, be entrusted to any able stapathi,

selected from the panel of stapathis approved by the Government from time to time.....

From the said rule as rightly submitted by the learned Additional Advocate General, there is no direction to the authorities to call for the tender only

from the panel of stapathis approved by the Government. But from the above said rule it is clear that the construction of Gopuram etc., should be

done only by stapathis. Originally the second respondent called tender for construction of Garpagraham, Arthamandapam and Mahamandapam of

the temple in the year 1991. Since no empanelled stapathis came forward to submit the tenders, the work was entrusted to the Tamil Nadu

Construction Corporation. They have also not completed the work. So, the second respondent called for another tender and it was sent for

approval of the first respondent. The first respondent directed the second respondent to include certain conditions as contemplated under Rule-30.

It is stated in the counter that even though Rs. 1,50,000/- was spent on earlier advertisement, fresh tenders were called for which is impugned in

this writ petition.

5. From the above it is clear that the first respondent applied his mind with the requirements in respect of Rule-30 and directed the 2nd respondent

to call for fresh tenders so as to satisfy the requirements of the said rule. In the impugned tender in clause-9(f) the applicant not only should be

reputed and experienced construction contractor but also he has to produce letters of acceptance from any of the eligible stapathis from the panel

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published by the Department ""for construction of Rajagopuram"". From the above, it is clear that such a letter of acceptance was asked for only to

ensure that empanelled stapathis carrying out the construction of Rajagopuram. Though the rule does not prohibit the respondents from calling for

tenders from the eligible contractors, it compels the authorities that the construction of Gopuram should be done only by the stapathis. From the

impugned tender notice it is clear that though the contractor submits his offer, he has to get a consent letter from concerned stapathi who is in the

panel of stapathis for the purpose of constructing Gopuram. So, the submission of the learned counsel for the petitioner that tenders should be

called for only from Stapathis, cannot be accepted. The purpose of the rule is that the stapathis are having specialised knowledge in constructing

such Gopuram etc., and so it should be done only by them. That is being complied with by incorporating a condition in the tender, this court

expects the authorities strictly implement the intention of the rule relating to construction of Gopuram by stapathis.

6. Learned counsel further submitted that all the stapathis cannot be permitted to construct Gopuram though they are empanelled but selection

should be done. I am not able to accept the said submission. Even according to the petitioner as stated in the affidavit even before selecting the

stapathis to include in the panel, interviews were conducted in all aspects and only thereafter their names are eligible to be included in the panel. So

the question of making selection again will not arise. Moreover, no such ground is raised in the writ petition.

7. Since the respondents having complied with the requirements under Rule-30, and the tender is only in accordance with Rule-30, the question of

specific inclusion of Rule-41 does not arise. Moreover, in this case the Commissioner had already applied his mind and directed the 2nd

respondent to re-issue the tender and accordingly it has been re-issued.

8. Learned counsel for the petitioner further submitted that on earlier occasions including the temple in question and also in other temples, tenders

with respect to the construction of Gopuram etc., were called for only from stapathis and hence now the respondent cannot change the practice

which is against Rule-30. When the action taken by the respondent is not contrary to Rule-30 merely because some practice was followed earlier,

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this court cannot compel them to follow the said procedure. As stated already now by issuing the impugned tender the respondents have complied

with the requirements under Rule-30. Hence, I do not find any reason to accept the petitioners'' case.

9. Hence the writ petition is dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

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