

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2015

Delivered on: 03.08.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.17008 and 17054 of 2015

P.Arun Kumar .. Petitioner in both W.Ps.

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Govt.,
Highways and Minor Ports Department,
Fort St.George,
Madras-600 009.

2.The Chief Engineer (Highways),
Office of the Chief Engineer(H),
Metro, Alandur,
Chennai-600 016.

3.The Superintending Engineer,
Highways Department,
Metro, CMDP Circle,
Nandanam, Chennai-600 035.

4.The Divisional Engineer (H),
Chennai Metropolitan Development Plan,
Division I, Guindy,
Chennai-600 032.

.. Respondents

Prayer in W.P.No.17008 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to release a sum of Rs.20,65,000/- in accordance with the letter dated 08.03.2010 and 31.10.2013 issued by the second respondent along with interest at 24% per annum.

Prayer in W.P.No.17054 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to release a sum of Rs.20,47,000/- in accordance with the letter dated 08.03.2010 and 31.10.2013 issued by the second respondent along with interest at 24% per annum.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.Rm.Muthukumar,
Government Advocate for State Govt.
in all W.Ps.

Mr.P.Tamil Mani for CMDA

COMMON ORDER

The issue involved in these writ petitions is one and the same and hence, both these writ petitions are disposed of by this common order.

W.P.No.17008/2015

2. The petitioner would state among other things that it's proprietorship concern, namely M/s.Gowpatt Associates, Chennai-600086 was awarded contract for widening the two lane road between Vandalur and Kelambakkam between Kms 44/0 and 48/0, vide letter dated 21.06.2007 issued by the third respondent and the total value of the tender is Rs.8,32,83,682/-. According to the petitioner, his concern had scrupulously adhered to the terms and conditions of the tender and the work done by it was also reviewed periodically and found to be satisfactory. However, there was some difficulty in

relocating the drinking water pipelines and electric poles on account of which, the work entrusted to the petitioner could not progress as per schedule and hence, the concerned respondent has decided to impose a weekly fine of Rs.1,00,000/- on the petitioner for the alleged slow progress and the petitioner has also brought to the knowledge of the respondents, vide letter dated 02.09.2008, with regard to various hurdles that had impeded the progress of the work, which includes delay and in-action on the part of the Highways Department in not removing the drinking water pipelines and electric poles. The petitioner has also sent a reminder dated 28.03.2009 and the second respondent, vide letter dated 08.03.2010, had accepted the explanation offered by the petitioner and ordered waiver of fine/forfeiture of Rs.20,65,000/- and directed the fourth respondent to refund the same. However, inspite of such a recommendation, the said amount has not been refunded and the petitioner, in this regard, submitted very many reminders and therefore, the petitioner came forward to file this writ petition.

W.P.No.17054 of 2015

3. The petitioner was awarded contract for widening the two lane road between Vandalur and Kelambakkam between KMs 48/0 and 51/0, vide letter dated 03.08.2007 issued by the third respondent and the total value of the tender is Rs.7,04,03,779/-. The petitioner would further contend that though it has performed its work satisfactorily, a

weekly fine of Rs.1,00,000/- was imposed, alleging slow progress of work and vide representation dated 02.09.2008, has brought to the knowledge of the respondents about the hurdles that had impeded the progress of the work, which includes delay and in-action on the part of the Highways Department in not removing the drainage pipelines and electric poles, followed by a reminder dated 28.03.2009. The second respondent has accepted the explanation and vide order dated 08.03.2010, has ordered waiver of fine/forfeiture of Rs.20,65,000/- and directed the fourth respondent to refund the same at the earliest. However, no orders have been passed and the petitioner submitted very many representations and since, no response is forthcoming, came forward to file this writ petition.

4. Mr.V.Raghavachari, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that the respondents 2 to 4 had made positive recommendation for releasing/payment of the above said amounts and inspite of it, the first respondent Government did not choose to pass any orders. It is the further submission of the learned counsel appearing for the petitioner that the petitioner has executed the above said contracts by borrowing money from banks and on account of delay in settlement of such huge sums of money, the petitioner is not in a position to settle its debts and the banks are threatening to declare the company as Non Performing Asset, which

may have a catastrophic effect and prays for appropriate orders directing the first respondent to pass appropriate orders so as to enable the other respondents to release the amounts due and payable to the petitioner.

5. *Per contra*, Mr.Rm.Muthukumar, learned Government Advocate appearing for the first respondent would contend that the petitioner has placed heavy reliance upon G.O.(D) No.18, Highways and Minor Ports (HN1) Department dated 02.03.2010 and the said Government Order has no application to the case on hand. It is further submitted that fine was imposed on the petitioner on account of slow progress and it was paid without any protest and therefore, it is not open to the petitioner to turn around and ask for return of the fine amount and the first respondent, vide communication dated 20.11.2013, addressed to the Chief Engineer (Metro), Highways Department, Chennai-16, has indicated that the proposal made by him for sanction of a sum of Rs.83,84,000/- to refund the fine amount to the contractors relating to the works of expansion of the road from Vandalur to Kelampakkam from two lane to four lane, is not feasible of compliance and insofar as the claim made in the writ petition, it will be dealt with strictly in accordance with law.

6. This Court has carefully considered the rival submissions and

also perused the materials placed before it.

7. It could be seen from the typed set of documents that the petitioner made a request to refund the weekly fine deducted from the earlier bills and also levying of the fine by considering the facts above cited and that delaying of the work has not been done purposefully. The fourth respondent has addressed a letter No.172/2007/A1 dated 15.04.2009 stating among other things that there is every possibility that the petitioner/contractor would finish the work before 30.04.2009 and Centre Median work is pending only for a kilometer and putting up of a small bridge at Km 50/10 is also being done expeditiously and therefore, made a positive recommendation for refund of the fine amount of Rs.20,72,000/-. The second respondent has considered the recommendation of the fourth respondent and vide his Memo No.CMDP/2009/JE-II dated 08.03.2010, addressed to the fourth respondent has observed that as per the CL 109-06 of PS to SSRB and para 172(g) Highways Manual Volume-IV, has considered the recommendation and ordered waiver of the fine/forfeiture of Rs.20,72,000/- and refund the same subject to relevant rules. The Chief Accounts Officer (Construction and Maintenance) (A/c), Chennai-108, has addressed a letter to the fourth respondent dated 16.09.2010 instructing him to obtain necessary allotment under Revenue Budget (R.E) under "1054 Roads and Bridges" "Refund of Revenue" and necessary LOC for making refund. The second respondent has

addressed a letter No.1182/2010/A1 dated 01.03.2011 to the first respondent stating that the petitioner was given two contract works for expansion of two way lane to four way lane in respect of Kms 44/0 and 48/0-51/0, between Vandalur and Kelambakkam and in respect of the said works, fine of Rs.40,87,000/- have been levied and taking into consideration the recommendation made by the fourth respondent, has requested the first respondent to treat it as a special case and ordered refund of the fine, not only to the petitioner but also to two other contractors, who had done the road expansion work.

8. The Additional Secretary to the Government/first respondent Department has addressed a letter dated 17.05.2011 to the second respondent to inform as to whether any precedent is available as to the refund. The second respondent, in response to the said letter, has stated that there is no precedent for refund of the fine amount and thereafter, the petitioner continued to submit reminders and the first respondent has once again addressed a letter dated 20.08.2013 clarifying among other things that only due to some unforeseen difficulties, the contractors could not able to finish the work on time and for good and sufficient reasons, the amount collected by way of fine, can be refunded and since the fine amount imposed on the contractor and collected from them have been remitted to the credit of Revenue Account, it could not be refunded and once again made positive recommendation that it should be treated as a special case for

the purpose of refund. The second respondent has also addressed a letter dated 31.10.2013 on similar lines.

9. During the course of arguments in these writ petitions, the learned Government Advocate appearing for the respondents 1 and 2 has produced a letter No.3355/HW1/2011-4 dated 20.11.2013 sent by the Joint Secretary to Government, on behalf of the first respondent, addressed to the second respondent stating that the proposal sent by the said official for sanction of Rs.83,84,000/- to refund the fine amount to the contractors relating to the works for expansion of the road from Vandalur to Kelambakkam from two lane to four lane is not feasible of compliance. It is to be pointed out at this juncture that no counter affidavit has been filed and the second respondent, in his memo dated 08.03.2010, addressed to the fourth respondent, has also pointed out that as per CL 109-06 of PS to SSRB and para 172(g) Highways Manual Volume -IV, has considered the recommendation and ordered waiver of the fine/forfeiture of Rs.20,72,000/- and refund the same subject to relevant rules.

10. As already pointed out in the earlier paragraphs, the second respondent on more than one occasion has pointed out the justifiability of the claim made by the contractors including the petitioner and requested the Government for appropriate orders for the reason that

the amounts collected by way of fine have been credited to the Revenue Account of the Government. The first respondent in-turn, has sought for a clarification from the second respondent as to whether any precedent to that effect is available and it was replied by stating that no precedent is available on account of the fact that the delay in completing the work is not solely attributable to the contractor and once again reiterated his recommendation.

11. The petitioner, in his representations as well as in the affidavit filed in support of these writ petitions, has drawn the attention of the authorities to the fact that the Highways Department did not remove the drainage water pipelines and electric poles on time which resulted in the delay in completion of the project. The fourth respondent has also accepted the said reasons and that is why, has made a positive recommendation for refund of the fine amount and the second respondent has also accepted the same and agreed for refund of the fine amount collected, not only from the petitioner but also from two other contractors. The only impediment is that the amount collected by way of fine have already been remitted to the revenue account of the Government and that is why, the second respondent has written letters to the first respondent praying for appropriate orders for refund. If the amounts are not credited to the revenue account of the Government, the second respondent is having power to straightaway order refund. The first respondent in-turn, has sought

clarification from the second respondent as to whether any precedent is available and the second respondent has responded to the said query by stating that no precedent is available, but reiterated his recommendation and it was not accepted by the first respondent and addressed a letter dated 20.11.2013 to the second respondent stating that it is not feasible of compliance.

12. It is to be noted at this juncture that it is also not seriously disputed by the first respondent as to the power as per CL 109-06 of PS to SSRB and para 172(g) Highways Manual Volume -IV and the second respondent, in his memo dated 08.03.2010, addressed to the fourth respondent sought for waiver of fine/forfeiture with a request to refund the same subject to relevant rules.

13. It is well settled principle of law that decision is a precedent of its own facts and each case, presents it's own features.

14. This Court, in the light of the above uncontroverted factual aspects coupled with the legal position, is of the considered view that the petitioner is entitled to the relief as prayed for in these writ petitions.

15. In the result, these writ petitions are disposed of by directing

the first respondent to reconsider the issue regarding the refund of fine amount of Rs.51,12,000/- collected from the petitioner in respect of two contract works awarded to the petitioner in the light of the findings given in these writ petitions and pass orders as expeditiously as possible and not late than six weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as, the respondents 2 to 4. No costs.

03.08.2015

Index : Yes / No

Internet : Yes / No

jvm

Note: Issue order on 4.8.2015

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Fort St.George, Madras-600 009.
- 2.The Chief Engineer (Highways),
Office of the Chief Engineer(H),
Metro, Alandur,
Chennai-600 016.
- 3.The Superintending Engineer,
Highways Department,
Metro, CMDP Circle,
Nandanam, Chennai-600 035.
- 4.The Divisional Engineer (H),
Chennai Metropolitan Development Plan,
Division I, Guindy,
Chennai-600 032.

M.SATHYANARAYANAN. J

jvm

Common Order
in W.P.Nos.17008
and 17054 of 2015

03.08.2015

W.P.Nos.17008 and 17054 of 2015**M.SATHYANARAYANAN, J.**

The matter is listed under the caption "for being mentioned" at the instance of the learned Counsel appearing for the petitioner, who would submit that in paragraph No.15 of the order dated 3.8.2015, instead of stating the amount as Rs.41,12,000/-, it has been wrongly stated as Rs.51,12,000/- and prays for appropriate correction.

2.The Court heard the submissions of Mr.Rm.Muthukumar, learned Government Advocate appearing for the respondents 1 to 3, and Mr.P.Tamil Mani, learned Standing Counsel appearing for the fourth respondent, also.

3.Since the said mistake is an inadvertent one, paragraph No.15 of the order dated 3.8.2015, shall be read as follows:-

"15. In the result, these writ petitions are disposed of by directing the first respondent to reconsider the issue regarding the refund of fine amount of Rs.41,12,000/- collected from the petitioner in respect of two contract works awarded to the petitioner in the light of the findings given in these writ petitions and pass

orders as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as, the respondents 2 to 4. No costs."

08-09-2015

Note to Office:

Registry is directed to carry out the said correction and reissue the order copy to the respective parties on payment of necessary charges, on 14.9.2015.

nsv

M.SATHYANARAYANAN, J.

nsv

**W.P.Nos.17008 and
17054 of 2015**

Dt: 08-09-2015