IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.1602 of 2015
and
M.P.No.1 of 2015

1.Government of Tamil Nadu
Represented by its Principal Secretary,
Highways and Minor Ports Department,
Chennai.

2.The Chief Engineer,
National Highways,
Chepauk, Chennai.

3.The Superintending Engineer,
National Highways, Salem.

4.The Divisional Engineer,
National Highways, Coimbatore.

5.The Chief Accounts Officer,
National Highways,
Kuralagam, Chennai. ...Appellants/Respondents

V.

P.Arunkumar .. Respondent/Petitioner

Prayer: Writ Appeal filed under Clau
se 15 of the Letters Patent, against the order of this Court dated 03.08.2015 made in W.P.No.16140 of 2015. Petition presented under Article 226 of the constitution of India, is to issue a writ of Mandamus, directing the Respondents to direct the respondents to disburse the admitted dues amounting to a sum of Rs. 3 98 90 310 being the sum lawfully due to the petitioner under the Agreement No. 25/2010-2011 dt 23.9.2010 between the petitioner and the respondents together with cumulative interest at 24% p.a.

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For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.V.Lakshmi Narayanan
For Mr.V.Raghavachari

JUDGMENT
(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have focussed the instant Writ Appeal before this Court as against the order dated 03.08.2015 in W.P.No.16140 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order in W.P.No.16140 of 2015, on 03.08.2015, at paragraph 9, had directed the 1st Respondent (1st Appellant herein) to consider the claim of the Petitioner (Respondent herein) for disbursal of Rs.3,98,90,310/- claimed by him under the Agreement No.25/2010-11 dated 23.09.2010 by taking into consideration the findings/observations made in the writ petition and pass orders as expeditiously as possible and not later than four weeks from the date of receipt of a copy of the order and consequently, disposed of the Writ Petition without costs.

3.Challenging the order dated 03.08.2015 in W.P.No.16140 of 2015 (filed by the Respondent/Petitioner) passed by the Learned Single Judge, the Appellants have preferred the instant Writ Appeal primarily contending that the entire pleadings of the Respondent/ Petitioner is contrary to the terms and conditions of contract concluded with the Appellants.

4.The Learned Counsel for the Appellants submits that the Learned Single Judge had failed to take into consideration of the fact that notices were issued to the Respondent/Petitioner pointing out the slow progress and imposed a fine for an aggregate amount of Rs.15,30,000/- between 30.06.2011 and 31.01.2012 on him and this would be a conclusive evidence for 'Breach of Contract'.

5.On behalf of the Appellants, a plea is taken that the Learned Single Judge had failed to appreciate that there was clear understanding between the parties to the contract as to the bargain and specific terms and conditions at the time of invitation of tenders and conclusion of contract. Furthermore, the preliminary specification to Standard Specification for Roads and Bridges forms part of the General Conditions of Contract and Clause 110.01 is self-explanatory in this regard.

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6.According to the Appellants, the Respondent/Petitioner had received the final payment without any protest and by his conduct, the Appellants are discharged of the alleged payments.

7.The Learned Special Government Pleader for the Appellants takes a legal plea that the Respondent/Petitioner is to file a suit for claiming a sum of Rs.3,98,90,310/- under the terms of contract and not to file the present Writ Petition.

8.Lastly, it is the stand of the Appellants that the Learned Single Judge while passing the impugned order in the Writ Petition had overlooked the fact that the correspondence relied upon was purely an internal matter to which, the Respondent/Petitioner is not a party and the same could not be relied upon.

9.The Learned Government Advocate for the Appellants refers to Clause 10 of the Agreement No.25/2010-11 dated 23.09.2010 between the parties wherein it was observed as follows:

> "10.Recovery at 0.3% of the estimated value of the contract bill be made from the contractor's bill or at such rates the govt. may by notification fix from time to time towards Tamil Nadu manual workers welfare with reference to the Tamil Nadu Manual Work (Regulation of Employment and Condition of Works Act, 1982).
>
> In case of any dispute of difference between the parties to the contract either during the progress or after the completion of the work or after the determination/ abandonment of the contract or any matter arising there under and if the claims value exceeds Rs.2.00 Lakhs (Rupees Two Lakhs only) the same shall be settled by filing a civil suit before a Civil Court having jurisdiction for decision. If the claims monetary value is less than Rs.2.00 Lakhs (Rupees Two Lakhs only) the dispute shall be referred for arbitration to a sole Arbitrator. The Superintending Engineer (MH) Tirunelveli Circle or his successor in his office shall be the Arbitrator for this purpose. The arbitration proceedings will be government by Arbitration and Conciliation Act 1996."

and submits that if the value of the claim exceeds Rs.2,00,000/-, a Civil Suit is to be filed and if the claim is less than Rs.2,00,000/-, then, the dispute shall be referred for Arbitration to a Sole Arbitrator. Furthermore, the Superintending Engineer (NH), Tirunelveli Circle or his

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Successor in his Office, in Clause 10 of the Agreement, was named as an Arbitrator for the purpose. Therefore, the Respondent/Petitioner, without invoking the Clause 10 of the Agreement dated 23.09.2010, had filed the Writ Petition before this Court, which is not per se maintainable.

10.The Learned Government Advocate for the Appellants, to lend support to her contention that the Writ Petition filed by the Respondent/Petitioner is not maintainable, cites the decision of the Hon'ble Supreme Court in Rajasthan State Industrial Development and Investment Corporation and another V. Diamond & Gem Development Corporation Limited and another, (2013) 5 Supreme Court Cases 470 at page 482, wherein it is, inter alia, observed that '... the Writ Court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties'.

11.Per contra, it is the submission of the Learned Counsel for the Respondent/Petitioner that the 4th Appellant/4th Respondent in his letter dated 03.02.2014 had observed that G.O.Ms.No.1010 PWD dated 10.06.2009, on price escalation mechanis for Civil works would apply to this contract and that a sum of Rs.2,15,661,94.70 was due and payable to the Respondent/Petitioner under the price escalation clause in the contract. Furthermore, it was also represented that the 4th Appellant/4th Respondent had admitted since the overall expenditure incurred would fall within the sanctioned sum of Rs.2118.91 lakhs there would be no necessity to obtain revised administrative sanction to disburse the amounts.

12.Besides the above, the Learned Counsel for the Respondent/ Petitioner proceeds to take a stand that the 4th Appellant/4th Respondent wrote a letter dated 12.12.2013 to the 3rd Appellant/ 3rd Respondent requesting him to obtain the requisite amount of Rs.3,85,38,990/- being the amount due and outstanding under the contract. Likewise, on 11.12.2013, the 4th Appellant/4th Respondent wrote a letter to the Senior Accounts Officer, National Highways for releasing the funds.

13.The Learned Counsel for the Respondent/Petitioner brings it to the notice of this Court that the 3rd Appellant/3rd Respondent on 20.11.2013 wrote a letter to the 2nd Appellant/2nd Respondent admitting the dues payable to the Respondent/Petitioner and made a request for approval of the payment. Added further, the Learned Counsel for the Respondent/Petitioner submits that the letter of the 4th Appellant/4th Respondent dated 03.02.2014 would point out that no administrative sanction was necessary to disburse the funds as the expenditure fell within the sanctioned limit.

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14.In effect, the core contention advanced on behalf of the Respondent/Petitioner is that refusal to tender payments on the ground of sanction is an arbitrary and illegal one. Moreover, inasmuch as there are no 'Disputed Issues of Fact' to be gone into and furthermore, when the outstanding sum is admitted, the present Writ Petition filed by the Respondent/Petitioner is Ex facie maintainable in law.

15.The Learned Counsel for the Respondent/Petitioner cites the decision of the Hon'ble Supreme Court in Madras Port Trust V. Hymanshu International By its Proprietor V. Venkatadri (Dead) by L.Rs. reported in (1979) 4 Supreme Court Cases 176 at page 177, wherein at paragraph 2, it is observed and held as follows:

> "2.We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905)."

16.He refers to the decision of the Hon'ble Supreme Court in State of Karnataka and another V. All India Manufacturers

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Organisation and others, (2006) 4 Supreme Court Cases 683, at page 686, wherein it is observed as follows:

> "The High Court merely directed that the Project and the Agreement, as conceived originally and upheld by the High Court in the earlier writ petition should be implemented "in letter and spirit". In other words, the High Court said that there is no scope for raising frivolous and mala fide objections for ulterior purposes. All that the High Court has done is to reaffirm and require the State Government and its instrumentalities, as "State" under the Constitution, to act without arbitrariness and mala fides. This, the High Court was fully entitled to do. It is trite law that when one of the contracting parties is "State" within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional courts in this country. Therefore, there is no reason to interfere with the said directions of the High Court. In the future also while the State Government and its instrumentalities are entitled to exercise their contractual rights under the FWA, they must do so fairly, reasonably and without mala fides; in the event that they do not do so, the Court will be entitled to interfere with the same."

17.He also seeks in aid of the decision of the Hon'ble Supreme Court in Urban Improvement Trust, Bikaner V. Mohan Lal, (2010) 1 Supreme Court Cases 512 at page 513, whereby and whereunder, it is held as under:

> "The Supreme Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Vexatious and unnecessary

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> litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. There harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected."

18.On a careful consideration of respective contentions and also this Court taking note of the fact that there are no disputed issues of fact to be gone into in the present Writ Petition and also when the 4th Appellant/4th Respondent wrote a letter to the 3rd Appellant/3rd Respondent requesting him to obtain the requisite amount of Rs.3,85,38,990/- being the sum due and outstanding under the contract and further that, on 11.12.2013 the 4th Appellant/4th Respondent wrote to the Senior Accounts Officer, National Highways for releasing the funds etc., this Court comes to an inevitable conclusion that the outstanding sum, when it is admitted by the Appellants, the impugned order dated 03.08.2015 in W.P.No.16140 of 2015 passed by the Learned Single Judge in directing the 1st Appellant/ 1st Respondent to consider the claim of the Respondent/Petitioner in regard to the disbursal of amount of Rs.3,98,90,310/- claimed by him as per Agreement No.25/2010-11 dated 23.09.2010, does not suffer from any material infirmities/irregularities or patent illegalities in the eye of Law. Per contra, the same is in order. Viewed in that perspective, the Writ Appeal filed by the Appellants sans merits.

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19.In fine, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Principal Secretary,
Government of Tamil Nadu
Highways and Minor Ports Department,
Chennai.

2.The Chief Engineer,
National Highways,
Chepauk, Chennai.

3.The Superintending Engineer,
National Highways, Salem.

4.The Divisional Engineer,
National Highways, Coimbatore.

5.The Chief Accounts Officer,
National Highways,
Kuralagam, Chennai.

+ 1 cc to MR.V. Raghavachari, Advocate Sr.8596
+ 1 cc to Government Pleader Sr.8227

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