

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 23206 of 2016

&

W.M.P. Nos.19912 and 24504 of 2016

C. Ramesh

..Petitioner

Vs.

1. The Managing Director,
Chennai Metropolitan Water
Supply and Sewerage Board,
Chintadripet, Chennai.

2. Mr. Sudhakar ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents not to cancel the purchase order No. 1516EPLA-237 dated 27/08/2015 and project code: PLA 13005 as per the PR dated 15.06.2015 without due process of law.

For Petitioner :: Mr.G. Murugendran

For Respondents:: Mr.G. Janakiraman for R1
Mr.P.J. Rishikesh for R2

O R D E R

The petitioner is said to be a sub-contractor under the 2nd respondent, to execute the project of Chennai Metropolitan Water Supply and Sewerage Board namely, to build a Over Head tank, to a height of 75 feet, in a circular shape. According to the petitioner, the plan of the water tank was designed by the 1st respondent. The 1st respondent had entered into a contract with the 2nd respondent for execution of civil works for Over Head Tanks of capacity 50LL, 7LL and Underground Tank of 8LL capacity, Pump House including all ancillary works, finishing works complete for CMWSSB Job at Puzhal, Chennai and thereafter, the 2nd respondent entered into a sub-contract with the petitioner, the value of Letter of Intent being Rs.3,79,91,104/-.

2. Based on the Letter of Intent dated 08.06.2015, the petitioner commenced work by investing a huge amount and before starting the work, the petitioner had collected materials for rent from third parties, worth about Rs.2 crores and engaged labourers for the purpose of construction. Thereafter, the 2nd respondent issued Purchase Order dated 27.08.2015 and notified 116 itemised works.

3. The petitioner further submits that he had entered into an agreement with the 2nd respondent in all aspects and part payments were released by the 2nd respondent as per the Purchase Order. Though, according to the petitioner, the water tank was constructed with the approval plan of the 1st respondent and bills were raised, based on the work done, the 2nd respondent did not make payment properly as per the Purchase Order, due to which the petitioner suffered huge loss. Though the petitioner raised bills regularly, the same were not paid by the 2nd respondent and on account of the same, the petitioner could not continue the work. According to the petitioner, when he had completed almost 75% of the work given to him, the 2nd respondent is now trying to engage another contractor to complete the pending work, without cancelling the petitioner's purchase order. Therefore, the petitioner is before this Court with the present writ petition seeking a direction to the respondents not to cancel the purchase order No. 1516EPLA-237 dated 27/08/2015 and project code: PLA 13005 as per the PR dated 15.06.2015 without due process of law.

4. Heard Mr.G. Murugendran, learned counsel for the petitioner, Mr.G. Janakiraman, learned counsel for the 1st respondent and Mr.P.J. Rishikesh, learned counsel for the 2nd respondent.

5. Though the learned counsel for the petitioner would argue regarding the maintainability of the writ petition, Mr.P.J. Rishikesh, learned counsel for the 2nd respondent would submit that the Purchase Order contains an Arbitration Clause under Clause 36 and therefore, the matter has to be referred for arbitration.

6. A perusal of the records would show that it is regarding the execution of the contract entered into by the 2nd respondent with the 1st respondent. The petitioner is said to be a sub-contractor under the 2nd respondent. There is no privity of contract between the petitioner and the 1st respondent. The petitioner contends that 75% of the work has been completed and the 2nd respondent deliberately stopped payment. However, the same is denied by the 2nd respondent stating that in spite of payment of approximately, Rs.75 lakhs, the work has not been completed in consonance with the payment. These are disputed questions of fact, which cannot be gone into, by this Court, under Article 226 of the Constitution of India. Moreover, the relief sought in the writ petition is against the 2nd respondent, who is a private party. Therefore, the writ petition is not maintainable and

the same is dismissed. However, liberty is given to the petitioner to agitate the dispute before the appropriate forum, as per law. No costs. Connected W.M.P is closed.

Sd/-
Asst.Registrar

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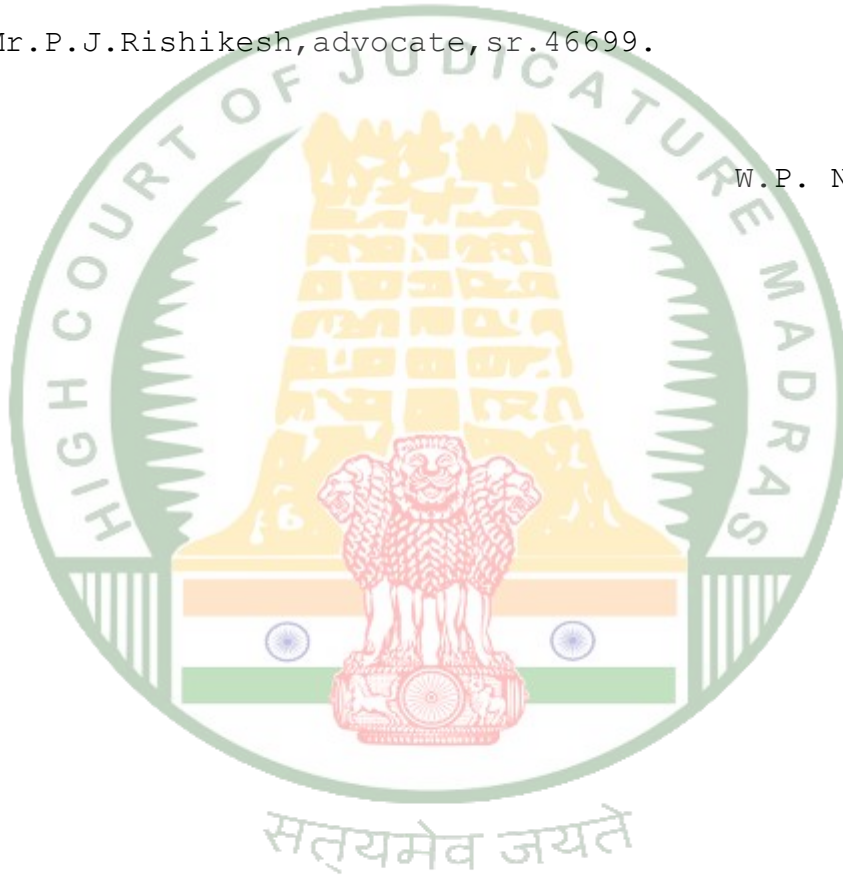
Sub Asst. Registrar

+1 cc to Mr.G.Murugendran, Advocate,sr.46713

+1 cc to Mr.P.J.Rishikesh,advocate,sr.46699.

gr(co)
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