

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.40703 of 2002

V.Manoharan

...Petitioner

Vs.

1. The State of Tamil Nadu
Represented by
The Secretary,
(Local Administration)
Fort St. George,
Chennai.

2. The Managing Director,
T.W.A.D. Board,
Chennai.

3. The Executive Engineer,
T.W.A.D. Board,
R.W.S.Division,
Vellore, Vellore District.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ, order or direction or any other Writ in the nature of Writ of Mandamus directing the respondents to disburse the sum of Rs.9,13,872/- after deducting from the same a sum of Rs.3,16,335/- as directed by the first respondent to the petitioner with interest at the rate of 24% per annum from 01.12.2000 till date of realisation i.e., full and final payment by way of damages and compensation.

For Petitioner : No Appearance

For Respondents: Mr.Zakir Hussain
Govt. Advocate for R1

ORDER

Prayer in this writ petition is for a writ of mandamus directing the respondents to disburse the sum of Rs.9,13,872/-, after deducting from the same a sum of Rs.3,16,335/- as directed by the first respondent to the petitioner with interest

at the rate of 24% per annum from 01.12.2000 till the date of realization, that is, full and final payment by way of the damages and compensation.

2. When this writ petition is taken up for hearing today, no one is appearing for the petitioner. However, Mr. Zakir Hussain, learned Government Advocate appeared for the first respondent.

3. Since the writ petition is of the year 2002 and the same is pending before this Court for more than 15 years, this Court is inclined to dispose this writ petition on merits based on the available records.

4. The petitioner claims that, he is the contractor under the second and third respondents. He had executed the works entrusted to him to the satisfaction of the respondent's department namely T.W.A.D.

5. The amount payable against the bill claimed by the petitioner had not been paid by the respondent's department.

6. According to the petitioner, the sum due from the respondent department payable to the petitioner is a sum of Rs.9,13,872/- (Rupees Nine Lakh Thirteen Thousand Eight Hundred and Seventy Two only). In order to get the said amount the petitioner also caused a legal notice on 30.01.2002. In spite of the legal notice there was no response from the respondent's department. Therefore the petitioner had been constrained to approach this Court by filing a writ petition in W.P.No.8005 of 2002 seeking for writ of mandamus to disburse the said sum of Rs.9,13,872/- (Rupees Nine Lakh Thirteen Thousand Eight Hundred and Seventy Two only) with interest at 24% per annum from 01.12.2000.

7. This Court by an order dated 11.03.2002 passed the final order, by disposing the said writ petition, directing the respondent's department to consider the said request of the petitioner made through his lawyer, dated 30.01.2002, on merits and in accordance with law, and take a decision thereon within a time frame.

8. Pursuant to the said direction issued by this Court, the third respondent has passed an order in letter No.1507/AEEIIQATA/2002 dated 24.07.2002, whereby, the third respondent after having quantified the amount, which has to be recovered from the petitioner for the alleged defective work, had also directed the superintending Engineer for the respondent TWAD Board, for disbursing the remaining amount payable to the petitioner. Even though such a directive was issued by the third respondent, the

amount payable to the petitioner had not been paid, and only in that circumstances, the petitioner had filed this writ petition in the year 2002 seeking for the aforesaid prayer.

9. I have heard, Mr. Zakir Hussain, learned Government Advocate who appeared for the first respondent. He would submit that, since some of the work executed by the petitioner were found to be defective, the second respondent quantified the amount to be recovered from the petitioner for the said defective work as Rs.3,16,335/- (Rupees Three Lakh Sixteen Thousand Three Thirty Five Only)

10. The learned Government Advocate would also submit that, after recovering the said amount, the remaining amount payable to the petitioner can be disbursed by the Superintending Engineer concerned of the second respondent department. The learned Government Advocate would also submit that in the said order dated 24.07.2002, the second respondent also directed the superintending Engineer to forfeit the EMD and SD amount for the defective work and substandard quality of work done by the petitioner, of course, after observing the usual formalities as per Rule in force.

11. In this regard, the learned Government Advocate would further submit that, after deducting the amount quantified by the second respondent in the said proceedings dated 24.07.2002 for the defective work executed by the petitioner, the remaining sum could have been paid to the petitioner, as the said proceeding was issued as early as in the year 2002.

12. I have considered the submission made by the learned Government Advocate on behalf of the respondents and have perused the materials placed before this Court.

13. It is no doubt true that, the petitioner is a contractor who executed some work entrusted upon him, by the second respondent. For the said work executed by the petitioner, according to the petitioner, a sum of Rs.9,13,872/- (Rupees Nine Lakh Thirteen Thousand Eight Hundred and Seventy Two only) was due as on 01.12.2000. When the said amount was requested to be paid, since the respondent's department not acted immediately, the petitioner has approached this Court by filing a writ petition where in by an order dated 11.03.2002, a direction was issued to consider the representation of the petitioner and pass an order, pursuant to which, the present order dated 24.07.2002 has been passed by the second respondent.

14. On a perusal of the said order it can be found that, the second respondent, had, allegedly, executed some defective work or substandard work or some excess payment had been made in this regard to the petitioner. Therefore on the said reasoning

the second respondent has quantified a sum of Rs.3,16,335/- (Rupees Three Lakh Sixteen Thousand Three Thirty Five Only) as the amount due to be recovered from the petitioner.

15. However, in the said order dated 24.07.2002, the second respondent had directed superintending Engineer concerned to disburse the remaining amount, after deducting the said sum of Rs.3,16,335/- (Rupees Three Lakh Sixteen Thousand Three Thirty Five Only), to the petitioner. Since, it has also been mentioned in the said communication of the second respondent that, the superintending Engineer also has to forfeit the amount paid only as EMD and SD for the defective and substandard work done by the petitioner after observing the usual formalities which were in force. Therefore there can be no further impediment for the respondent department to disburse the remaining amount after deducting the sum of Rs.3,16,335/- payable to the petitioner.

16. In this regard, Mr.Zakir Hussain, learned Government Advocate would submit that, the said amount could have been paid by this time. But whether the sum has been paid or not is not known. In the circumstances, in view of the factual matrix disclosed above, I am inclined to pass the following order in this Writ Petition:

(i) Pursuant to the order dated 24.07.2002 in proceedings in Letter No.1507/AEEITQATA/2002 of the second respondent, T.W.A.D. Board shall pay the remaining amount payable to the petitioner after forfeiting EMD and SD amount.

(ii) If the said dues as directed by the second respondent in his order dated 24.07.2002 has already been paid, or settled, to the petitioner, the same can be communicated to the petitioner for record purpose.

(iii) If the said amount as indicated above so far has not been paid to the petitioner, the same shall be paid by the second respondent Board, through the Superindening Engineer concerned, to the petitioner within a period of 6 weeks from the date of receipt of a copy of this order. It is needless to mention that, though interest at the rate of 24% has been sought for by the petitioner, a reasonable interest can be paid to which the petitioner is entitled to, as per the Rule which are in force.

With these directions the Writ Petition is ordered. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dh

To

1. The State of Tamil Nadu
Represented by
The Secretary,
(Local Administration)
Fort St. George,
Chennai.

2. The Managing Director,
T.W.A.D. Board,
Chennai.

3. The Executive Engineer,
T.W.A.D. Board,
R.W.S.Division,
Vellore, Vellore District.

+1cc to Government Pleader SR.No.86359

W.P.No.40703 of 2002

sm:22.12.2017



WEB COPY