

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.8648 of 2003
and W.M.P.No.11082 of 2003 and
W.M.P.No.2350 of 2004

M/s Thirumalai Building Contractors
rep. By its Sole Proprietor
Mr.A.K.Alwar
No.38, IV Avenue,
Ashok Nagar, Chennai 83.

..Petitioner

..vs..

1. Tamil Nadu Water Supply and
Drainage Board,
rep. By its Managing Director
Kamarajar Salai, Chennai 5.

2. The Superintending Engineer,
TWAD Board,
World Bank Project Circle,
Vilangkurichi Road,
Coimbatore 4.

3. Tahsildar,
Mambalam, Guindy Taluk,
Chennai 78.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of certiorari to call for the records of the 3rd respondent in its proceedings No.Na.Ka.No.E3/39077/2002 dated 04.03.2003 and quash the same.

For Petitioners : Mr.M.Sivavarthan
For Respondents : Mr.S.Thamizharasi (R1) and R2
Mr.V.Jayaprakash Narayanan, SGP(R3)

O R D E R

The writ petition is filed challenging the proceedings of the 3rd respondent dated 04.03.2003.

2.1 The short factual matrix of the case is as follows:- The Tamil Nadu Water Supply and Drainage Board (hereinafter referred to as "the TWAD Board") issued a tender notice dated 09.10.1987 for laying pipes to a length of 5500 meters approximately 5 kms for water supply to Coimbatore. The petitioner participated in the tender by depositing a sum of Rs.4,000/- as EMD and his quotation amounting to Rs.3,47,291.25 was found to be the least. In the quotation submitted by the petitioner, the price was quoted on the premise that the petitioner will be permitted to quarry sand for laying the pipes from the nearby Madampatti Village. The petitioner was given the work order dated 08.02.1988 by the TWAD Board and was called upon to enter into the necessary agreement with the TWAD Board. The petitioner, by his communication dated 17.02.1988 to the Superintending Engineer of the TWAD Board stated that on account of public agitation against and quarrying in Madampatti Village, he may not be able to commence the work and therefore, he sought the authorities to provide him an alternative site for quarrying sand for the purpose of laying the pipes.

2.2 On the contrary, the TWAD Board was calling upon the petitioner to first enter into the agreement and thereafter seek necessary changes, for which the petitioner was not ready. Ultimately, the petitioner opted out of the contract by addressing a communication dated 18.04.1988 and requested the TWAD Board to refund the sum of Rs.4,000/- paid by him as EMD. At the same time, the TWAD Board, by a communication dated 20.04.1988, requested the petitioner to remit the Security deposit and to produce stamp paper to conclude the agreement.

2.3 In response to the petitioner's letter dated 18.04.1988, the TWAD Board addressed a communication dated 06.05.1988, which reads as follows:-

"With reference to your letter second cited and in continuation to the discussion had with the undersigned on 5.5.88 regarding the above matter, it is informed that the quarry for sand (source) has been revised. The change of quarry for sand (source) and lead fixed and the rate arrived at for the work of sand filling are furnished in the annexure enclosed.

Please furnish your consent letter to execute the work of sand filling for the above work to this office early. Kindly acknowledge the receipt of this letter".
(emphasis supplied)

2.4 In the annexure to the letter dated 06.05.1988, the TWAD Board permitted the petitioner to quarry sand from Bhavani River at Sirumugai at the rate of Rs.81.17 m³. Since it was not agreeable to the petitioner, the TWAD Board, by a communication dated 12.05.1988, cancelled the work order and forfeited Rs.4,000/- that was paid as EMD by the petitioner. The TWAD Board gave the contract to some one else.

2.5 The petitioner issued an Advocate Notice dated 16.07.1988 calling upon TWAD Board to refund Rs.4,000/-, for which a reply notice dated 22.07.1988 was issued by the TWAD Board, through their advocate, reiterating their stand that the sum of Rs.4,000/- has been forfeited on the failure of the petitioner to execute the agreement and that the petitioner will not be entitled to the refund of EMD, as he opted out of the contract, after having been successful.

2.6. Thereafter, the petitioner received a communication dated 04.03.2003 from the Tahsildar, Chennai, under the provisions of the Revenue Recovery Act, calling upon the petitioner to pay a sum of Rs.13,86,000/- to the TWAD Board, challenging which, the petitioner has filed the present writ petition.

3. The TWAD Board have filed a counter affidavit, wherein, they have taken a stand that since the petitioner had opted out of the contract, they had to give the contract to another person at a higher cost and the differential cost of Rs.13,86,000/- should be borne by the petitioner.

4. At the time of admission, on 20.03.2003, this Court has granted interim stay of the impugned notice, which was subsequently made absolute by this Court on 22.08.2003.

5. Heard Mr.Sivavarthanan, learned counsel for the petitioner, Mrs.Thamizharasi, learned counsel for the 1st and 2nd respondents and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the 3rd respondent.

6. The learned counsel for the petitioner submitted that though the petitioner was a successful bidder, yet, he did not enter into any agreement with the TWAD Board, as stipulated in the Work Order dated 08.02.1988. That apart, learned counsel contended that before invoking the provisions of the Revenue Recovery Act, it is necessary for the TWAD Board, to quantify the amount due by issuing appropriate notice to the petitioner in the manner known to law and adjudicate the claim. In the absence of such procedure being adopted, the TWAD Board cannot straight away invoke the provisions of the Revenue Recovery Act for recovery of a sum of Rs.13,86,000/-.

7. Per contra, Mrs. Thamizharasi, learned counsel appearing for the TWAD Board submitted that the petitioner was unnecessarily delaying the execution of the agreement, on account of which, the project got delayed and ultimately the TWAD Board, had to once again call for fresh tenders and give Work Order to a new Contractor, on account of which, the TWAD Board, had suffered a loss of Rs.2,63,685/-, which the petitioner is liable to pay.

8. This Court gave its anxious consideration to the rival submissions.

9. It is true that the petitioner was the successful bidder in the tender floated by the TWAD Board and the rate quoted by him was based on the permission of the TWAD Board, to quarry sand from the nearby Madampatti Village. After he got the tender, there were agitations by the Villagers of Madampatti Village against sand quarrying on account of which, he realised that he may not be able to execute the work on the rate quoted by him.

10. At this juncture, it may be relevant to extract below the kernel portion of the Work Order dated 08.02.1988:-

"AGREEMENT:-You should enter into an agreement in proper prescribed form, with the TWAD Board and the agreement thus concluded shall be the foundation of rights for both the parties concerned. The contract shall not be deemed to be complete until the agreement is first signed by you and then by any officers authorised by Board. For this, you should produce non-judicial stamp paper value of Rs.2.50/- purchased in your favour at your own cost within 10 days without fail". (emphasis supplied)

11. From a bare reading of the above clause in the Work Order dated 08.02.1988, it is limpid that until and unless the petitioner and the TWAD Board enters into an agreement, their rights will not stand concluded. In other words, either the TWAD Board or the petitioner can walk out of the contract before the agreement is signed. Thus, the Work Order is only an offer and it is not a concluded contract.

12. In this case, admittedly, the petitioner and the TWAD Board did not enter into any agreement because of the dispute with regard to the quarrying of sand from Madampatti Village. The excuse given by the petitioner cannot be said to be totally unfounded because, the TWAD Board itself by its subsequent communication dated 06.05.1988 changed the source of sand and

permitted the petitioner to quarry from Bhavani River at Sirumugi at Rs.18.17 m³. The petitioner was not prepared to enter into the agreement with the TWAD Board, on the basis of the rates quoted by him earlier, because, it was not economically viable for him to execute the work by quarrying sand from Bhavani River at Sirumugi and therefore, he explicitly walked out of the deal. The TWAD Board also by its communication dated 12.05.1988 cancelled the tender and rightly forfeited the sum of Rs.4,000/- paid by the petitioner. Thereafter, it is not open to the TWAD Board to claim Rs.13,86,000/- from the petitioner on the ground that they suffered loss by awarding the contract to another person. Had the petitioner entered into the contract, things would have been different. The Work Order dated 08.02.1988 clearly states that the contract shall not be deemed to be completed until the agreement is first signed by the petitioner and then by the Board. When the Work Order is so categorical and unequivocal, it is not open to the TWAD Board to make any claim for damages in the absence of the party signing the contract.

13. The learned counsel for the petitioner placed strong reliance upon the Division Bench Decision of this Court in V.D.Swami and Co., Ltd. vs. The Chief Engineer, Public Health Engineering Department (reported in 1986 WLR 380), wherein this Court has succinctly crystallised the legal position as follows:-

"4. Thus, the legal position as culled out from the relevant decisions may be stated as under:

(i) Before invoking the provisions of the Revenue Recovery Act, there should be a determination or adjudication as to the liability of the person concerned or the extent of his liability.

(ii) The determination and adjudication need not take the place of determination and adjudication in a Civil Court, but the determination or adjudication should be in the nature of a preliminary ascertainment of the existence or the extent of the liability and such determination will be a condition precedent for invocation of the provisions of the Revenue Recovery Act".

14. In this case, the TWAD Board had not undertaken any exercise to adjudicate the claim of Rs.13,86,000/- even informally, before quantifying the claim at Rs.13,86,000/-. On this ground alone, the impugned notice issued under the Revenue Recovery Act, is unsustainable.

15. Be that as it may, the fact remains that the petitioner had not entered into any contract with the TWAD Board and had opted out of the deal, immediately, on realising that he may not be able to quarry sand from Madampatti Village. Therefore, the TWAD Board cannot mulct the petitioner with the liability to pay the sum of Rs.13,86,000/-, demanded in the impugned notice.

16. In the result, this writ petition is allowed and the impugned demand notice dated 04.03.2003 passed by the 3rd respondent is quashed. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-III)

//True Copy//

Sub-Assistant Registrar

To

1. The Managing Director
Tamil Nadu Water Supply and
Drainage Board,
Kamarajar Salai, Chennai 5.
2. The Superintending Engineer,
TWAD Board,
World Bank Project Circle,
Vilangkurichi Road,
Coimbatore 4.
3. The Tahsildar,
Mambalam, Guindy Taluk, Chennai 78.

+1 CC to Mr. D. Srinivasa Raghavan, sr 7726

+1 CC to M/s. S. Thamizharasi, sr 7525

सत्यमेव जयते

Writ Petition No.8648 of 2003

VGI (CO)
sp/23/2

WEB COPY