



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.164 of 2015

and

M.P(MD)No.1 of 2015

S.Karuppiah : Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Secretary to Government of Tamil Nadu,
Public Works Department,
Fort St. George,
Chennai-600 009.

2.The Chief Engineer,
madurai Region,
Public Works Department,
Periyar Vaigai Basin Circle,
Madurai-625 001.

3.The Superintending Engineer,
Public Works Department,
Periyar Vaigai Basin Circle,
Madurai -625 001.

4.The Executive Engineer,
Periyar Improvement Divison VII,
P.W.D. Complex,
Tallakulam,
Madurai -625 002.

: Respondents

Prayer:This Writ Appeal is filed under Clause 15 of Letters Patent Act, praying to set aside the portion of the order rejecting the additional claim amount at the enhanced rate of Rs.250/- or Rs.300/- per cu.m and directing the appellant to work out his remedy before the appropriate forum as well as for failing to award interest for the delayed payment of contractual work passed in W.P(MD).No.8687 of 2009 and allow the writ appeal.

Prayer in WP(MD). 8687/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a WRIT OF CERTIORARI FIED MANDAMUS by calling for the records relating to order passed by the 2nd respondent in his proceedings Letter No. B1/6925/2008 dated 09.07.2009 and quash the same and further direct the respondent to pay a sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs Only) for the additional work done by the petitioner (40,000 per cum X Rs.300= 1,20,00,000) and further direct the respondents to release the balance 50% of the amount as well as withheld amount to the petitioner with interest at 18% p.a. from the date of completion of work (i.e.), November 2008 and till date of payment.

For Appellant : Mr.A.Thirumuthy

For respondentss : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

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

The appellant was a registered class I of Public Works Department contractor. Though the work was completed there was some dispute with reference to the fixation of the amount for the additional work done. According to the appellant, he is entitled for a sum of Rs.250 per cu.m as against the case of the respondents what the petitioner is entitled to is only a sum of Rs.37 per cu.m. Considering the above, the learned Single Judge in W.P.(MD)No.8687 of 2009, dated 06.01.2010, was pleased to direct the respondents in the following manner:-

"10.Since this agreed amount has not been paid to the petitioner, the petitioner has filed the above writ petition, not only claiming the balance amount, but also an escalated rate at Rs.250/- per cu.m. for the additional work carried out.

11.In the light of the above undisputed facts, I am of the view that the contractor is entitled to get the payment of Rs.18,00,189/- and Rs.30,23,712/- only. The petitioner's additional claim at the enhanced rate cannot be decided in this writ petition under Article 226 of the Constitution of India and the petitioner will have to work out his remedy before the appropriate forum.

<https://hcservices.ecourts.gov.in/hcservices/>

12.Therefore, while rejecting the additional claim made by the petitioner, on the basis of the enhanced



rate, which was not accepted by the respondents, I direct the respondents to sanction the balance amount due to the petitioner viz., Rs.18,00,189/- together with the security Deposit of Rs.30,23,712/- agreed to be paid by the respondents, and pay the same to the petitioner within a period of three months from the date of receipt of a copy of this order. With regard to the additional amount at the enhanced rate of Rs.250 or Rs.300 per cu.m, it is open to the petitioner to claim the same in the appropriate forum."

2. In compliance of the order of the learned Single Judge, the learned Special Government Pleader would submit that a sum of Rs.46,95,663/- was paid, which is inclusive of the admitted amount, by treating the additional work done for a sum of Rs.37 cu.m and the security deposit amount of Rs.30,23,712/-.

3. The learned Special Government Pleader has also produced the Government order in G.O.Ms.No.30, Public Works Department, dated 22.03.2013, which shows that a sum of Rs.46,95,663/- had already been paid to the appellant. The order of the learned Single Judge did not deal with the interest portion and therefore, a separate Writ Petition in W.P.(MD)No.15476 of 2013 was filed by the appellant, which was dismissed, against which the Writ Appeal was also dismissed on the ground that the appellant seeks review of the order passed in W.P.(MD)No.8687 of 2009. Thereafter, the appellant filed this appeal after getting the delay condoned. The learned counsel for the appellant would submit that inasmuch as there is no dispute on the sum of Rupees paid, the same will have to be considered for the interest as well.

4. The learned Special Government Pleader appearing for the respondents would submit that inasmuch as in second round the Writ Petition having been dismissed, no relief can be granted. The dismissal of the Writ Petition, as confirmed by the Division Bench in Writ Appeal, is not on merits. On a perusal of the order passed in W.A.(MD)No.1089 of 2014, dated 15.09.2014, it is seen that the appellant has filed a Writ Petition in W.P.(MD)No.15476 of 2013, challenging the order of the learned Single Judge in W.P.(MD)No.8687 of 2009 and the same was disposed of by the learned Single Judge. Therefore the dismissal of the Writ Appeal will not prevent the appellant from getting the relief further.

5. The appellant seeks for the interest payable from 01.11.2008 i.e., after completion of the work till the actual payment made on 05.07.2013. Therefore, for the period thereafter he is not claiming any interest. As the entitlement of Rs.250 per cu.m is not in dispute and despite the fact that the work was completed as seen from the communication sent by the Executive Engineer, WRD, to the Superintending Engineer, WRD, dated



20.01.2009, we are of the view that the appellant is entitled to succeed.

6. Accordingly we are of the view that the appellant is entitled for interest on the sum of Rs.46,95,663/- from 21.04.2008 to 05.07.2013 at 7.5% per annum. The above said amount will have to be paid by the respondents to the appellant within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Appeal is disposed of. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.Secretary to Government of Tamil Nadu,
The State of Tamil Nadu,
Public Works Department, Fort St. George,
Chennai-600 009.
 - 2.The Chief Engineer,
Madurai Region, Public Works Department,
Periyar Vaigai Basin Circle, Madurai-625 001.
 - 3.The Superintending Engineer,
Public Works Department,
Periyar Vaigai Basin Circle, Madurai -625 001.
 - 4.The Executive Engineer,
Periyar Improvement Divison VII,
P.W.D. Complex,
Tallakulam, Madurai - 625 002
- +One cc to M/s.A.Thirumurthy, Advocate, SR.No.66642
+One cc to The Special Government Pleader, SR.No.67325

TA/vsg

RL/7C/4P/GT/SRA1/11/9/2017

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