



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.01.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.633 of 2017

and

W.M.P. (MD)No.494 of 2017

M/s. A.P.Construction,
Government Contractors,
No. 31,33/16, A.M. Church Street,
Cumbum - 625 516, Theni District,
Rep.by its Partner,
A.Abdul Samadhu

... Petitioner

Vs.

- 1.State of Tamil Nadu rep. by its
Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.
- 2.The Director General,
Highways, Guindy,
Chennai - 600 025.
- 3.The Superintending Engineer,
Highways Department (C&M),
Madurai - 2.
- 4.The Divisional Engineer,
Highways Department (C&M),
Theni,
Theni District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from recovering any amount from the petitioner under the price adjustment mechanism without following the guidelines issued in Government Orders in G.O.Ms.No.101, Public Works (G2) Department dated 10.06.2009 for the work viz. Package 72 - Widening from DL - ML and improvements in KM 0/0 - 1/0 & 3/4 - 5/700 and Improvements in Km 1/0 - 3/4 of Abandoned NH220 in Cumbum Town including Reconstruction of Minor bridge 2 Nos & Reconstruction of Culvert 1 No and Construction of side Drain in Uthamapalayam (Highways) C and M Sub-Division executed by the petitioner and direct the respondents to refund amount which was already recovered.



For Petitioner : Mr. S.Doraisamy
For R1 to R4 : Mr. C.Selvaraj
(Special Government Pleader)

WEB COPY

O R D E R

Mr.C.Selvaraj, learned Special Government Pleader takes notice for the respondents.

2. The case of the petitioner is that he is a Class-I Contractor under the Tamil Nadu Highways Department. According to the petitioner, as per G.O.Ms.No.101, Public Works (G2) Department, dated 10.06.2009, the estimate rate has to be calculated for the purpose of Price Variation Mechanism and in case of delayed agreement, the date of agreement will have to be taken into account for the purpose of price variation mechanism and not the estimate rate. In this regard, the petitioner had made a representation on 19.12.2016 requesting that in case of delayed agreement, the date of agreement alone will have to be taken into account for the purpose of price variation mechanism and not the estimate rate. The said representation has not been considered till date and hence, the present Writ Petition has been filed.

3. As pointed out by the learned Special Government Pleader, the respondents are yet to pass price variation recovery order in the present case. Therefore, the present writ petition is premature. Nevertheless, it would be appropriate to point out that when the petitioner has redressed his grievance through a representation, the respondents are duty bound to consider the same and pass appropriate orders instead of keeping the same pending.

4. In view of the same, there shall be a direction to the fourth respondent to consider the petitioner's representation, dated 19.12.2016, on its own merits and pass appropriate orders on the same, after giving due opportunity of hearing to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar (RTI)



To

1.The Secretary to Government,
State of Tamil Nadu
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.

2.The Director General,
Highways, Guindy,
Chennai - 600 025.

3.The Superintending Engineer,
Highways Department (C&M),
Madurai - 2.

4.The Divisional Engineer,
Highways Department (C&M),
Theni,
Theni District.

+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER, Advocate, SR No.3094

PM

PSM/PM-PN/01.02.2017/3P/6C

W.P. (MD) No.633 of 2017
and
W.M.P. (MD) No.494 of 2017
12.01.2017