

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12072 of 2013

M/s.P & C Construction Pvt Ltd.,
[Formerly known as M/s.S.P.Periasamy & Co
now merged in to M/s P&C Constructions]
Rep. by its Mr.S.P.Ravishankar,
No.140, Perundurai Road,
Erode - 638 011. ... Petitioner

vs.

1. The Chief Engineer,
TWAD Board, Western Region,
No.46, Bharathi Park Road,
Coimbatore - 43.
2. The Executive Engineer,
TWAD Board, RWS Division,
No.10, Muthusamy Street,
Sathy Road, RR Lodge backside,
Erode - 638 001.
3. The Executive Engineer,
TWAD Board, NRAP Division,
No.71, Poongundram Street,
Karungal Palayam ,
Erode - 638 003.
4. The Superintendent Engineer,
TWAD Board, NRAP Division,
No.216, Arumugam Street,
Thirunagar Colony, Erode - 638 003.
5. The Managing Director,
TWAD Board, Head Office,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus directing the respondents 1 to 3 herein to take final measurement of works and issue final completion certificate with respect to the works done pursuant to agreement No.CE/WR/No.08/2002-2003 dated 23.07.2002.

For Petitioner : M/s.P.J.Rishikesh

For Respondents 1-3 : Mrs. S.Thamizharasi

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents 1 to 3 to take final measurement of works and issue final completion certificate with respect to the works done pursuant to agreement No.CE/WR/No.08/2002-2003 dated 23.07.2002.

2. The Learned counsel for the writ petitioner forcibly contended that, as per the clause stipulated in the agreement, the respondents are duty bound to measure the works done by the writ petitioner and accordingly make payment. In other words, the learned counsel for the writ petitioner is of an opinion that, the respondents had violated the conditions stipulated in the contract and therefore the writ petitioners are constrained to move the present writ petition.

3.The Learned counsel appearing on behalf of the respondents disputed the said point by citing the clause 67 of the contract, reads as under:-

"In the event of any dispute arising between the parties hereto in respect of matter comprised in the contract, the same shall be settled by a competent Court at having jurisdiction over the place where the contract is awarded and agreement is concluded and by no other Court."

In view of the conditions stipulated in the contract, the writ petition cannot be maintained. Even if there is any dispute between the parties in respect of the conditions in force that conditions agreed upon in the agreement, the respective parties have to approach the Competent Civil Court of Law and therefore, the writ petition liable to be rejected.

4. This Court is of an opinion that complex, facts and circumstances arising on account of certain disputes can never be adjudicated in the writ proceedings under Article 226 of the Constitution of India. All such disputed facts and circumstances must be adjudicated and resolved by filing original documents and by adducing evidences before the Competent Civil Court of Law. This Court cannot entertain the issues or disputes arising on account of the contractual obligations. Such obligations are to be redressed only through the Civil Suits to be filed before the Competent Civil Court having jurisdiction.

5. However, the learned counsel for the writ petitioner brought to the notice of this Court that, he has submitted a representation setting out all his grievances to the respondents and the respondents have not even cared to reply the same. Under these circumstances and without going in to the merits of the matter, the first respondent is directed to consider the representation submitted by the writ petitioner on 09.02.2013 and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. The writ petitioner is directed to enclose a copy of the representation and relevant documents along with the order passed in this writ petition. Accordingly the writ petition stands disposed of. No Costs.

pkn

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer,
TWAD Board, Western Region,
No.46, Bharathi Park Road,
Coimbatore - 43.
 2. The Executive Engineer,
TWAD Board, RWS Division,
No.10, Muthusamy Street,
Sathy Road, RR Lodge backside,
Erode - 638 001.
 3. The Executive Engineer,
TWAD Board, NRAP Division,
No.71, Poongundram Street,
Karungal Palayam ,
Erode - 638 003.
 4. The Superintendent Engineer,
TWAD Board, NRAP Division,
No.216, Arumugam Street,
Thirunagar Colony, Erode - 638 003.
 5. The Managing Director,
TWAD Board, Head Office,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- +1cc to Mrs. S.Thamizharasi, Advocate SR.No. 73734
+1cc to M/s.P.J.Rishikesh , Advocate SR.No. 73724

W.P.No.12072 of 2013

ASK(26/11/2018)