

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8786 of 2017

M/s. Consolidated Construction Consortium Limited

Rep. by its Authorized Signatory

Mr.S.Raghavendran

.. Petitioner

Vs.

1.State of Tamil Nadu

Rep. by its Secretary

Finance Department

Fort St.George, Chennai.

2.Director of Public Library

No.737/1, Anna Salai LLA Building

Chennai-02.

3.Executive Engineer

PWD Department

Building Construction Division

Chennai-5.

4.State of Tamil Nadu

Rep. by its Secretary

Education Department

Fort St.George, Chennai.

5.Executive Engineer

PWD Department

Building Construction Division-III

Medical Works, Chepauk,

Chennai-5.

... Respondents

*R4 impleaded as per order dated 25.04.2017 in WMP.No.11597 of 2017 in WP.No.8786 of 2017

*R5 impleaded as per order dated 13.06.2017 in WMP.No.16102 of 2017 in WP.No.8786 of 2017

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to pay dues of the petitioner based on its representations dated 20.06.2012 and 06.06.2014 for a total sum of Rs.3,93,92,752/- along with 18% interest p.a. from the date of accrual to till date within a time frame.

For Petitioner : Mr.P.Wilson
Senior Counsel for Mr.S.Karthikei Balan
For Respondents : Mr.Vijay Narayanan
Advocate General
assisted by Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The petitioner seeks for a mandamus directing the respondents to pay the dues to the petitioner, based on its representations dated 20.06.2012 and 06.06.2014, a total sum of Rs.3,93,92,752/- along with 18% interest per annum from the date of accrual to till date.

2. The case of the petitioner is as follows:-

The petitioner is a Public Limited Company, carrying on business in Construction Sectors for many years. The petitioner was awarded a contract for providing interior furniture and furnishing works for Reading and Book Stack area in Modern State Library Building at Kotturpuram, Chennai for a contract price of Rs.4,98,24,225/- and a contract for providing interior furniture and furnishing works for General and Admin in Modern State Library Building at Kotturpuram, Chennai for a price of Rs.9,49,90,824/-. The petitioner Company was also awarded a contract for providing special interior partitions in Tamil Nadu New Legislative Assembly Complex in Omandur Government Estate, Chennai for a contract price of Rs.3,41,40,016/-. The petitioner Company has successfully completed all the works assigned to it and the final amount to be paid to the petitioner Company stood at Rs.1,95,50,244/- towards the work namely furnishing works for Reading and Book Stack area in Modern State Library Building at Kotturpuram, Chennai, Rs.1,46,42,407/- towards the work namely providing interior furniture and furnishing works for Reading and Book Stack area in Modern State Library Building at Kotturpuram, Chennai and Rs.52,00,101/- towards the work namely providing special interior partitions in the Tamil Nadu New Legislative Assembly Complex. Thus, the total payment of Rs.3,93,92,752/- was due.

3. The third respondent filed a counter affidavit dated 15.06.2017, stating as follows:-

"4. It is submitted that the petitioner Company was awarded a contract for providing interior furniture and furnishing works for Reading and Book Stack area in Modern State Library Building at Kotturpuram, Chennai vide Agreement Ref.No.127 BCM/2009-10 for a contract price of Rs.4,98,24,225/- and a contract for providing interior furniture and

furnishing works for General and Admin in Modern State Library Building at Kotturpuram, Chennai vide Agreement Ref.No.126 BCM/2009-10 for a price of Rs.9,49,90,824/-

5. It is submitted that the petitioner Company has successfully completed all the above said works and the final amount to be paid to the petitioner Company stood at Rs.1,95,50,244/- towards the Agreement Ref.No.127 BCM/2009-10 and Rs.1,46,42,407/- towards Agreement Ref.No.126 BCM/2009-10. It is submitted that the above said amounts are to be paid by this respondent.

6. It is submitted that sufficient funds are not available with this respondent and hence a revised administrative sanction proposal has been sent to the Government on 31.01.2011 and the Revised Administrative Sanction has been received by this respondent vide G.O.Ms.No.112 School Education Department dated 29.05.2017. It is submitted that the bill submitted by the petitioner for the balance amount of Rs.3,41,92,651/- is now under scrutiny and the same will be paid to the petitioner shortly."

4. The fifth respondent filed a separate counter affidavit, by stating as follows:

"4. It is submitted that the petitioner Company was awarded a contract for providing special interior partition in Tamil Nadu Legislative Assembly Complex (Block A) in Omandurar Government Estate, Chennai-02 vide Agreement Ref.No.10 BCC/TNLA/2009-10 for a contract price of Rs.3,41,40,016/-.

5. It is submitted that the petitioner Company has completed the above said works and the payment made upto LS V & Part as on 29.03.2011 for the amount of Rs.2,71,22,677/- and the final amount to be paid to the petitioner company stood at Rs.52,00,101/- towards the Agreement Ref.No.10 BCC/TNLA/2009-10. It is submitted that the above said amount has to be paid by this respondent.

6. It is submitted that in the address by His Excellency the Governor of Tamil Nadu in the Legislative Assembly on 03.06.2011, it has been stated that there have been

allegations of excess and wasteful expenditure and deficiency in the standards of construction of New Secretariat Building. Therefore, a commission of inquiry headed by a retired Judge of the High Court will be constituted to enquire into the alleged irregularities like excess expenditure, inordinate delay and deficiency in the standards of construction. Further works in the new Secretariat Complex will be stopped to facilitate this enquiry and based on the Governor's address stop work notice issued to petitioner on 03.06.2011.

7. It is submitted that the Government have appointed a Commission of Inquiry to inquire into the causes and circumstances leading to alleged irregularities like excess expenditure, irregularities causing loss to the exchequer, whether all statutory approvals and clearances were obtained, inordinate delay and deficiency in standards of constructions in the Construction of New Secretariat Complex in Omandurar Government Estate, Chennai-2 vide G.O.Ms.No.530 Public (Buildings) Department dated 22.06.2011 and G.O.Ms.No.1143 Public (Buildings) Department dated 2.12.2011 with the terms of reference of the Commission of Inquiry as follows:-

(a) To inquire into the causes and circumstances leading to the alleged irregularities like excess expenditure, irregularities causing loss to the exchequer, whether all statutory approvals and clearances were obtained, inordinate delay and deficiency in standards of construction in the construction of New Secretariat Complex in Omandurar Government Estate, Chennai-2.

(b) To inquire whether there was any lapse or abuse of position on the part of Government Officials / Public servants.

(c) If such allegations are proved true, then to suggest suitable ways and means to prevent such recurrences in future and

(d) To make appropriate recommendations as the commission deems fit."

5. When the present writ petition was heard by this Court on 25.04.2017, it was represented by the learned Special Government Pleader that the respondents will be making the payment to the petitioner in four weeks' time. Thereafter, the matter was taken up on 22.06.2017, on which day, after hearing both parties, this Court passed the following order:

"In respect of payment for Anna Centenary Library, Mr.A.N.Thambidurai, learned Special Government Pleader, submitted that the Executive Engineer, PWD, Building Construction Division-I, Chennai, by his letter dated 22.06.2017, had informed that two bills were passed and sent to Pay and Account Office (East) vide Token No.23291 and 23293 dated 21.06.2017, i.e. (1) for providing internal furniture and furnishing works for reading and Book Stall area in Modern State Library Building at Kotturpuram, Chennai, a sum of Rs.1,38,95,306/- and (2) for providing internal furniture and furnishing works for general and admin area in Modern State Library Building at Kotturpuram, Chennai, a sum of Rs.2,75,27,062/-, totalling to a sum of Rs.4,14,22,368/-.

2.Further, the learned Special Government Pleader submitted that the total payment of Rs.4,14,22,368/- towards Anna Centenary Library will be credited to the petitioner's account by RTGS on or before 27.06.2017.

3.The above submission made by the learned Special Government Pleader is taken on record.

4. So far as payment of interest is concerned, since there is no specific agreement to that effect in the agreement, I do not find any reason to award any interest in the writ proceedings. Mr.P.Wilson, learned Senior Counsel, submitted that liberty may be given to the petitioner to file a civil suit for claiming interest on the delayed payment of Rs.4,14,22,368/-.

5.In view of the submission made by the learned Senior Counsel for the petitioner, it is open to the petitioner to file appropriate civil proceedings before the appropriate Court for claiming interest on the delayed payment.

6.Post on 28.06.2017, for reporting compliance."

6. The matter was again taken up on 28.06.2017, on which day, after hearing both parties, this Court passed the following order:

"Mr.P.Wilson, learned Senior Counsel appearing for the petitioner submitted that the petitioner had received the payment of Rs.4,14,22,368/-and that the respondents had complied with the order dated 22.06.2017 with regard to the first portion of the prayer sought for in the writ petition.

2. Since the respondents had paid the sum of Rs.4,14,22,368/-, no further order is required insofar as the first portion of the prayer is concerned. As far as the claim of interest is concerned, it is open to the petitioner to file a Civil Suit or appropriate Civil proceedings for claiming interest on the belated payment of the amount.

3. So far as the second portion of the prayer is concerned, the learned Special Government Pleader submitted that pursuant to the representation given by the petitioner claiming a sum of Rs.52,00,101/- towards work done for providing special interior partitions in TNLA Complex (Block A) in Omandurar Government Estate, Chennai, an Enquiry Commission was appointed and that the said prayer should be gone into in detail. Further, the learned Special Government Pleader submitted that the learned Advocate General is appearing in this matter on behalf of the respondents and therefore, he sought two weeks' time for making his submissions.

In view of the above, post the matter on 06.07.2017."

7. Thereafter, the matter was listed before this Court on 11.01.2018, 29.01.2018 and 02.02.2018. On the last occasion, namely on 02.02.2018, Mr.P.Wilson, learned Senior counsel appearing for the petitioner submitted before this Court that though the prayer sought for in this writ petition was originally for payment of Rs.3,93,92,752/-, the petitioner would restrict the relief only for an extent of Rs.52,00,101/-, since major portion of the due was paid by the respondents on various

occasions during the pendency of this writ petition. Accordingly, the petitioner was directed to file an affidavit to that effect indicating the total amount due as on today. Thus, the matter was adjourned on the said day and consequently, taken up for further hearing today.

8. Today, the petitioner has filed an additional affidavit, wherein, at Paragraph No.6, it is stated as follows:-

"6. In the light of the above order, the representation of the petitioner dated 20.06.2012 in respect of the work done for providing special interior partitions in TNLA Complex (Block A) in Omandurar Government Estate, Chennai for a sum of Rs.52,00,101/- is yet to be complied in the above writ petition and the same was undertaken to be paid at the earliest by the Advocate General of Tamil Nadu and the matter is being posted for reporting compliance only with regard to TNLA Complex (Block A) in Omandurar Government Estate, Chennai for a sum of Rs.52,00,101/-. Hence, the petitioner would be satisfied if the respondents are directed to pay a sum of Rs.52,00,101/- and giving liberty to approach the appropriate forum for payment of interest on delayed payment."

9. Heard the learned Senior Counsel appearing for the petitioner and the learned Advocate General appearing for the respondents.

10. Though this writ petition was filed initially seeking for payment of Rs.3,93,92,752/-, in view of the subsequent developments as extracted supra, the petitioner has now confined his relief only for a sum of Rs.52,00,101/- alone. Perusal of the counter affidavit filed by the fifth respondent as extracted supra, would show that the respondents have also admitted their liability for a sum of Rs.52,00,101/-, towards the Agreement Ref.No.10 BCC/TNLA/2009-10 and that the said amount is to be paid to the petitioner by the respondents. The only reason stated for not paying the said amount to the petitioner is that the Government has appointed a Commission of Inquiry to inquire into the causes and circumstances leading to alleged irregularities like excess expenditure, irregularities causing loss to the exchequer etc., in the construction of New Secretariat Complex in Omandurar Government Estate, Chennai-2.

11. I do not think that the respondents are justified in stating the above said reason for not paying the balance amount

to the petitioner, having paid the major portion of the amount to the petitioner during the pendency of this writ petition for executing the above said works. The quantum is not in dispute as the fifth respondent himself admitted in the counter affidavit that the respondents are liable to pay a sum of Rs.52,00,101/- to the petitioner. In fact, before this Court, when the matter was taken up on earlier occasions, the respondents have agreed to pay and report compliance, as could be seen from the order passed on 25.04.2017. In fact, it is seen that major portion of the claim made by the petitioner was paid by the respondents during the pendency of the writ petition without any protest or reservation. Therefore, the balance sum admitted by the respondents cannot be denied or delayed on any reason. Now, the respondents cannot take a different stand, that too, by citing the appointment of Commission of Enquiry, in respect of the alleged irregularities in the Construction of New Secretariat Complex in Omandurar Government Estate, Chennai-2. It is not the case of the respondents that such appointment of commission of enquiry was made after paying the major portion of the demand as stated supra. As the petitioner has executed the works and such execution is also accepted by the respondents, they are bound to pay the balance amount to the petitioner in terms of the contract. Now, the claim is reduced to the tune of Rs.52,00,101/- and when the said sum is also admitted by the respondents, this writ petition is disposed of, by issuing the following directions:-

(a) The respondents shall pay the said sum of Rs.52,00,101/- to the petitioner towards the balance amount payable in respect of the Agreement Ref.No.10 BCC/TNLA/2009-10, within a period of six weeks from the date of receipt of a copy of this order.

(b) Insofar as the claim of the petitioner seeking for interest is concerned, it is open to them to file appropriate civil proceedings before appropriate Court on the late payment.

No costs.

Sd/-

Assistant Registrar

/true copy/

Sub Assistant Registrar

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To

- 1.State of Tamil Nadu
Rep. by its Secretary
Finance Department
Fort St.George, Chennai.
 - 2.Director of Public Library
No.737/1, Anna Salai LLA Building
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Education Department
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 - 5.Executive Engineer
PWD Department
Building Construction Division-III
Medical Works, Chepauk,
Chennai-5.
- 2 cc to Mr.S.Karthikei Balan, Advocate, Sr. 9820
1 cc to Government Pleader, Sr. 9395

W.P.No.8786 of 2017

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