



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.05.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARANW.P.(MD)No.11468 of 2018 and
WMP(MD)No.10451 of 2018

M/s.Threekay Constructions,
Through its Partner,
N.Karuppasamy,
No.5/381, Shanthi Nagar-2nd Street,
Athimarapatti Road,
Tuticorin - 628 005.

.. Petitioner

vs

1. The Chief Engineer,
V.O.Chidambaranar Port Trust,
Tuticorin.

2. M/s.Transstroy India Ltd.,
represented by its Authorised Signatory,
Opp. to JNIT Technologies/Batronics,
Plot No.201, 202-A and 202-B,
Kavuri Hills, Hyderabad,
Telangana - 500 081.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 1st respondent to conduct an enquiry in connection with engaging of the petitioner's company as a sub contractor by the 2nd respondent to carry out civil works in Port Trust and to disburse the petitioner's dues from and out of the final bill and retention money to be disbursed to the 2nd respondent by considering his representation dated 19.12.2017 within the period that may be stipulated by this Court.

For Petitioner : Mr.R.Gandhi

For Respondents : Mr.V.R.Shanmuganathan(for R1)
Special Government Pleader**ORDER**

The petitioner by namely M/s.Threekay Constructions through its Partner Mr.N.Karuppasamy has approached this Court and filed this writ petition to direct the 1st respondent to conduct an enquiry in connection with engaging of the petitioner's company as a sub



contractor by the 2nd respondent to carry out civil works in Port Trust and to disburse the petitioner's dues from and out of the final bill and retention money to be disbursed to the 2nd respondent by considering his representation dated 19.12.2017 within the period that may be stipulated by this Court.

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2.The case of the petitioner is that the petitioner's company is a registered company under the Registration of Company Act 1956. They have involved in civil contract work for the past 39 years and has gained more reputation among the business people by its work committment. The 2nd respondent also involved in civil contract work.

3.It is the further case of the petitioner is that while being so on 02.08.2012, the 1st respondent has given a contract work to the 2nd respondent for modification and improvement of Port Entrance Green Gate at V.O.Chidambaranar Port. In turn, the 2nd respondent had engaged this petitioner company as a sub contractor for carry out the above work and accordingly the petitioner company have completed the work to the utmost satisfaction as early as in the year 2014. This petitioner also states that the said work was inspected by the Port Trust Authorities later and the 1st respondent officials also approved the entire work done by the petitioner including the excess work of laying river sand.

4.It is the further case of the petitioner is that the 2nd respondent has to pay a sum of Rs.67,39,351/- towards work done by the petitioner in modification and improvement of Port Entrance Green Gate, supplying and laying concrete paver blocks including laying of rivers sand, which is not at all provided in the work order, apart from the said order, the retention amount a sum of Rs.11,56,376/-, by altogether, the 2nd respondent has to pay a sum of Rs.77,95,727/- to the petitioner.

5.It is further case of the petitioner is that the petitioner have completed the work as contract as early as in the year 2014 itself, but the 2nd respondent along with the 1st respondent were driven the petitioner from pillar to post for settling the contract amount for saying one or other reasons.

6.It is the contention of the petitioner is that though they worked and completed the said work and they have paid the salary for the workers and invested huge amount in purchasing the materials then and there without waiting for the release of amount from their side.

7.In this regard, the petitioner has given a representation on 15.06.2015 to the Chairman, V.O.Chidambaranar Port, they were engaged as a sub contractor by the 2nd respondent and the petitioner were sought for work towards modification and improvement of Port Entrance Green Gate, for settling the payment. In fact, on receipt of the said representation, the 1st respondent had issued a letter vide No.E(C)/F45/PJT/GG/2011/D.2702 dated 24.07.2015 to the 2nd respondent, who in turn the 2nd respondent by his letter dated 06.08.2015 had issued a reply to the 1st respondent and confirmed the

engagement of this petitioner and accepted the dues to be paid by the petitioner to the 1st respondent.

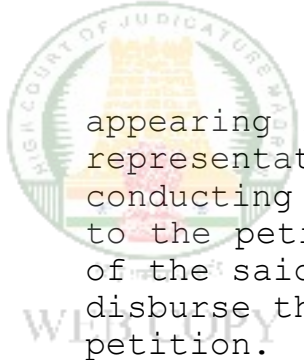
8. The petitioner also states that the 1st respondent Engineer incharge of the concern works, knew very well that the petitioner has only executed the 8 No's of Gate Building, Rubble Bund and Paver Block work through proper work orders issued by the 2nd respondent and purchased all the materials in the above works to the petitioner concern name and not in the name of the 2nd respondent. For reconciliation statement of cement and steel the 1st respondent's Engineers have entered in the M-Book with the Threekay Constructions purchase invoices bearing TIN No. and these bills are very much available of the petitioner. Apart from that, it is the case of the petitioner is that the 2nd respondent deducted TDS and Retention Money in the petitioner's bill as per the Port norms. Therefore, all these documents would unerringly go to show that though the 2nd respondent have engaged the petitioner as a sub-contractor to the above said works and the 2nd respondent has suppressed this matter from the Port Authorities.

9. The petitioner also states that the 1st respondent withhold the work amount of the 2nd respondent name, now, the 2nd respondent is making an attempt to get their pending dues with the 1st respondent's Port without settling the dues behind their back. Therefore, the intention of the 2nd respondent officials is not good. Therefore, they are trying to get the funds from the Port authorities without settling the petitioner dues and in the above circumstances, the petitioner has sent a representation on 19.12.2017 to the 1st respondent to conduct an enquiry in connection with the engagement of the sub contract violation, the various rules of Port Trust and floating the terms and conditions of the work order. On receipt of the said representation an acknowledgment was given by the 1st respondent official in the register maintained by the petitioner. Again on 27.05.2018, the petitioner also sent a further representation by way of reminder to the 1st respondent and also requested the 1st respondent to disburse the pending dues of the 2nd respondent after deducting the dues to the petitioner. Though, it is the bounden duty of the 1st respondent to consider the petitioner's representation dated 19.12.2017 and 27.05.2018.

10. It is the case of the petitioner that at any movement, the 2nd respondent is making an attempt to get their dues from the 1st respondent in which this petitioner also eligible for their dues. Therefore, with the above urgency they moved before this Court for the above prayer.

11. I heard Mr. R. Gandhi, learned counsel appearing for the petitioner and Mr. V. R. Shanmuganathan, learned Special Government Pleader appearing for the 1st respondent and perused the entire materials available on record.

12. When on 30.05.2018, the writ petition came for admission, this Court ordered notice in the writ petition and an order of interim injunction was granted, but later on, the learned counsel



appearing for the petitioner mentioned before this Court that his representation dated 19.12.2017 and 27.05.2018 can be disposed by conducting an enquiry by the 1st respondent, by giving an opportunity to the petitioner as well as the 2nd respondent and pending disposal of the said representation, the 1st respondent may be directed not to disburse the dues to the 2nd respondent till the disposal of the writ petition.

13. Considering the petitioner's case, I heard Mr.R.Gandhi, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the 1st respondent, but due to the limited prayer sought for by the petitioner, without issuing any notice to the 2nd respondent, I am inclined to pass the following orders.

14. In the result:

(a) this writ petition is disposed of;

(b) the 1st respondent is directed to consider the petitioner's representation dated 19.12.2017 and 27.05.2018, by conducting proper enquiry in respect of engagement of the petitioner by the 2nd respondent by way of sub contract by civil works as per the orders of the 1st respondent, by giving personal opportunity to the petitioner as well as the 2nd respondent and to pass orders within a period of three months from the date of receipt of a copy of this order;

(c) till the disposal of the said representation, the 1st respondent is directed not to disburse the final bill and retention the money to be paid to the 2nd respondent for the civil work carried out for modification and improvement of Port Entrance Green Gate at V.O.Chidambaranar Port Trust, Tuticorin. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Chief Engineer,
V.O.Chidambaranar Port Trust,
Tuticorin.

+ 1 CC TO Mr.R.GANDHI, ADVOCATE IN SR No. 9324

VSV

TE/SKN-RSK/SAR-2 : 08/06/2018 : 4P/3C