



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.12990 of 2018
and W.M.P. (MD) No.11879 of 2018

A.K.Rajpriam

.. Petitioner

Vs.

1.The Superintending Engineer,
(National Highways),
Tirunelveli.

2.The Divisional Engineer,
(National Highways),
Tirunelveli - 2.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in his proceedings Memo No.585/2018/E Va Tho A/dated 15.03.2018 and the consequential impugned order passed by the second respondent in his proceedings Ka.No.8/2018/A1 dated 08.06.2018 and quash the same as illegal, without jurisdiction and in violation of principles of natural justice and consequently directing the respondents to disburse the pending RA Bill and Final Bill payments payable to the petitioner pursuant to the completion of works namely strengthening in Km.2/0-6/6, 13/2-14/2, 17/--2014, 25/0-29/6 of Rajapalayam Vembakottai Road - Job No. CRF - TN -2016-17-66 and reconstruction of RCC Slab Culverts at Km 85/8, 85/10, 94/4, 158/2, 166/6, 166/8, 167/2, 167/4 and 218/4 of NH - 208 (Kollam - Thirumangalam Road) in the state of Tamilnadu within a time frame fixed by this Court.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.S.Nagarajan

Special Government Pleader

O R D E R

This Writ Petition has been filed to quash the impugned order passed by the second respondent dated 08.06.2018 withholding a sum of Rs.2,06,39,356/- and for consequential direction to disburse the amount payable to the petitioner pursuant to the completion of works.



2. The petitioner is a Class-I Contractor registered under the respondents. He was the successful bidder in respect of certain works floated by the respondents.

3. It is a mandatory requirement that for getting work order, one has to produce bank guarantee as per the terms and conditions of the tender. On production of bank guarantee, the petitioner would be awarded with work order and hence, the petitioner submitted bank guarantee. At the time of processing, it was found that the bank guarantee submitted by the petitioner was a bogus one. Therefore, the respondents have taken action against the petitioner for cancellation of license.

4. The action taken by the respondent Department was questioned before this Court in W.P.(MD) No.12763 of 2018 and the same was stayed for want of jurisdiction. Now, the present impugned order is with regard to withholding of the amount due to the petitioner after completion of the work entrusted to him.

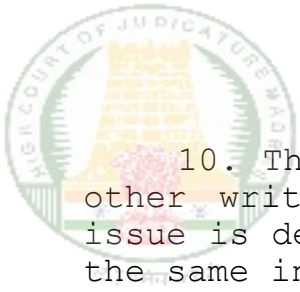
5. Admittedly, the work entrusted to the petitioner has been completed and the Bills submitted by him were certified and passed by the competent officials of the respondent Department. At that juncture, the impugned order came to be passed by the second respondent dated 08.06.2018 withholding the amount for assessing the loss caused to the Government. The very same order mentions that all the deductions have already been done and a net amount of Rs.2,06,39,356/- is due to the petitioner.

6. However, according to the learned counsel for the petitioner, the respondents at the most withhold the amount involved on production of bank guarantee and it cannot be construed as a loss to the Government. Fake bank guarantee was given only to the tune of Rs.31,15,000/-, for that the entire amount cannot be withheld. Also the amount has not been deposited in any bank. If it is deposited in the bank, it will fetch some interest at the time of disbursement.

7. This Court issued notice to the respondents and in response to the same, the second respondent has filed a counter narrating the factual averments with regard to the award of the contract and production of materials. But it does not disclose any fact regarding the loss caused to the Government nor is there an amount quantified as loss.

8. However, the learned counsel for the petitioner would submit that the amount involved in production of bank guarantee was to the tune of Rs.31,15,000/- and it can be withheld and deposited in a bank.

9. This Court finds some force in the submission of the learned counsel for the petitioner.



10. The amount of Rs.31,15,000/- which is the subject matter of other writ petition can be withheld by the respondents till the issue is decided. It is also advisable in public interest to deposit the same in bank deposit to avoid payment of interest.

11. Considering the facts and circumstances of the case, a direction is issued to the respondents to deposit the said amount in one of the nationalized banks till disposal of the writ petition in W.P.(MD) No. 12763 of 2018 and consider the issue of disbursement of balance amount in accordance with law as expeditiously as possible.

12. The writ petition is ordered with the above terms. No costs. Consequently, connected W.M.P.(MD) No.11879 of 2018 is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To,

1.The Superintending Engineer,
(National Highways),Tirunelveli.

2.The Divisional Engineer,
(National Highways),Tirunelveli - 2.

+1cc to Mr.B.Saravanan, Advocate, SR.No.70733.

W.P(MD)No.12990 of 2018
and W.M.P.(MD) No.11879 of 2018
02.07.2018

cm

RAM/VR/SAR 2/06.07.2018/3P/4C