



3. The Chief Engineer
Tamil Nadu Water Supply and Drainage Board
Southern Region
Madurai.

..3rd Respondent WA No.1691/13

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3. The Chief Engineer
Tamil Nadu Water Supply and Drainage Board
Eastern Region Thanjavur ..3rd Respondent in WA No.1739/13

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30.11.2012 in WP No.22552/19 and WP No.27389/10.

Prayer in WP No.22552 of 2009 : Calling for the records of the 1st respondent comprised in its Lr.No.F.26599/SDO 1/Com/2007 dated 14.10.2008 and the consequential communication of the 4th respondent Lr.No.1827/F.Tveli UGSS/SDO.2 dated 23.2.2009 and set aside the same as being arbitrary, illegal and one passed without application of mind and violation of provisions of the Tamil Nadu Transparency in Tenders Act 1998 and Rules 2000 framed thereunder and consequentially direct the first respondent to consider and make payment towards price-escalation incurred by the petitioner in relation to the execution of works under the Agreement No.CER/S.R./MDU-1-2003-04 dated 21.4.2003 in view of the applicability of the price-adjustment provisions set out in the Tamil Nadu Transparency in Tenders Act 1998 and Rules framed thereunder.

Prayer in W.P.No.27389 of 2010: Directing the First Respondent to make payment as per Petitioner representation dated 21.03.2009 in accordance with price-adjustment clause incurred in respect of the execution of the Agreement No. CE/ER/TNJ/23/2003-2004 dated 15.09.2003.

For Appellant in
W.A.No. 1739 / 2013 : Mr. A.Jenasenan

For Appellant in
W.A.No. 1691/2013 : Mr. Rahul Balaji

For Respondents in
both W.As. : M/s.S.Thamizharasi

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

The Appellants/Petitioners, M/s. East Coast Constructions and Industries Limited, and M/s. Subaya Constructions Company Limited have filed these intra Court Appeals aggrieved by the Order of the learned Single Judge dated 30.11.2012 whereby the

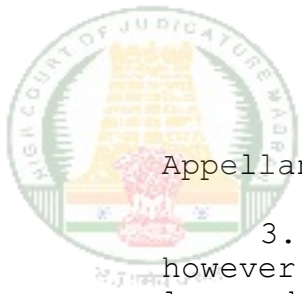


Writ Petitions came to be dismissed by the learned Single Judge by relegating the parties to the remedies of Civil Suit for claiming any price escalation with respect to the contracts awarded to them by the respondent - Tamil Nadu Water Supply and Drainage Board (TWAD), Chennai. The relevant portion of the order of the learned Single Judge is quoted below for ready reference:-

"4. The agreements executed by the petitioners as well as the respondent Board, dated 21.04.2003 and 15.09.2003, contain a clause stating that in the event of any dispute arising between the parties in respect of any of the matter comprises in the contract, the same shall be settled by a competent Court having jurisdiction over the place where contract is awarded and agreement is concluded and by no other Court. Thus, it is evident that the petitioners have to establish about the escalation cost by adducing evidence, even assuming that they are eligible to get the same, by filing a suit. If any such suit is filed, the Civil Court concerned can hear the parties as to whether the petitioners are entitled to get escalation cost and if so, what is the amount they can demand from the respondent Board.

5. In view of the above specific clause and the petitioners have to lead evidence, these Writ Petitions are disposed of granting liberty to the petitioners to approach the Civil Court in terms of the agreements. If any such suit is filed, while computing the period of limitation, the Court concerned is directed to exclude the period spent in prosecuting these writ petitions viz., 3.11.2009 and 19.11.2010, respectively, to till date. No costs. Consequently, connected miscellaneous petitions are closed."

2. The learned counsel for the Appellants urged in unison that the respondent /Department admitted before the learned Single Judge that escalation clause is applicable to the contract in question executed by the appellants and therefore, the relegation to seek remedy by way of civil suit was not warranted and the learned Single Judge ought to have determined such escalation and awarded the same in favour of the



Appellants/Petitioners.

3. The learned counsel for the Respondent Department however disputed the said position and submitted that the learned Single Judge has rightly relegated the parties to institute civil suits with respect to the quantum of compensation or price escalation if any payable to them which can be determined only by the competent Civil Court.

4. Having heard the learned counsels, we are of the concerned opinion that there is no merit in the Writ Appeals and the learned Single Judge was perfectly justified in relegating the parties to the civil remedy by way of civil suit. The issues relating to escalation as claimed by the appellants/petitioners are issues of fact, requiring evidence and documents, which deserve to be proved before the competent Civil Court. Therefore, the Writ Petitions under Article 226 of the Constitution of India are absolutely unsuited remedy in such cases. We find no error in the order of the learned Single Judge directing the parties to go before the competent Civil Court in and consequently the Writ Appeals deserve to be dismissed. Accordingly, the Writ Appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vsg

To

1. Tamil Nadu Water Supply and
Drainage Board (TWAD),
Rep. by its Managing Director,
TWAD Board, Chepauk
Chennai - 600 005.
2. The Executive Engineer
TWAD Board
Sewerage Division
Perambalur.
3. The Chief Engineer
Tamil Nadu Water Supply and Drainage Board
Eastern Region Thanjavur



4. The Executive Engineer
TWAD Board
Sewerage Division
Tirunelveli

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5. The Chief Engineer
Tamil Nadu Water Supply and Drainage Board
Southern Region
Madurai.

+1cc to Mr.A.Jenasenan, Advocate SR.No.53336

+2cc to M/s.S.Thamizharasi, Advocate SR.No.52749,52750

+1cc to Mr.R.Parthasarathy, Advocate SR.No.53221

W.A.Nos. 1739 & 1691 of 2013
And
M.P.Nos. 1 & 1 of 2013

RK(CO)
GMY(02/08/2019)