

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.s 19727 of 2009 & 19844 of 2010  
and  
M.P.s 1 & 2 of 2009 & M.P.s 1 & 2 of 2010

R.Shanmugam

... Petitioner in  
both W.P.s

Versus

1. The Managing Director,  
TWAD Board,  
Chennai.
2. The Chief Engineer,  
TWAD Board,  
Southern Region,  
Madurai.
3. The Superintending Engineer,  
TWAD Board,  
Southern Region,  
Madurai.
4. The Executive Engineer,  
TWAD Board,  
Urban Division,  
Dindigul.

... Respondents in  
both W.P.s

PRAYER in W.P. 19727 of 2009 : Writ Petition is 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 Proceedings of the 2<sup>nd</sup> respondent herein in his Lr.No.F.254/2005/SDO-1/C and A, dt. 18.09.2009 and quash the same and consequently direct the respondents herein to pay the balance bill amount in respect of Zone I and II, 5 percent withheld amount, Value of the unmeasured work in Zone I to III and supplemental work Secrity Deposit and all other amount due relating to Work Order No.CE/SR/MDU/Lr. No.Vadamadurai/ SDO-2/2005-1, dt. 31.01.2006 including the difference in bill amount

for the work done in Zone II and value of the work done in Zone III at the escalated rate applicable for the year 2008-2009 to the petitioner herein with interest at the rate of 12 percent from the date of Writ Petition till the date of the actual payment.

(Prayer amended as per order dated 04.11.2019 in W.M.P.28818/2019)

PRAYER in W.P. 19844 of 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents from carrying any tender schedule work in respect of the proceedings of the 3<sup>rd</sup> respondent herein dated 13.08.2010 in I FB No.F254/DO.II/2009 without measuring the total work done by the petitioner herein as per the agreement No.CER/SR/MDU/6/2006-07 dated 29.05.2006.

(Prayer amended as per order dated 11.09.2014 in M.P.3/2010)

For Petitioner : Mr.V.R.Rajasekaran  
in both W.P.s

For Respondents : Mrs. Thamizharasi for R1  
in both W.P.s

Mrs.Sudarshana Sundar  
for R2 to R4

C O M M O N O R D E R

W.P. 19727 of 2009

The Writ Petition has been filed challenging the order passed by the 2<sup>nd</sup> respondent Chief Engineer, TWAD Board, terminating the petitioner contract.

W.P. 19844 of 2010

The Writ Petition has been filed by the petitioner seeking a direction forbearing the respondents from carrying out any tender schedule work without measuring the total work done by the petitioner as per the agreement.

2. The brief facts leading to the filing of these Writ Petitions are as follows :

The petitioner was awarded with a contract for providing Clean Water Supply Scheme to 254 rural habitations in Vadamadurai and Vedasandur Unions. As per the agreement, the petitioner has to complete the work within a period of 12 months. But, after issuing the work order, the respondents are not able to get approval from the National Highways, State Highways and Railway department for laying pipeline. Hence, the respondents divided the above scheme into three segments of 51, 96, 107 habitations. So far as 51 habitation is concerned, the petitioner has completed the scheme within the prescribed period. In so far as other remaining two segments are concerned, the petitioner was not able to complete the same, since the respondents did not get permission from the highways authorities as well as railway department. In the above circumstances, the respondents has also extended the time limit for segments 1 and 2. In the meantime, the petitioner has provided a water connection to 96 habitations, and the work in respect of another 57 habitation was also completed. So far as third segment is concerned, the petitioner has completed nearly 25 habitations, but that was not inspected and measured by the respondents. Only because of the delay in getting permission from the highways authority by the respondents, the petitioner could not proceed with the work, for which, the petitioner cannot be blamed.

3. Earlier, the 4<sup>th</sup> respondent has issued a show cause notice for the delay in completion of work, for which the petitioner has sent a detailed reply on 05.08.2009 and 15.09.2009. Thereafter, another show cause notice was also issued by the 3<sup>rd</sup> respondent, for that also, the petitioner has sent a suitable reply stating the reason for the delay. Without considering the reply, once again, the 2<sup>nd</sup> respondent has issued another show cause notice with the very same allegation on 08.09.2009, before the petitioner submitting his reply, the 3<sup>rd</sup> respondent has hurriedly passed the impugned order, thereby, terminating the petitioner's contract without any enquiry whatsoever. In the above circumstances, the petitioner has challenged the order of termination of contract in W.P. 19727 of 2009. After terminating the contract, the respondents are taking steps to award the remaining work to some other person. Hence, another Writ Petition came to be filed in W.P. 19844 of 2010 forbearing the respondents from awarding contract to any third parties without measuring the total work done by the petitioner.

4. The respondents have filed a counter affidavit stating that, the work was awarded on Turnkey basis to the petitioner by an order dated 31.01.2006. Thereafter, an agreement was concluded between the parties on 29.05.2006. Subsequently, the work site has been handed over to him on 14.02.2007. As per the agreement, the work should be completed within a period of 12

months viz., on or before 13.02.2008, but the petitioner did not complete the work for more than 3 years. So far as the allegation in respect of obtaining permission from the railway department for laying pipe line crossing railway line is concerned, a proposal has been sent to Railway authorities. The petitioner has also carried two nos. of railway crossing works. It is further submitted that there is a delay in obtaining the permission from the National Highways Authority. Hence, the 2<sup>nd</sup> respondent has given a letter to the petitioner to take action to complete all pipeline works except the pipe line to be laid in the National Highways Authority portion. Even though the work site was handed over to him on 14.02.2007, he has not commenced the work even after the lapse of eight months.

5. However, considering the work completed by the petitioner, a sum of Rs.2.47 crores has been paid to the petitioner. The petitioner has violated the agreement condition, and did not complete the work within the agreed period. A time extension was also given to the petitioner on condition that, the contractor should not claim any escalation of rates. After issuing proper show cause notice to the petitioner, the respondents have terminated the contract. Hence, there is no illegality in the impugned order passed by the 2<sup>nd</sup> respondent.

6. Mr. V.R.Rajasekaran, learned counsel appearing for the petitioner would submit that, the entire work has been divided into three zones, and he has completed entire works in Zones 1 and 2. Thereafter, the maintenance period was also over. So far as, Zone 3 is concerned, because of the delay in getting permission from the authorities, the petitioner was not in a position to complete the work within a stipulated period. Even the earlier show cause notices issued by the 3<sup>rd</sup> and 4<sup>th</sup> respondents with similar allegations, the petitioner has given a reply, but those replies were not considered. Thereafter, the 2<sup>nd</sup> respondent issued a fresh show cause notice dated 08.09.2009. Before the petitioner submitting explanation for the show cause notice, the 2<sup>nd</sup> respondent has hurriedly passed an order dated 18.09.2009, thereby terminated the entire contract, which includes the work done by the petitioner in Zones 1 and 2. That apart, for the admitted work, the respondents have to pay a sum of Rs.10 lakhs to the petitioner. By virtue of the order of termination, the petitioner is not in a position to get the legitimate amount payable to him. The learned counsel has further submitted that, the impugned order has been passed in utter violation of principles of natural justice, and without giving any reasonable opportunity to the petitioner.

7. Per contra, the learned counsel appearing for the respondents would contend that, as per the agreement, the petitioner has to complete the work within a period of 12

months, but he has deliberately delayed the work, and he was not able to complete the work for more than 3 years. Even after the show cause notice issued by the 3<sup>rd</sup> respondent, he did not send any reply. In the said circumstances, the 2<sup>nd</sup> respondent cancelled the agreement. The learned counsel has further submitted that, the above work has been subsequently allotted to another contractor, and he has completed the work. The remaining cost of Rs.3.75 lakhs has to be recovered from the petitioner.

8. I have considered the rival submissions made by learned counsel appearing for petitioner as well as learned counsel appearing for respondents and perused the materials available on record carefully.

9. The premortial contention of the learned counsel appearing for the petitioner is that, the petitioner has completed the work in respect of Zones 1 and 2, so far as 3<sup>rd</sup> zone is concerned, due to the delay in getting permission from the railway authorities by the respondents, the petitioner was not in a position to complete the work, this was not disputed in the counter affidavit filed by the respondents. That apart, earlier, two show cause notices issued by 3<sup>rd</sup> and 4<sup>th</sup> respondents viz., the Superintending Engineer, TWAD Board and Executive Engineer TWAD Board, with some allegation, and the petitioner said to have sent a suitable reply.

10. Thereafter, another show cause notice for the very same allegation, has been sent by the 2<sup>nd</sup> respondent Chief Engineer on 08.09.2009. Subsequently, based on the show cause notice, the contract was terminated on the ground that the petitioner has not given any reply to the show cause notice. From the materials available on record, it could be seen that, the earlier show cause notices issued by the 3<sup>rd</sup> and 4<sup>th</sup> respondents, the petitioner has sent reply explaining the reasons for the delay in completing the work. Once again, another show cause notice was issued on 08.09.2009 by the 2<sup>nd</sup> respondent leveling same charges. Even before the petitioner submitting his explanation, the 3<sup>rd</sup> respondent without conducting any enquiry whatsoever, terminated the contract. When there is a dispute regarding the delay in completion of work, the 2<sup>nd</sup> respondent before terminating the contract, ought to have given a reasonable opportunity to the petitioner to submit his explanation, and an enquiry shall also necessarily be conducted by the 2<sup>nd</sup> respondent arisen. But, the 2<sup>nd</sup> respondent without conducting any enquiry, and without giving any reasonable opportunity to the petitioner, terminated the contract without assigning any reasons. Therefore, I am of the considered view that the impugned order has been passed in total violation of principles of natural justice, and on that ground, the impugned order is liable to be set aside.

11. In the said circumstances, without going to the merits of the case, the impugned order passed by the 2<sup>nd</sup> respondent vide Lr.No.F.254/2005/SDO-1/C and A, dated 18.09.2009 is set aside, and the matter is remanded back to the 2<sup>nd</sup> respondent to issue fresh show cause notice to the petitioner, and after receiving reply from the petitioner, if any, the 2<sup>nd</sup> respondent is directed to conduct enquiry, and pass suitable orders on merits in accordance with law.

12. So far as the Writ Petition in W.P. 19844 of 2010 is concerned, the work has been handed over to another contractor, and he has also completed the work. Hence, prayer sought by the petitioner in the said Writ Petition, has become infructuous, and the same is liable to be dismissed.

13. In the result, in W.P. 19727 of 2009 is allowed, the impugned order is set aside, and the matter is remanded back to the 2<sup>nd</sup> respondent for conducting enquiry after issuing a fresh show cause notice to the petitioner, and pass suitable orders on merits in accordance with law. So far as W.P. 19844 of 2010 is concerned, the Writ Petition stands dismissed as infructuous. No costs. Consequently, the connected Miscellaneous Petitions in M.P.s 1 and 2 of 2009 and 1 and 2 of 2010 are closed.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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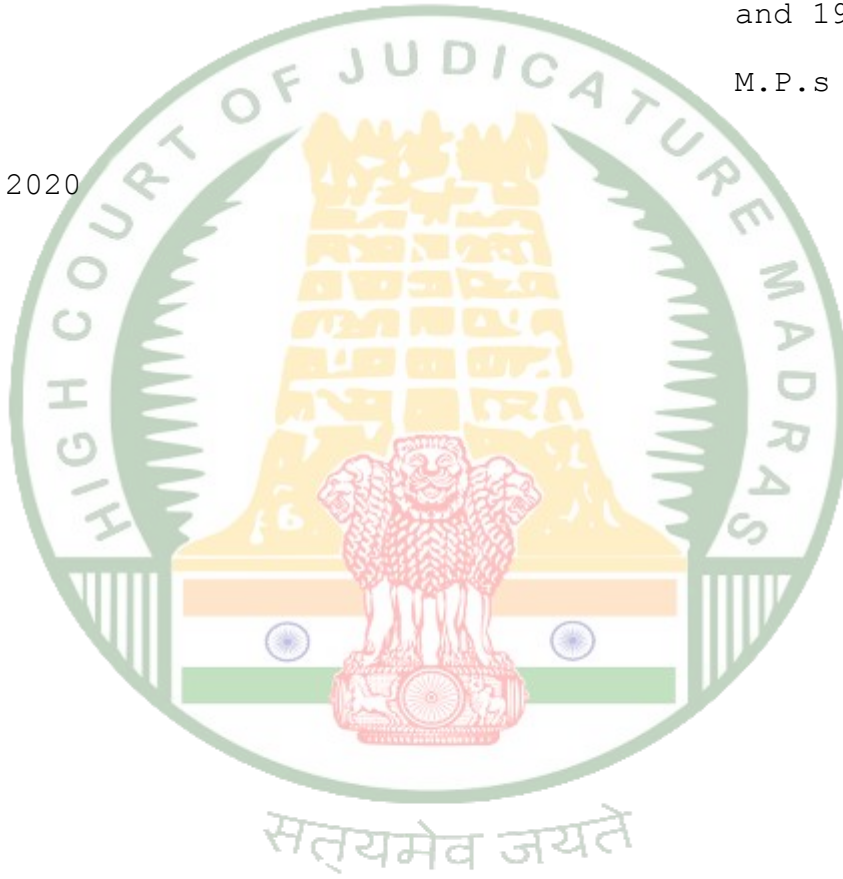
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4. The Executive Engineer,  
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+1cc to Mr.V.R.Rajasekaran, Advocate, SR.No.97949.  
+1cc to Ms.S.Thamizharasi, Advocate, SR.No.98210.

W.P.s 19727 of 2009  
and 19844 of 2010  
and  
M.P.s 1 of 2009 &  
2 of 2010

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