IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.14546 of 2014 &
M.P.No.1 of 2014

M/s.Subaya Constructions Co. Ltd.,
Rep. by its Director Mrs.S.Meenakshi,
No.21, Soundarapandian Street,
Ashok Nagar,
Chennai - 600 083. ... Petitioner

Vs.

1.The Managing Director,
TWAD Board, Chennai.

2.The Engineering Director,
TWAD Board, Chennai.

3.The Chief Engineer,
TWAD Board, Northern Region,
Vellore.

4.The Executive Engineer,
TWAD Board,
Urban Division, 1st Floor,
Regulated Market Building,
Villupuram - 605 602. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, forbearing the respondents from unilaterally deducting any amount from the price variation bills prepared on the basis of the agreement BOQ by reducing it, based on the estimate rate of 2007, pending disposal of the adjudication proceeding before the adjudicator.

For Petitioner : Mr.Natarajan

For Respondents : Mrs.S.Thamizharasi
Standing Counsel

O R D E R

The prayer in the Writ Petition is for issuance of Writ of Mandamus, forbearing the respondents from unilaterally deducting any amount from the price variation bills prepared on the basis of the agreement BOQ by reducing it, based on the estimate rate of 2007, pending disposal of the adjudication proceeding before the adjudicator.

2. The case of the petitioner is that he was awarded with contract for providing the underground sewerage scheme to Villupuram Municipality. The petitioner successfully completed the contract as per the terms and conditions of the contract. When the petitioner submitted its 26th R.A.Bill for price escalation for the works done during the quarter, the fourth respondent informed that the price escalation under Clause 47 of the agreement could not be calculated, though, Clause 47-1(a),(b),(c) of the agreement stipulates that the price variation had to be necessarily calculated. According to the petitioner, the fourth respondent intends to calculate the value of the work based on the estimate rates prepared by the Department while calling the tenders and not as per the BOQ rates in the agreement, due to the recommendations of the Department's internal audit which was done after six years of the agreement, which is not binding on the petitioner. Thereafter, the petitioner made representation to the second respondent on 07.08.2018 and the second respondent has given necessary instructions to the fourth respondent to release the payment towards the price variation without any deduction as per the agreement conditions and the fourth respondent also gave his concurrence to release the price variation amount without any deductions as per the agreement conditions vide letter dated 04.10.2013. The petitioner made several requests to the fourth respondent to release the payments towards the price variations taking the R value as the value of the work done during the quarter based on the BOQ rates as per Clause 47-1 (a), (b), (c) of the agreement, but however, there is no response from the fourth respondent. The petitioner has also sent a letter dated 26.04.2014 to the respondents to release the payments on the agreement BOQ rates, without any deductions any amount unilaterally, until adjudication process is over. The said dispute between the petitioner and the third respondent was referred to Mediator as per Clause 24 of the agreement and the same is pending. However, the petitioner has approached this Court for forbearing the respondents from unilaterally deducting any amount from the price variation bills prepared on the basis of the agreement BOQ by reducing it, based on the estimate rate of 2007, pending disposal of the adjudication proceedings before the Adjudicator.

3. The learned Standing Counsel for the respondents has drawn the attention of this Court by relying upon paragraph No.9 of the counter affidavit that the deduction has been made for want of clearance from Principal Auditor General, Head Office, TWAD, Chennai and in paragraph No.11, it has been stated that the Adjudicator himself allowed for price adjustment clause but not admitted for 45% increase. It is further stated that the Executive Engineer, Urban Division, Villupuram has also reported that Audit is not applicable to the project, since the project is executed on DBOT basis. The Managing Director has also addressed a letter dated 03.09.2014 to the Auditor General, explaining the position and emphasizing on the fact that the price Adjustment Clause is applicable. Therefore, without clearance from the Principal Auditor General, the respondents are not in a position to settle the entire due amount.

4. As could be seen from the counter affidavit that the deduction has been made for want of clearance from the Principal Auditor General, Chennai and Head Office TWAD, Chennai, the respondents could not settle the entire due amount. Since the Principal Auditor General, Chennai, is not a party in this Writ Petition, this Court directs the petitioner to make a representation to the said Principal Auditor General, Chennai, for getting clearance of audit objection, based on the proposal submitted by the respondents and work out his remedy.

5. With the above direction, the Writ Petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Managing Director,
TWAD Board, Chennai.

2.The Engineering Director,
TWAD Board, Chennai.

3.The Chief Engineer,
TWAD Board, Northern Region,
Vellore.

4.The Executive Engineer,
TWAD Board,
Urban Division, 1st Floor,
Regulated Market Building,
Villupuram - 605 602.

+1cc to Mr.B.Natarajan, Advocate SR.No.27379

+1cc to M/s.S.Thamizharasai, Advocate SR.No.27386

W.P.No.14546 of 2014 &
M.P.No.1 of 2014

PMS(CO)
GMY(01/04/2019)