



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :03.12.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.8203 & 8204 of 2017

In W.P.No.8203 of 2017
M/s.SPL Infrastructure Pvt. Ltd.,
Represented by S.P.Lakshmanan
15, Kasturi Rangan Road, Alwarpet,
Chennai - 600 018.

... Petitioner

Vs

1.The Chief Engineer,
Highways, Metro Works,
Highways Office Buildings, HRS Campus,
Sardar patel Road, Guindy,
Chennai - 600 025.

2.The Superintending Engineer,
Highways, Metro Works,
Anna Salai, Nandanam,
Chennai - 600 035.

3.The Divisional Engineer,
Highways, CMDP Division - I,
Real Diamond Building,
78, Anna Salai, Guindy,
Chennai - 600 032.

4.The State of Tamil Nadu,
Rep. by Secretary to Government, Highways
Department, Fort St. George, Chennai - 600 009

... Respondents

(R4 impleaded as per order dated
21.10.2019 in WMP.No.28757 of 2019
in WP.No.8203 of 2017)



PRAYER in WP.No.8203/2017:Writ Petitions filed under Article 226 of the Constitution of India seeking for an issuance of a writ of mandamus directing the respondents to disburse the admitted dues amounting to Rs.21,82,000/- along with interest at 18% per annum from the date when the amount has become due till the date of payment.

In W.P.No.8204 of 2017
M/s.SPL Infrastructure Pvt. Ltd.,
Represented by S.P.Lakshmanan
15, Kasturi Rangan Road, Alwarpet,
Chennai - 600 018. ... Petitioner

Vs

- 1.The Chief Engineer,
Highways, Metro Works,
Highways Office Buildings, HRS Campus,
Sardar patel Road, Guindy,
Chennai - 600 025.
- 2.The Superintending Engineer,
Highways, Metro Works,
Anna Salai, Nandanam,
Chennai - 600 035.
- 3.The Divisional Engineer,
Highways, CMDP Division - I,
Real Diamond Building,
78, Anna Salai, Guindy,
Chennai - 600 032.
- 4.The State of Tamil Nadu,
Rep. by Secretary to Government, Highways
Department, Fort St. George, Chennai - 600 009.
...Respondents
(R4 impleaded as per order dated
21.10.2019 in WMP.No.28758 of 2019
in WP.No.8204 of 2017)

PRAYER in WP.No.8204/2017: Writ Petition filed under Article 226 of the Constitution of India seeking for an issuance of a writ of mandamus directing the respondents to disburse the admitted dues amounting to Rs.21,16,000/- along with interest at 18% per annum from the date when the amount has become due till the date of payment.



WEB COPY

For Petitioner
in both W.Ps. : Mr.D.Balaraman

For Respondents
in both W.Ps. : Mr.K.Ravikumar,
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed seeking for writ of mandamus to direct the respondents to disburse the amount of Rs.21,82,000/- and Rs.21,16,000/- along with interest at the rate of 18% per annum from the date of due till the date of payment.

2. The case of the petitioner is that the petitioner company is a contractor for executing major infrastructure projects particularly roads and bridges in the states, National Highways and National Highways Authority of India. The petitioner company had entered into two contracts with the respondents. There was an enormous delay in the implementation of the projects in both the contracts. Due to the said delay in both the contracts, penalty of Rs.21,82,000/- and Rs.21,16,000/- was imposed on the petitioner company by the respondents for two contracts. According to the petitioner company, delay in implementing both the projects was only due to the fault of the respondents. According to the petitioner, several requests were made by the petitioner to the respondents requesting for refund of penalty which was wrongly recovered from the petitioner. It is the case of the petitioner that by circular memos issued by the first respondent in Memo No.3053/2009/JE-II/dated 16.04.2010, the Chief Engineer, (H) Metro, Alandur, Chennai - 16 requested the Divisional Engineer (H), Chennai Metropolitan Development Plan, Division-I to refund the penalty amount of Rs.21,82,000/- and Rs.21,16,000/- collected from the petitioner company subject to relevant rules. According to the petitioner, since the first respondent, Chief Engineer has admitted that the petitioner company is entitled for the refund of penalty amount, the respondents will have to refund the same to the petitioner in both the contracts. According to the petitioner, despite several requests, the respondents failed to refund the penalty amount which was wrongly recovered from them. In such circumstances, these writ petitions have been filed.



3. A counter affidavit was also filed by the third respondent denying that the petitioner is entitled for refund. According to the third respondent, the Government has rejected the refund application, since there was an enormous delay in the execution of the projects by the petitioner company.

4. It is brought to the notice of this Court that an order dated 02.08.2016 passed by the Government in G.O.Ms.No.95, Highways and Minor Ports (HW1) Department, pursuant to the directions given by this Court by order dated 22.07.2015 in W.P.Nos.17008 & 17054 of 2014 in the case of P.Arun Kumar vs. The Government of Tamil Nadu, the first respondent to reconsider the refund application and granted the refund of the penalty amount to the said contractor. The case of the writ petitioner in the instant case is also identical to the facts of the case of the said contractor in the aforesaid case. In that case also, there was an internal communication between the Chief Engineer and the Divisional Engineer wherein the Chief Engineer had requested the Divisional Engineer to refund the penalty amount to that contractor subject to the relevant rules. Even though such a request has made, the Government has rejected the refund application without assigning any reason.

5. This being the case, this court is of the considered view that it is just and necessary that the fourth respondent once again reconsiders the refund application and pass appropriate orders by assigning proper reasons for either accepting or rejecting the refund application submitted by the petitioner.

6. The petitioner is directed to submit a fresh application for refund of penalty amount of Rs.21,82,000/- and Rs.21,16,000/- to the fourth respondent within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the fourth respondent shall pass final orders within a period of eight weeks thereafter after giving sufficient opportunities to the petitioner to put forward their case.

7. With the aforesaid directions, these writ petitions are dispose of. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar



To

1.The Chief Engineer,
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Chennai - 600 025.

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Real Diamond Building,
78, Anna Salai, Guindy,
Chennai - 600 032.

4.The Secretary to Government,
Highways Department,
Fort St. George, Chennai - 600 009.

+1 cc to Government Pleader sr101176

+2 ccs to Mr.D.Balaraman Advocate sr100566 & 100567

W.P.Nos.8203 & 8204 of 2017

aa10/01/2020