

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2019

Pronounced on: 04.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No. 24336 of 2017

A.Ambika

...Petitioner

Vs

1. The Tamilnadu Water Supply & Drainage Board,
By its Managing Director,
Chepauk, Chennai 5.
2. Chief Engineer,
Tamil Nadu Water Supply & Drainage Board,
Vellore.
3. The Executive Engineer,
Tamil Nadu Water Supply & Drainage Board,
Urban Division,
Villupuram.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to pay the sum of Rs.1,33,95,325/- to the petitioner as per the representation dated 14.06.2017 and 25.07.2017.

For Petitioner : Mr.M.Raja Sekhar

For Respondents : Mr.R.Ganesh Babu

ORDER

The petitioner has come up with this Writ Petition for issuance of a Writ of Mandamus directing the respondents to pay a sum of Rs.1,33,95,325/- as per her representations dated 14.06.2017 and 25.07.2017.

2. According to the petitioner, her husband late A.S.Arunachalam was a class I Contractor executing contract work in the office of the respondents for the past 10 years and he had unblemished record in the work done by him. It is further stated that pursuant to the tender floated by the respondents 2 and 3 for the Water Supply Improvement Scheme to Villupuram Municipality, her husband applied and he became the successful bidder and he was awarded with the contract. The value of the contract was Rs.8,26,52,705/-. When he was executing the

contract work, he became ill and he was diagnosed with tumor in the brain and also kidney failure. Hence, he was admitted in K.M.S.H Hospital at Coimbatore on 28.10.2008 and underwent surgery on 31.10.2008 in his brain and renal transplantation was done and discharged on 07.12.2008. Moreover, Railway Department refused to give consent for laying pipes, construction of well in sumps of lands belong to them and hence the time schedule for completing the contract was not adhered.

3. The second respondent by order dated 02.02.2009 cancelled the contract on the ground that the time schedule was not followed by her husband. It is the further case of the petitioner that before termination of the contract, he had actually executed the work for a value of Rs.94,06,977/- as against the original value of 8,26,52,705/-. As per clause 41 of the terms and conditions of the contract, no contract work was awarded for the completion of the work left by her husband to any third party for a period of 20 months.

4. The petitioner would allege that after her husband discharged from the hospital, he expressed his willingness to complete the work by sending various representations to the respondents. But, the balance work left out by her late husband was awarded to a Company, viz., M/s.Nagarajan Construction Company, at the rate of Rs.7,32,45,728.57/- and the second Contractor also not completed the work within the time schedule and after extension granted, the work was completed in the year 2014.

5. The petitioner would state that her husband was awarded another contract viz., GINGEE Water Supply Scheme (WSIS) during February 2009 for a sum of Rs.2,35,33,936/-. Notwithstanding the fact that, he successfully completed the work, the respondents 2 and 3 paid only a sum of Rs.1,01,52,409/- and the balance amount of Rs.1,33,95,325/- was withheld by them for the uncompleted work in the Villupuram Municipality.

6. It is the case of the petitioner that the respondents have not incurred any financial loss and in fact they have earned a profit of Rs.1,68,15,214/-. The petitioner gave representations to the respondents for disbursement of the balance amount. Since no response was forthcoming, the present Writ Petition.

7. The first respondent filed a detailed counter denying and disputing the averments made by the petitioner. It is the case of the respondents that the technical sanction was accorded for providing Water Supply Improvement Scheme to the Villupuram Municipality by the Chief Engineer, by his letter dated 20.03.2007 for a sum of Rs.955 Lakhs. The contract was awarded to the petitioner's husband vide letter dated 29.09.2007 and the

total value of the contract was Rs.8,26,52,705/-. The contract period for completion of the work as per the agreement dated 22.10.2007 was 12 months commencing from 12.10.2007 to 11.10.2008. But the contractor had not completed the work within the stipulated time.

8. It is further stated that the contractor was periodically instructed by the Executive Engineer to complete the work as per the program schedule, but the contractor had not shown any required progress and hence penalty was imposed on 30.04.2018 and 05.06.2018. After issuing show cause notices, as per the TWAD Board Rules, the work was terminated.

9. In paragraph 7 of the counter, it is stated that the Contractor in his letter dated 19.08.2010 admitted that "if any recovery found in later date in Villupuram WSIS terminated work, the same may be adjusted in his future payment of GINGEE bills". Hence, the amount of Rs.1,33,95,325/- was withheld for the extra financial commitments to be incurred by the Board in view of the calling for second contract for the work of Villupuram Water Supply Improvement Scheme. In paragraph 9 of the counter it is admitted that the second contractor had completed the work on 24.05.2014, on getting extension of time from the concerned authorities. The withheld amount of Rs.1,33,95,325/- is the extra cost involved for the same quantity of work done by the second Contractor. It is also stated that as per the request of the Local Body, the works D system, valve fixing in D system, Public Fountain in the sanctioned estimate were not executed by TWAD Board since already laid down by Local Body due to urgent need and necessity. But suitable reply was furnished by the Executive Engineer, Urban Division, Tindivanam on 22.12.2017.

10. Mr.M.Raja Sekhar, learned counsel for the petitioner would submit that the husband of the petitioner was awarded two contracts by the respondent-Department and in respect of Gingee work, the entire work was completed in time, but for the Villupuram assignment, it could not be completed fully due to the reason that the petitioner's husband had health issues and after recovery, the request for extension of time for completing the work was not considered by the respondents and in an arbitrary manner, the work was terminated. It is further contended that as per the terms and conditions of the contract, no Work Done Certificate was issued by the respondents and they have not incurred any additional expenditure to carry out the balance works left out by the petitioner's husband and hence, withholding of part of the contract amount in Gingee work is illegal and the petitioner is entitled for payment of the amount.

11. Per contra, Mr.R.Ganesh Babu, learned Standing Counsel for the respondents would contend that the contract of agreement carries time limit to complete the work. Admittedly, the

contractor, who is the husband of the petitioner, has not completed the work in time. The contractor himself has given a letter to the respondents for adjustment of the terminated work with a future payment of Gingee bills. It is the contention of the learned Standing Counsel for the respondents that though the second contractor was awarded Rs.7,32,45,728.57/- to carry out the remaining work, but the Local Body himself have completed part of the works covered under the contract in view of the urgency and necessity. So, the differential amount cannot be a criteria to decide the additional expenditure incurred by the respondents and the bill amount of Rs.1,33,95,325/- was withheld by the respondents for extra financial commitments incurred by the Board for the work of Villupuram Water Supply improvement Scheme. Hence, the petitioner is not entitled for the amount claimed in the Writ Petition.

12. Heard the rival submissions on either side and perused the materials available on record.

13. In the instant case, it is not disputed that Mr.A.S.Arunachalam, the late husband of the petitioner was awarded contracts at Villupuram and Gingee. It is also not disputed that he had completed the entire work at Gingee and in respect of Villupuram, he carried out only part of the work. As per the terms and conditions, the work should be carried out within a period of 12 months. Admittedly, the petitioner's husband completed the work to an extent of Rs.94,06,977/-, till the work was terminated on 02.02.2009.

14. A perusal of the Discharge Summary issued by the Kovai Medical Centre and Hospital Limited, Coimbatore shows that the said A.S.Arunachalam was admitted in the Hospital for kidney ailment and for posterior circulation stroke, for which he was treated from 30.10.2008 to 07.11.2008. It is not disputed that after recovery from the illness, he sent representations on 08.09.2009 and 05.12.2009, requesting the respondent-Department for re-issuance of the work order to complete the remaining work.

15. It is to be noted that though the first contract was terminated on 02.02.2009, the second contract was given only on 04.10.2010 i.e., after lapse of 1 1/2 years of the termination of the earlier contract. The second contractor, completed the work only in the year 2014. The value of the contract for Villupuram Water Supply Improvement Scheme was Rs.8,26,25,705/- and one M/s.Nagarajan and Company was awarded second contract to complete the remaining work for a sum of Rs.7,32,45,728.57/-and the second contractor has completed the balance left out work of the petitioner's husband to a sum of Rs.7,09,97,977.06/- on 24.05.2014.

16. It is the case of the writ petitioner that though the second contractor had quoted Rs.8,78,31,191/-, but completed the balance left out work at the rate of Rs.7,09,97,977/- and the difference amount of Rs.1,68,15,214/- is profit for the respondents.

17. In the matter on hand, admittedly, the respondents have withheld Rs.1,33,95,325/- for the work carried out at GINGEE on the ground that the respondents incurred excess expenditure for the uncompleted work at Villupuram. In paragraph 11 of the counter affidavit filed by the first respondent, though it is admitted that the second contractor was awarded the work at the amount of Rs.7,09,97,977/-, reduction was due to the reason that the local body had executed a part of the work in view of the urgency, but no materials have been given in the affidavit in support of the contention. It is to be noted that detailed representations were given in the months of June 2017 and July 2017, however they were not considered and disposed of in accordance with law.

18. In the light of the above facts, this Writ Petition is disposed of directing the respondents 1 and 2 to consider the representations of the petitioner dated 14.06.2017 and 25.07.2017 and pass orders on merits and in accordance with law, after providing personal hearing to the petitioner within a period of two months from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs.

pvs

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Managing Director,
The Tamilnadu Water Supply & Drainage Board,
Chepauk, Chennai 5.
2. The Chief Engineer,
Tamil Nadu Water Supply & Drainage Board,
Vellore.
- 3.The Executive Engineer,
Tamil Nadu Water Supply & Drainage Board,
Urban Division, Villupuram.

+1cc to Mr.M.Raja Sekhar, Advocate, SR.No.91253
+1cc to Mr.R.Ganesh Babu Advocate, SR.No.91314

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