

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33916 of 2018
and W.M.P.No.39376 of 2018

K.S.Mani Electricals

Rep. by its Proprietor K.Subramaniyan

S/o.P.Kuppusamy

H.O 50, 3rd Cross Street,

Velmurugan Nagar,

Kuyavarpalayam,

Pondicherry - 605 013.

... Petitioner

Vs

1.The Project Director,
Tamil Nadu Road Sector Project II,
No.171, 1st Floor, TNMB Building,
South Kesavaperumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

2.VDB Projects (P) Limited,
Rep. by its Project Manager,
No.842/A, 3rd Floor,
100 Feet Road, Indira Nagar,
Bangalore - 560 038.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner's representation dated 26.11.2018 and to pay the entire bill amount to the petitioner as per the details furnished along with the Annexure contained in the petitioner's written representation dated 26.11.2018.

For Petitioner : Mr.P.Ariyudainambi

For Respondents : Mr.R.Govindasamy,
Special Government Pleader for R1

No appearance for R2

O R D E R

This writ petition is filed for a Mandamus directing the 1st respondent to consider the petitioner's representation dated 26.11.2018 and to pay the entire bill amount to the petitioner as per the details furnished along with the Annexure contained in the petitioner's written representation dated 26.11.2018.

2. The case of the petitioner is as follows:

Petitioner is an utility contractor. The 2nd respondent entered into a contract agreement with the 1st respondent on 16.07.2015 to execute certain Government contract work. The 2nd respondent engaged the petitioner as the utility contractor. Consequently, the petitioner completed all the works in full and the TNEB officials have also issued the work completion certificate long back. Based on the Work Completion Certificate issued by the TNEB officials, the petitioner submitted bills to the Divisional Engineer(Highways), who in turn, forward the same to the 1st respondent. The 2nd respondent has now appropriated illegally from the Escrow account, the payment, which the petitioner alone is entitled to operate apart from illegally withholding the payment of Rs.6,02,615/-. The petitioner having executed the Government contract work in full is entitled to get the outstanding bill amount of Rs.5.19 crores. The 1st respondent has not paid, the bill amount till date. The 2nd respondent has paid only a sum of Rs.24 lakhs to the petitioner after illegally withholding Rs.6,02,615/-, apart from illegal appropriation of Rs.62,24,120 from the Escrow account. All the above said details have been explained through the representation dated 26.11.2018 to the 1st respondent. The 2nd respondent was treated as deemed to be in default and the contract awarded was also terminated by the 1st respondent as early as on 01.11.2018. The 1st respondent, who is a statutory authority owes an obligation to deduct the above said payments payable to the 2nd respondent from his running bill amount or bank guarantee and pay the same to the petitioner.

3. In this writ petition, notice was issued to the 2nd respondent and though the same was served, they have not chosen to appear either in person or through counsel. Their name is printed in the cause list.

4. The 1st respondent filed counter affidavit, wherein it is stated as follows:

The petitioner is not an approved sub contractor to carryout shifting the utility along that road. The authority (TNR SOP-II) has never approved the petitioner. As per EPC(04) Contract Agreement under Article 9, Clause 9.2 the main contractor has to engage a licensed/ approved contractor of the

utility department concerned. Payment of RA bills in respect of bill of electrical bill so far submitted had been released to the main contractor namely, the 2nd respondent, Rs.30,26,615/- and Rs.64,24,131/- on 17.10.2017 and 28.03.2018 respectively. There is no pending payment in respect of utility by TNRSP-II. As per the Contract Agreement Article 9, the main contractor is responsible for shifting the electrical lines. No agreement was executed between TNRSP-II and the petitioner. Therefore, the main contractor is only responsible for his item of work and also if any payment is to be made to the petitioner.

5. Mr.Arivudainambi, learned counsel for the petitioner submitted that though the 2nd respondent is a contractor under the 1st respondent, the fact remains that the 2nd respondent engaged the petitioner as utility contractor to execute the contract and extracted the work from the petitioner and therefore, the 1st respondent having availed the work from the petitioner, is bound to pay the bills raised by the petitioner for the work which has already been done. He further contended that when the contract of the 2nd respondent has been terminated, he is nowhere in the picture and therefore, it is a matter between the petitioner and the 1st respondent and consequently, the petitioner has to be paid for the work which has already been done and completed.

6. Learned Special Government Pleader, on the other hand, submitted that the petitioner is not a contractor under the 1st respondent and therefore, in the absence of privity of contract between the petitioner and the 1st respondent, they cannot make any claim for payment. He further contended that if the petitioner has any claim for payment, it has to be made only against the 2nd respondent by filing appropriate civil suit.

7. Heard both sides.

8. The petitioner claims to have completed certain work as a utility contractor engaged by the 2nd respondent. There is no dispute to the fact that the contract was entered between 1st and 2nd respondents and not between the petitioner and the 1st respondent. Therefore, it is evident that there is no privity of contract between the petitioner and the 1st respondent at any point of time. If the petitioner has executed some work as utility contractor engaged by the 2nd respondent for the purpose of completing the contract work, as entrusted to the 2nd respondent by the 1st respondent, it is for the petitioner to seek such claim against the 2nd respondent by filing appropriate civil proceedings, if the 2nd respondent failed to make such payment to the petitioner. In the absence of any privity of contract between the petitioner and the 1st respondent, I find that there is no legally enforceable claim

available to the petitioner against the 1st respondent, since the dispute between the private parties, namely, the petitioner and the 2nd respondent in respect of payment of money for the work executed by the petitioner on behalf of the 2nd respondent, has to be agitated before the competent Civil Court by filing appropriate Civil proceedings and by adducing evidence.

9. When such being the position, I find that the present relief sought for in this writ petition cannot be granted. Therefore, without expressing any view on the merits of the claim made by the petitioner against the 2nd respondent, this Writ Petition is disposed of by granting liberty to the petitioner to file a Civil Suit by raising all the contentions as raised in this writ petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vsi/gsi

To

1. The Project Director,
Tamil Nadu Road Sector Project II,
No.171, 1st Floor, TNMB Building,
South Kesavaperumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

+1 cc to Mr.P.Arivudainambi, Advocate, S.R.No.12168

+1 cc to the Government Pleader, S.R.No.13485

W.P.No.33916 of 2018

PA(CO)
SSM(01/03/2019)

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