



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD).No.19980 of 2014

WEB COPY

M.Krishnakumar

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai - 600 009.

2.The Government of Tamil Nadu,
Rep. by its Secretary,
Finance Department,
Fort St. George, Chennai - 600 009.

3.The Chief Engineer,
Public Works Department (WRO),
Madurai Region,
Madurai.

4.The Superintendent Engineer,
Public Works Department (WRO),
Thamirabarani Basin Circle,
Tirunelveli.

5.The Executive Engineer,
Public Works Department (WRO),
Kothaiyar Basin Circle,
Nagercoil,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the fifth respondent to forward the claim of 1% bonus amount to the respondents 1, 2 and 4 in respect of contract work namely "Reformation of RMS Wall for a length of 230 meters at Erayumanthurai West of Vilavancode Taluk in Kanyakumari District" within the time stipulated by this Court.

For Petitioner : Mr.J.Anandhavalli

For Respondents : Mr.D.Muruganandam
Additional Government Pleader



O R D E R

This Writ Petition is filed for issuance of a Writ of Mandamus directing the fifth respondent to forward the claim of 1% bonus amount to the respondents 1, 2 and 4 in respect of contract work namely "Reformation of RMS Wall for a length of 230 meters at Erayumanthurai West of Vilavancode Taluk in Kanyakumari District" within the time stipulated by this Court.

2.This matter arises out of a contract between the petitioner and the Public Works Department. The petitioner is a registered contractor in National Highways and in the Public Works Department. The petitioner was allotted a work by the respondents named as "Reformation of RMS Wall for a length of 230 meters at Erayumanthurai West of Vilavancode Taluk in Kanyakumari District". The total estimated value of the contract is Rs.71,55,331/-. The contract was given to the petitioner as per the agreement dated 29.08.2012. It is stated that the tender was invited long prior to the agreement and the rate quoted by the petitioner was pursuant to the tender which was in 2008. Despite the fact that the tender was floated in 2008 and the rate was quoted in 2008, it is stated by the petitioner that the contract itself was entered into only on 29.08.2012 and the work site was handed over to the petitioner only after the execution of the contract. It is not in dispute that the petitioner completed the work to the satisfaction of the respondent by 10.11.2012 even though he was given six months time to complete the work. As per the contract, the petitioner is entitled to bonus as an incentive for any work completed in advance by not less than 10% of the agreement period. The bonus has to be calculated at 1% of the actual quantum of work executed at the tendered rate. After execution of the contract, the petitioner submitted several representations claiming 1% bonus for early completion of works. The respondents replied by stating that the total cost of work will exceed the amount for which administrative sanction was given for the project, if bonus is given and therefore, the petitioner's request cannot be considered. It is in the said circumstances, the petitioner has approached this Court for issuing a Writ of Mandamus directing the fifth respondent to forward the claim of 1% bonus to the respondents in respect of the work completed by the petitioner before the time.

3.The fifth respondent filed a counter. In the counter also, it is stated that the administrative sanctioned amount of the work will be increased if any additional expenditure is incurred by the respondents and that therefore, the petitioner's request for paying bonus cannot be considered. It is further stated that as per the agreement, bonus for advance completion of work is the discretion of the Executive Engineer, as per the provisions made in the estimate without exceeding the amount for which administrative sanction was



obtained. The learned Additional Government Pleader appearing for the respondents is unable to refer to any of the provisions of the contract itself for the stand that was taken by the fifth respondent in the counter affidavit. However, the learned Additional Government Pleader would submit further that there are other reasons for rejecting the claim of the petitioner. According to him, the work undertaken by the petitioner was performed without adhering to the usual hours of work. Since the petitioner started the work early on every day, the respondents incurred additional expenditure towards supervision of the work.

4.This Court is unable to appreciate the stand taken by the fifth respondent and the Additional Government Pleader appearing for the respondents, having regard to the terms of contract. Further, the petitioner was not given any opportunity to advance his case and to substantiate that the stand taken by the respondents has no support from the agreement that was originally entered into. Though judicial review in matters relating to contract is very limited, this Court having regard to the admitted facts is of the view that the respondents may be directed to consider the petitioner's representation and to pass appropriate orders on merits in the light of terms of the contract and in accordance with law. Accordingly, this Writ Petition is disposed of with a direction to the fifth respondent to consider the petitioner's representation and pass appropriate orders on merits and in accordance with law after giving adequate opportunity to the petitioner to substantiate the petitioner's case if the respondent has any adverse material or reasons which will have a bearing in the decision making process. The petitioner may also be permitted to make further representation particularly in the context of the stand taken by the Additional Government Pleader and the counter affidavit that is filed before this Court. On such representation being submitted by the petitioner, the fifth respondent shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also entitled to have personal hearing. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1.The Secretary,
The Government of Tamil Nadu,
Public Works Department,
P.O. No. 1, George, Chennai - 600 009.



2.The Secretary,
The Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai - 600 009.

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Public Works Department (WRO),
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Kanyakumari District.

+1 CC to M/s.SPL GP (SR-94897[F] dated 30/10/2019)

+1 CC to Mr.J.ANANDHAVALLI, Advocate (SR-94978[F] dated
30/10/2019)

ORDER MADE IN
W.P. (MD) .No.19980 of 2014
25.10.2019

VB(13.11.2019) 4P 8C