IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020
CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16018 of 2018
and
W.M.P.No.19044 of 2018

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

Vs.

1.The Managing Director,
Tamil Nadu Water & Drainage Board,
No.31, Kamarajar Salai,
Chepauk,
Chennai 600 005.

2.The Engineering Director,
Tamilnadu Water & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.

3.The Engineering Director,
CMWSS Board,
No.1, Pumping Station Road,
Chindatripet, Chennai 600 002.

4.The Chief Engineer,
Commissioner of Municipal Administration,
Ezhilagam,
Chennai 600 005.

5.The Chief Engineer(A/C),
TWAD Board,
No.30, Bharathi Park Road,
Sirvani Nagar,
Coimbatore-641043.

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6.The Joint Managing Director,
Chairan-Dispute Redressal Committee,
TWAD Board, Chepauk,
Chennai 600 005.

7.The Executive Engineer,
TWAD Board,
Sewerage Division,
Pollachi. ... Respondents.

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, calling for the records in the minutes of meeting dated 06-04-2017, on the file of the sixth respondent and quash the order dated 06-04-2017 made thereon and refer the claim of the petitioner for fresh consideration by the sixth respondent in terms of Clause 16, Clause 34 of the Agreement and Clause 7(i) of the Board proceedings and pass orders.

For Petitioner : Mr.B.Natarajan.

For RR1,2,6 & 7 : Tmt.Tamilarasi,
Government Advocate.

For R3 : Mr.N.Ramesh

For RR4 & 5 :No appearance.

O R D E R

This writ petition has been filed challenging the impugned order passed by the 6th respondent, who has rejected the claim made by the petitioner based on the decision taken by the Disputes Redressal Committee by its proceedings dated 06.04.2017.

2.The petitioner was allotted the work of constructing a sewage treatment plant by the Municipality. The contract is governed by agreement entered into between the parties. The petitioner was aggrieved with the settlement of the amount by the Municipality and according to the petitioner, the Municipality has to pay a balance amount of more than four crores. The petitioner had approached the Disputes Redressal Committee in this regard. The Disputes Redressal Committee did not accept the claim made by the petitioner and pursuant to the decision of the Disputes Redressal Committee, the 6th respondent had made a communication to the petitioner informing the

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petitioner that his claim has been rejected. Aggrieved by the same, the present writ petition has been filed before this Court.

3.The claim that has been raised by the petitioner involves appreciation of facts and interpretation of agreement entered into between the parties. Even as per the agreement entered into between the parties, if any of the contractor is aggrieved by the decision taken by the Disputes Redressal Committee, he can only approach the concerned District Court and work out his remedy. For this purpose, the relevant clause in the agreement is extracted here under:

> "d)in the contract whenever, there is a discretion or exercise of will, by the Employer during the progress of the work, the mode or manner of the exercise of discretion shall not be a matter for dispute.
>
> e)The decision of the Employer shall be final conclusive and binding of all, Parties to the Contract upon all questions relating to the meaning of specifications, designs, drawings and instructions, and as to the quality of workmanship or material used on the work or any matter arising out of or relating to the specifications, designs and drawings and instructions concerning the works or the erection of or failure to execute the same arising during the course of works. The above shall not be the subject matter of dispute and in no case shall the work be stopped consequent on such a dispute arising and the work shall also be carried out by the contractor strictly in accordance with the instructions of the Employer.
>
> f)In case any question, or difference or dispute shall arise on, matters other than clauses (d) and (e) above and except any of the "excluded matters" mentioned in bid documents touching the construction of any clause herein contained on the rights, duties and liabilities of the parties hereto or any other way touching or arising out of these presents, the same shall Settlement of dispute Dispute Redressal Committee In order to ensure a dispute Redressal mechanism, a Committee headed by the Managing Director, Joint Managing Director and consisting of Engineering Director, TWAD Board and Engineering Director, CMWSS Board as Member, will comprise the "Dispute Redressal Committee" for each package in order to resolve any disputes between the Employer/Engineer-incharge concerned and the contractor.

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[i] In the event of non settlement of any dispute by Dispute Redressal Committee arising between parties here to in respect of any of the matter comprised in this contract, the same shall be settled by a competent court having jurisdiction over the place where contract is awarded and agreement is concluded and by no other court."

4.The petitioner has an effective alternative remedy to work out its grievance and this Court does not want to exercise its writ jurisdiction when there is an effective alternative remedy. That apart, this Court cannot undertake the exercise of appreciating the facts involved in this case. Therefore, this Court is not inclined to entertain this writ petition.

5.This writ petition is disposed of by granting liberty to the petitioner to work out the remedy before the concerned District Court as per the terms of agreement, which has been extracted supra. The District Court shall entertain the petition filed by the petitioner and the concerned Court shall take note of the period during which this writ petition was pending before this Court and the petition need not be rejected on the ground of limitation if its otherwise in order. Except giving this liberty, no further orders can be passed by this Court. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrr

True copy

Sub-Assistant Registrar

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To

1.The Managing Director,
Tamil Nadu Water & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

2.The Engineering Director,
Tamilnadu Water & Drainage Board,
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Chepauk, Chennai-600 005.

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3.The Engineering Director,
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TWAD Board,
No.30, Bharathi Park Road,
Sirvani Nagar, Coimbatore-641043.

6.The Joint Managing Director,
Chairan-Dispute Redressal Committee,
TWAD Board, Chepauk,
Chennai 600 005.

7.The Executive Engineer,
TWAD Board, Sewerage Division,
Pollachi.

8.The Government Pleader,
High Court, Madras.

9.The Section Officer
Current Section
High Court, Madras

10.The Section Officer
ER Section High Court
Madras

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