IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28/01/2020

DATED : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 18255, 18258 & 18260 of 2019

M/s. Subaya Constructions Co.Ltd.,
Rep. by its Director Mrs.S.Chandara Ganthimathi
No.21, Soundarapandian Salai
Ashok Nagar, Chennai - 600 083.
... Petitioner in all W.Ps.

..Vs..

1. The Senior Audit Officer
O/o. The Principal Accountant General (G&SSA)
Lekha Pariksha Bhavan
361, Anna Salai, Teynampet,
Chennai - 600 018.

2. TWAD Board, (Tamil Nadu Water Supply and Drainage Board)
Represented by the Executive Engineer
Urban Division,
Villupuram.

3. TWAD Board, (Tamil Nadu Water Supply and Drainage Board)
Represented by the Chief Engineer
Northern Region
Vellore.

4. The Managing Director
TWAD Board, (Tamil Nadu Water Supply and Drainage Board)
31, Kamarajar Salai
Chepauk, Chennai - 600 005.
.. Respondents in all W.Ps.

PRAYER IN ALL W.Ps.: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd to 4th respondents to pay the pending dues claimed by th petitioner in the petitioner's letter dated 22.04.2019 together with 21% interest per annum from the date of completion of defect liability period on 25.06.2015, within a period stipulated by this Hon'ble Court.

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For Petitioners in all W.Ps. : Mr.B.Natarajan

For 4th Respondent in all W.Ps. :: M/s. Thamizharasi

COMMON ORDER

All the three Writ Petitions have been filed by the same writ petitioner M/s. Subaya Constructions Co. Ltd., Rep. by its Director Mrs.S.Chandara Ganthimathi, primarily against the fourth respondent, Managing Director, TWAD Board, Chennai, seeking a direction to pay the pending dues claimed by the petitioner in their letter dated 22.04.2019 together with interest at 21% p.a., from the date of completion of defect liability period of 25.06.2015.

2. In the separate affidavits filed in support of all the Writ Petitions, it had been stated that the third respondent, namely, Chief Engineer, Tamil Nadu Water Supply and Drainage Board, Vellore, had called for tenders for (i) construction, commissioning, trial run for six months and subsequent maintenance of Sewage Treatment Plant (STP) of 3.5 MLD capacity at Erumanthangal Eri in Villupuram Municipality, for 5 years on Designs Built Operate and Transfer basis on 21.01.2009, with respect to W.P.Nos. 18255, 18258 & 18260 of 2019 -

(ii) providing underground sewerage scheme to Villupuram Municipality; and

(iii) construction, commissioning, trial run for six months and subsequent maintenance of Sewage Treatment Plant (STP) of 9 MLD capacity at Kakuppam Eri in Villupuram Municipality, for 5 years.

3. The petitioner stated that they participated in the three tenders and thereafter the petitioner was allotted the works and agreements was also entered into between the petitioner and the respondents. With respect to the first tender, the petitioner had quoted a sum of Rs.4,21,15,887/-. With respect to the second tender, the petitioner had quoted a sum of Rs.21,04,88,362/-. With respect to the third tender, the petitioner had quoted a sum of Rs.8,99,79,816/-. It had also been stated in the affidavits that subsequently, the petitioner had completed all the three works. It was also stated that thereafter, the petitioner had raised bills for payment of the due amounts. It was stated that the fourth respondent had addressed a letter to the first respondent justifying reasons

for the queries raised and more specifically that G.O.Ms.No. 60, Public Works G-2 Department, dated 14.03.2008 does not have retrospective effect and therefore is not applicable to this project between the petitioner and the second and third respondents. The second respondent had also sent a letter dated 10.10.2014 reiterating the same facts. An Advocate's opinion was also obtained from the Legal Advisor of TWAD Board, who had given the same opinion. It is stated that the second and fourth respondents, had also given further letters reiterating the same facts.

4. The petitioner in this connection had filed earlier Writ Petitions seeking more or less the same relief as sought now. The petitioner had filed W.P.Nos. 31655/2018, 31660/2018 and 31665/2018. A learned Single Judge of this Court had passed orders in the three Writ Petitions stating that owing to the subsequent communication sent by the Principal Accountant General dated 14.03.2019, the petitioner shall submit an application to the fourth respondent within a period of two weeks and the same should be considered and orders be passed in accordance with law as expeditiously as possible.

5. It is to be noted that the first respondent in their remarks had raised objections as stated as follows:-

> "(1). para is not pursued further; and (2). inspection report is treated as closed.
>
> This is for information and necessary action at your end."

6. It is stated that since the first respondent had closed the inspection report and had not pursued further with objections raised, there was an obligation on the fourth respondent to release the payments for the bills outstanding to the petitioner. However, the fourth respondent had rejected the applications submitted by the petitioner consequent to the orders in the writ petitions filed earlier. Thereafter, the petitioner had given a further application on 22.04.2019 and since no orders have been passed, the present Writ Petitions have been filed.

7. In the common counter affidavit filed by the fourth respondent, the facts as stated have been admitted. It was stated that the first respondent had given the remarks that "para is not pursued further and the inspection report is treated as closed". It was stated by the fourth respondent that the said reply is ambiguous and therefore, the fourth respondent has not able to take any decision as said doubts of the fourth respondent have not cleared by the first respondent. It is stated that the payments due to the petitioner have not been paid.

8. Heard arguments advanced by the learned counsels.

9. This is a case where the petitioner has been running from pillar to post seeking payment for works already executed. There are no complaints from the respondents that the petitioner had not completed or had not executed the work to the satisfaction of the respondents. There is also no complaint that the petitioner had completed or executed the work in a delayed manner thereby incurring additional costs for the respondents. There is also an admission that as on date, the bills payable to the petitioner are due and payable. The only reason given by the fourth respondent for not settling the claim of the petitioner is that the remarks of the first respondent, namely, Accountant General, in their letter dated 14.03.2019 is as follows:-

> "(1). para is not pursued further; and
> (2). inspection report is treated as closed.
>
> This is for information and necessary action at your end."

10. The fourth respondent have raised a doubt in the counter affidavit claiming that the said remarks are very vague and therefore, a final decision cannot be taken. It is also stated by the fourth respondent that unless there is clarity by the first respondent, the dues cannot be paid. It is also stated that there is no clear direction from the Accountant General that there is no legal bar in settling the amount to the petitioner.

11. On perusing the material records, I hold that this stand of the fourth respondent cannot stand the scrutiny of the Court. The petitioner had executed the works. The second, third and fourth respondents have to pay and settle the dues of the petitioner. By the delay they would only incur interest. This loss by way of interest is a direct result of their own delay. The fourth respondent appears to shift the blame on the first respondent, Accountant General. The Accountant General would only give a reply in the manner they deem fit to the queries raised. They have given a reply that "the para is not pursued and that the inspection report is treated as closed." Once the Accountant General had closed the entire issue and had specifically stated that they are not pursuing with any issue further, a duty is cast on the fourth respondent to settle the dues. The petitioner had to unfortunately approach this Court again and again and every time a Mandamus has been issued directing the respondents to act in accordance with law. Acting in accordance with law indicate that the amounts that are due and payable will have to be paid.

12. I find no justification on the part of the fourth

respondent in holding over the payments. Consequently, a direction is issued to the fourth respondent to immediately settle the three payments due to the petitioner in the three Writ Petitions for the works already completed and executed. The only concession that this Court can grant relief is from payment of interest. However, if the respondents still do not pay the amount on or before 30.05.2020, then the petitioner will be entitled to claim the same with interest at 21% as claimed by them.

13. With the above said observation, these Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Senior Audit Officer
O/o. The Principal Accountant General (G&SSA)
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31, Kamarajar Salai
Chepauk, Chennai - 600 005.

+3cc to Mr.B.Natarajan, Advocate, S.R.No. 12764
+1cc to Mr.S.Thamizharasi, Advocate, S.R.No. 12797

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KS(CO)
GN(17/02/2020)