



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2020

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THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No. 6729 of 2020

and W.M.P. (MD) Nos. 6098 & 6099 of 2020

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M/s. Consolidated Construction
Consortium Limited.,
Rep., by its Authorized Signatory
having its registered office at
No. 8/22, Padmavathiyar Road,
Jeypore Colony, Gopalapuram,
Chennai-600086.

...Petitioner

Vs.

1. The Tamilnadu Water Supply and Drainage
Board (TWAD),
through its Managing Director,
No. 31, Kamarajar Salai, Chepauk,
Chennai 600 005.

2. The Chief Engineer,
Tamilnadu Water Supply and Drainage
Board (TWAD),
No. 1/1, Sambakulam, Ganesh Nagar,
Opp. Mattuthavani Bus Stand,
Melur Road, Madurai.

3. The Executive Engineer,
Tamilnadu Water Supply and Drainage
Board (TWAD),
Urban Division,
Kovilpatti.

4. The Commissioner of Municipal Administration,
No. 78, Urban Administrative Building,
Santhome High Road,
Chennai 28.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus, to call for the records relating to the proceedings of the third respondent in Lr.No.FKPT (BW)/Renew of Bank Guarantee/EA/2020 dated 13.05.2020 and quash the same and to direct the third respondent to release the Bank guarantee bearing guarantee No.05321GPER003116, dated 24.06.2016 issued by the Bank of Baroda, T.Nagar Branch, Chennai and further settle and pay the final payments including the retention amounts in respect of the works done by the petitioner company for providing Water Supply Improvement Scheme to Kovilpatti Municipality, Thoothukudi District.



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For Petitioner : Mr.M.P.Senthil
For R1 to R3 : Mrs.S.Porkodi Karnan
For R4 : Mr.M.Rajarajan,
Additional Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The petitioner is a contractor. The petitioner was awarded the work of providing Water Supply Improvement Scheme in Kovilpatti Municipality in the year 2016 by the first respondent Board.

3.The petitioner's case is that they had completed all the works entrusted to them. However, the Board would claim that even though the work had been completed substantially three more works remain to be commissioned. The specific contention of the learned Standing Counsel for the TWAD Board is that the contract envisages maintenance period and defect liability period and that only after the completion of the defect liability period, the Board can release the retention amount as well as the Bank guarantee. Counsel would contend that it is not open to this Court to segregate the contract and permit partial release of the Bank guarantee or the retention amount based on the work that have already been completed and commissioned.

4.I find that the said contention to be correct. This Court will not be justified in re-writing the terms of the contract. But then, the petitioner's counsel would bring to my notice that the Board owes to pay a sum of Rs.4,49,15,651/-. It appears that the said amount had not been paid by the Municipal Administration and therefore, even though there is no dispute about the said bill, the amount is yet to be paid to the petitioner herein.

5.Therefore, this Court *suo moto* impleaded the Commissioner of Municipal Administration. Today, when the matter was taken up for hearing, the learned Additional Government Pleader appearing for the impleaded fourth respondent would state that since the Capital Grant Fund for the year 2019-2020 and 2020-2021 though sanctioned is yet to be released, this Court may give them six months time.

6.It cannot be in dispute that this amount has to be paid only by the TWAD Board. The Grant may come from the Commissioner of Municipal Administration, but then, the liability to pay the petitioner is that of the TWAD Board. The TWAD Board without paying the admitted amount of Rs.4,49,15,651/- to the petitioner cannot in the same breath maintain that they will retain a sum of Rs.3.80 crores. The Board need not have any cause for worry because the fund is very much going to come only from the Government of Tamil



Nadu. It has been committed in writing before this Court that Capital Grant Fund had already been sanctioned and the Administration only wants six more months to pay to the Board.

7. I am, therefore, of the view the Board can very well release the retained amount to the petitioner herein. That alone would serve ends of justice. Therefore, while sustaining the other contentions of the learned Standing Counsel, I direct the TWAD Board to release a sum of Rs.3.80 Crores to the petitioner at the earliest. After the Commissioner of Municipal Administration releases the entire bill amount of Rs.4,49,15,651/-, the respondent Board can retain a sum of Rs.3.80 Crores, now directed to be paid and release the balance amount. Thus, after the entire amount is released by the Commissioner of Municipal Administration, the respondent Board would have the entire retained amount as per the contract. The Commissioner of Municipal Administration is directed to release the said amount to TWAD Board, within a period of three months from the date of receipt of a copy of this order.

8. The writ petition is partly allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Tamilnadu Water Supply and Drainage Board (TWAD),
through its Managing Director,
No.31, Kamarajar Salai, Chepauk, Chennai 600 005.

2. The Chief Engineer,
Tamilnadu Water Supply and Drainage Board (TWAD),
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3. The Executive Engineer,
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Board (TWAD), Urban Division, Kovilpatti.



4. The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai 28.

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+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-15622[F] dated 02/09/2020)

+1 CC to M/s.GP (SR-15705[F] dated 02/09/2020)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-15717[F] dated 02/09/2020)

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