



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1022 and 2844 of 2015
and
M.P.Nos. 1 and 1 of 2015

ALS Constructions,
rep. by its Proprietor,
Mr.Bala Abraham
S/o.Sukumar,
Maduravoyal,
Chennai - 600 095

...Petitioner in W.P.No.1022 of 2015

T.J.Arumugam & Co.,
rep. by its Manager,
Mr.A.Kabilan,
S/o.T.J.Arumugam,
175, T.J.S.Building,
G.N.T.Road, Kavaraipettai,
Gummudipoondi Taluk,
Thiruvallur Distrtict.

...Petitioner in W.P.No.2844 of 2015

Vs.

1. The Project Director,
Tsunami Projects Implementation Units,
100, Anna Salai, Guindy, Chennai -32.
2. The Collector / Chairman,
Tsunami District Project Implementing Units,
Kanchipuram.
3. Projects Co-ordinator / Project Director,
Tsunami District Implementation Units,
Kanchipuram District.

...Respondents in both WPs

PRAYER in W.P.No. 1022 of 2015: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to pass an order pursuant to the proceedings bearing Lr.No.F4 75/SDO/2010 dated



18.03.2013 of the third respondent and direct the respondents to pay the amount due to the petitioner for execution of the work bearing Nos.1/2010-11 and 7/2010-11 under ETRP/01 and ETRP/02 respectively.

WEB COPY

PRAYER in W.P.No. 2844 of 2015: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to pass an order pursuant to the proceedings bearing Lr.No.F4 75/SDO/2010 dated 18.03.2013 of the third respondent and direct the respondents to pay the amount due to the petitioner for execution of the work bearing Package No.ETRP/03 under Agreement No.6/2010-11.

For Petitioners : Mr.P.Haribabu
[In both Wps]

For Respondents : Mr.S.Gunasekaran
[In both Wps] [For R1 and R3]

M/s.N.Senthil Selvi
Government Advocate [For R2]

COMMON ORDER

The relief sought for in the present writ petitions is to direct the first respondent to pass an order pursuant to the proceedings bearing Lr.No.F4 75/SDO/2010 dated 18.03.2013 passed by the third respondent-Projects Co-ordinator / Project Director, Tsunami District Implementation Units.

2. In other words, the petitioners seek refund of price adjustment based on the letter dated 18.03.2013 passed by the Project Director.

3. The learned counsel for the petitioners mainly contended that the Tsunami Projects were completed as per the terms and conditions of the contract by the writ petitioners and regarding the price adjustment for extended time is yet to be settled. In this regard, the Project Co-ordinator has passed an order, categorically admitting the liability of the respondents to settle a sum of Rs.30,99,040/- towards payment of price adjustment for IV th Quarter of 2011. The said order was passed by the Project Director based on the recommendations of the Adjudicator in the year 2012. The Adjudicator was appointed to adjudicate the disputed facts. The Adjudicator conducted an enquiry and passed an award, stating that the Contractor is



eligible for price adjustment for the value work done from the start date given in the contract data up to the end of the initial intended completion date or up to the E.O.T. Period vide Clause 47.1 of the conditions of contract. Further, the contractor is also eligible for payment of interest for belated payment of Price Adjustment as per Clause 43.1 of the conditions of contract. Therefore, Clause 43.1 and 47.1 of the conditions of contract has been relied upon by the Adjudicator for the purpose of payment of price adjustment along with the interest. However, the interest was waived and subsequently, the Project Co-ordinator passed an order on 18.03.2013 based on the award passed by the Adjudicator, asking the other authorities concerned to settle the amount in favour of the Contractors.

4. Relying on the said award of the Adjudicator and the consequential proceedings of the Project Co-ordinator, the petitioners state that the amount is to be settled and several representations sent by them were not responded.

5. The learned Government Advocate appearing on behalf of the respondents made a submission that the Adjudicator had erroneously interpreted the conditions of Clause 43.1 and 47.1 and passed the award. Clause 43.1 read as under:

"43.1 Payments shall be adjusted for deductions for advance payments, retention, other recoveries in terms of the contract and taxes, at source, as applicable under the law. The Employer shall pay the Contractor the amounts certified by the Engineer within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made upto the date when the late payment is made at 8% per annum."

6. Condition 47 speaks about Price Adjustment and Clause 47.1. reads as under:

"47.1 Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, facts and lubricants in accordance with the following principles and procedures and as per formula given in the contract data:

(a) The price adjustment shall apply for the work done from the start date given in the contract data upto end of the initial intended completion date or extensions granted by the Engineer and shall not apply to the work carried out beyond the stipulated



time for reasons attributable to the contractor

(b) The price adjustment shall be determined during each quarter from the formula given in the contract data."

WEB COPY

7. Relying on the above conditions, the learned Government Advocate made a submission that the Adjudicator had wrongly interpreted the provisions and allowed the claim of the petitioners-Contractors. This was not initially noticed by the Authorities and based on the award, the Project Co-ordinator also passed an order in a routine manner. Subsequently, the authorities traced out the erroneous interpretation of the condition and initiated action and more specifically in proceedings dated 06.03.2015, the Project Director categorically considered all these aspects and passed an elaborate order, stating that no additional cost will be paid to the Contractors for the EOT period. EOT has been given by the Executive Engineer, Kancheepuram with the condition of "no additional cost will be paid to the contractor for the EOT period". But it is not clear that why is the amount of Rs.30,99,040/- being requested for making payment of price adjustment. So, Clarification in this regard should be submitted.

8. Based on the said letter, the Project Director filed a counter affidavit, categorically stating that the writ petitioner is wrongly interpreted Clause 43.1 of the conditions of contract. This Clause did not speak about price adjustment for Extension of Time Period. The fact remains that the payment should be given within 28 days of the date of each stage of bill. If any default, the contractor is entitled to get 8% of interest for late payment. In the case in hand, the payment has been settled to the petitioner within the stipulated time as mentioned in Clause 43.1. Hence, the claim of the writ petitioner is not sustainable.

9. The learned counsel for the petitioners reiterated that the case of the petitioners is straight that the Adjudicator recommended payment. Based on the award of the Adjudicator, the Project Co-ordinator also passed an order on 18.03.2013, requesting the Project Director to allot a sum of Rs.30,99,040/-. Perusal of the proceedings undoubtedly states that the amount is to be allotted for payment in favor of the petitioners. No doubt, the Project Co-ordinator admitted the amount of price adjustment and relying on the said letter, the writ petitions are filed.

10. This Court is of the considered opinion that the payment sought for is now formed as an unjust proposal by the respondents. It is tax payers' money and mere erroneous



interpretation of the terms and conditions of the contract or the letter of one authority, confirming any such payment alone cannot be the final one for the purpose of considering the writ petitions and for issuing directions. It would be easy for the Courts to look into the order passed by the Project Director on 18.03.2013 and issue directions to settle the payment. However, the Courts are bound to borne in mind that the money going to be settled is tax payers' money and nobody must be allowed to take such money for unjust gains. When it is brought to the notice of this Court that the Adjudicator/Engineer erroneously interpreted the terms and conditions of the contract and subsequently, such error was found out by the competent authority at later point of time, then thorough adjudication is required in order to crystallize the right of the petitioners/contractors. Contrarily, the Courts if issued a direction to settle the amount, undoubtedly, it will result in unjust gains for the Contractors. So also, the Court should pave the way for the contractors for effective adjudication to cull out the truth.

11. At the outset, if a doubt arises, in such circumstances regarding interpretation of the terms and conditions of the contract, then an adjudication is required. The authorities have committed a mistake in not approaching the adjudicator for clarification or otherwise. The said mistake of the authorities cannot confer any right on the petitioners to get the payment. It is to be considered that the rightful claim is to be settled and if the claim is found to be wrongful, then adjudication must be conducted thoroughly for the purpose of crystallizing the rights of the parties. Instead, the Courts issuing a direction merely based on one letter in such contractual matter, there is a possibility of miscarriage and therefore, Courts are expected to be cautious, while dealing with such matters.

12. In the present cases, no doubt, the petitioners are armed with the award of the Adjudicator and the consequential proceedings of the Project Co-ordinator dated 18.03.2013. However, the counter affidavit filed by the respondents reveal that the Adjudicator had wrongly interpreted the conditions No.43.1 and 47.1.

13. It is further contended that the extension of time was granted on condition that the petitioners are not entitled for any price adjustments. As far as the price adjustment up to the agreement period is concerned, the petitioners themselves admitted the said payment has already been made. The representation of the petitioners Nil dated shows that the price adjustment was paid to the petitioners up to the agreement period. Therefore, if beyond the agreement period, whether any such condition is stipulated or not, must be adjudicated and a decision is to be taken by the competent authorities. It is



stated by the Project Director in his letter dated 06.03.2015 that EOT has been given by the Executive Engineer, Kancheepuram with the condition of "no additional cost will be paid to the contractor for the EOT period."

WEB COPY

14. Therefore, it is to be verified, whether any such condition was imposed or agreed upon between the parties during the relevant point of time. When it was agreed that no additional cost will be paid to the Contractors for the EOT period, then, it is to be construed that the Adjudicator has committed an error in dealing with the issues. However, this Court cannot conduct an elaborate enquiry in these aspects as the original records are to be verified and an adjudication must be conducted with reference to the disputed facts.

15. In view of the contradicting facts and issues raised between the parties, the mere order passed by the Project Director would not confer any right on the petitioners to seek payment. The respondents have raised several issues regarding interpretation of the conditions of the contract as well as the conditions relating to EOT in subsequent proceedings. Thus, all these aspects require an adjudication to crystallize the rights of the parties. Thus, the parties are bound to approach the competent Civil Court of law for adjudication of issues.

16. The learned counsel for the petitioners made a submission that the petitioners are agreeing for appointment of fresh Adjudicator to adjudicate the issues. Accordingly, the respondents shall appoint an Adjudicator for the purpose of re-adjudication of all these disputed facts for the purpose of arriving a final decision.

17. In general, the Contractor obligations cannot be adjudicated in a writ proceedings. In respect of payments of terms and conditions of contract, the parties are bound to approach the competent Civil Court of Law and in the presents case, Adjudicator has been appointed. Even for enforcement of the recommendations of the Adjudicator, the parties must approach the competent Court. However, in the present cases, the award of the Adjudicator itself is disputed by the Department and further proceedings would reveal that there are certain errors in the matter of interpretation of terms and condition of contract.

18. This being the factum, the parties shall go for fresh adjudication through an Adjudicator to be appointed afresh and thereafter, the process of adjudication shall go on and the said exercise is directed to be completed as expeditiously as possible and preferably within a period of six (6) months from the date of receipt of a copy of this order. The parties shall



co-operate for the speedy adjudication of the issues as already several years lapsed. The respondents are bound to initiate action against the authorities for their lapses, negligence and dereliction of duty and find out if there is any collusion between the contractors and the officials for the purpose of passing such an order, admitting the liability of the Department during the relevant point of time.

19. With these directions, both the writ petitions stand disposed of. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (LA)

//True Copy//

Sub Assistant Registrar

nti/kak

To

1. The Project Director,
Tsunami Projects Implementation Units,
100, Anna Salai, Guindy, Chennai -32.
2. The Collector / Chairman,
Tsunami District Project Implementing Units,
Kanchipuram.
3. Projects Co-ordinator / Project Director,
Tsunami District Implementation Units,
Kanchipuram District.

+2ccs to Mr.P.Haribabu, Advocate, S.R.No.69158

+1cc to the Government Pleader, S.R.No.69820

W.P.Nos. 1022 and 2844 of 2015

SRA (CO)
SU (12/01/2022)