



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WRIT PETITION NO. 18564 OF 2016

WMP NOS.18833/16 & 16743/19

P. Arun Kumar
Proprietor
M/s. Gowpatt Associates
No.100, Journalist Colony
Thiruvannamiyur
Chennai - 600 041

.. Petitioner

Versus

1. The Government of Tamil Nadu
represented by its Principal Secretary
Highways and Minor Ports, Chennai
2. The Chief Engineer
National Highways
Chepauk, Chennai
3. The Superintending Engineer
National Highways, Salem
4. The Divisional Engineer
National Highways, Coimbatore
5. The Chief Accounts Officer
National Highways
Kuralagam, Chennai
6. The South Indian Bank
represented by its Chief Manager
Regional Office
No.1, Sterling Road
Nungambakkam, Chennai

(R6 impleaded as per order dated
30.06.2016 passed in WMP No. 18834
of 2016 in WP No. 18564 of 2016)

.. Respondents

Writ Petition filed under Article 226 of the Constitution
of India, praying to issue a Writ of Certiorarified Mandamus to



call for the records on the file of the first respondent, quash the proceedings in Letter No.7264/HV2/2015-11 dated 26.04.2016 as illegal, incompetent, unconstitutional and without jurisdiction and further direct the respondent No.1 to pay the dues amounting to Rs.3,98,90,310 together with interest at the rate of 24% per annum forthwith.

For Petitioner: Mr.V.Raghavachari

For Respondents: Mr.R.Shanmugasundaram, Advocate General
assisted by Mr. Edwin Prabhakaran
Government Advocate for RR1 to 5

Mr. S. Sethuraman for R6

ORDER

The petitioner challenges the order of rejection dated 26.04.2016 of the first respondent and after quashing the same, seeks for a consequential direction to the first respondent to pay the petitioner the sum of Rs.3,98,90,310 together with interest at the rate of 24% per annum forthwith.

2. The petitioner participated in the tender floated by the respondents on 22.07.2010 and he was awarded the contract relating to widening and strengthening, including construction of retaining wall, in Km 18/2 - 38/2 of Avinashi-Mettupalayam Road. An agreement dated 23.09.2010 came to be entered into between the petitioner and the respondents which contains several clauses as also the clause with respect to period within which the work has to be completed. In other words, as per the agreement, the work has to be completed by the petitioner within 12 months viz., before 22.09.2011. According to the petitioner, the work was completed on 31.01.2012 and the delay is attributable on the part of the respondents. It is claimed by the petitioner that by letters dated 13.10.2013 and 20.11.2013, the respondents also accepted that the delay is on their part. Further, the respondents have also accepted the variation in the quantity of bitumen and the price escalation on account of the delay in completing the work. However, the petitioner did not receive the legitimate amount due and payable to them for having completed the contract.

3. Earlier, aggrieved by the non-payment of the admitted amount, the petitioner filed WP No. 16140 of 2015 before this Court for issuing a Writ of Mandamus directing the respondents to disburse the admitted dues amounting to Rs.3,98,90,310/- together with cumulative interest. By order dated 03.08.2015, this Court directed the respondents herein to consider the claim of the petitioner for disbursement of the amount on the basis of



the observations made therein. Aggrieved by such a direction issued by this Court in WP No. 16140 of 2015, the respondents herein filed W.A. No. 1602 of 2015 before this Court. The Writ Appeal was dismissed by the Division Bench of this Court on 08.02.2016. Thereafter, the first respondent herein has passed the order dated 26.04.2016 rejecting the claim of the petitioner. Challenging the order of rejection dated 26.04.2016 of the first respondent, the petitioner has filed this writ petition. That apart, contending that the order of rejection dated 26.04.2016 passed by the first respondent, is in gross violation of the Judgment dated 08.02.2016 passed by the Division Bench of this Court in W.A. No. 1602 of 2015, the petitioner has also filed Contempt Petition No. 496 of 2018 and it is pending before the Division Bench of this court.

4. The learned counsel for the petitioner would vehemently contend that the order of rejection dated 26.04.2016 passed by the first respondent is in gross violation of the observations made by the Division Bench of this Court in the Judgment dated 08.02.2016 passed in WA No. 1602 of 2015 filed by the respondents herein. He placed heavy reliance on para No. 18 of the Judgment dated 08.02.2016 passed by the Division Bench of this Court. It will be apposite to refer to the observations of the Division Bench, which reads as follows:-

"18. On a careful consideration of respective contentions and also this Court taking note of the fact that there are no disputed issues of fact to be gone into in the present Writ Petition and also when the 4th Appellant/4th Respondent wrote a letter to the 3rd Appellant/3rd Respondent requesting him to obtain the requisite amount of Rs.3,85,38,990/- being the sum due and outstanding under the contract and further that, on 11.12.2013 the 4th Appellant/4th Respondent wrote to the Senior Accounts Officer, National Highways for releasing the funds etc., this Court comes to an inevitable conclusion that the outstanding sum, when it is admitted by the Appellants, the impugned order dated 03.08.2015 in W.P.No.16140 of 2015 passed by the Learned Single Judge in directing the 1st Appellant/1st Respondent to consider the claim of the Respondent/Petitioner in regard to the disbursal of amount of Rs.3,98,90,310/- claimed by him as per Agreement No.25/2010-11 dated 23.09.2010, does not suffer from any material infirmities/irregularities or patent illegalities in the eye of Law. Per contra, the same is in order. Viewed in that perspective, the Writ Appeal filed by the Appellants sans merits."



5. By placing reliance on the aforesaid portion of the Judgment of the Division Bench of this Court in the earlier round of litigation between the parties, the learned counsel for the petitioner would strenuously contend that the amount payable to the petitioner has been categorically admitted by the respondents, while so, the impugned order of rejection passed by the first respondent is arbitrary besides it runs contrary to the Judgment passed by the Division Bench of this court. The learned counsel for the petitioner therefore prayed for allowing this writ petition and to issue appropriate direction to the respondents to disburse the amount of Rs.3,98,90,310/- with interest, without brooking any further delay.

6. The learned Advocate General appearing for the respondents fairly submitted that the respondents are willing to pay the amount of Rs.3,98,90,310/- payable to the respondents.

7. In view of the above submission of the learned Advocate General appearing for the respondents, the learned counsel for the petitioner undertakes to withdraw the Contempt Petition No. 496 of 2018 pending before the Division Bench of this Court.

8. Recording the aforesaid submission of the learned Advocate General appearing for the respondents, this writ petition is disposed of. The respondents are directed to disburse the amount of Rs.3,98,90,310 /- payable to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu
Highways and Minor Ports, Chennai
2. The Chief Engineer
National Highways
Chepauk, Chennai



3. The Superintending Engineer
National Highways, Salem

4. The Divisional Engineer
National Highways, Coimbatore

5. The Chief Accounts Officer
National Highways
Kuralagam, Chennai

6. The Chief Manager,
South Indian Bank
Regional Office
No.1, Sterling Road
Nungambakkam, Chennai

+2ccs to M/S.V.Raghevacheri, Advocate, S.R.No.39594

+1cc to the Special Government Pleader, S.R.No.39834,39751

WP No. 18564 of 2016

RD(CO)
PM/17/09/2021