

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 8552 of 2021
and
W.M.P.No. 9117 of 2021

M.S.Engineers
rep. By its Managing Partner,
M.Saktivel, Son of Marimuthu,
No.19, Edayar Street,
Chennai - 600 009.

...Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Commissionerate of Municipal Administration,
75, Santhome High Road,
Raja Annamalaipuram, Chennai - 600 028.
- 3.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore 641 001.
- 4.The Chief Accounts Officer,
Corporation Main Office,
Coimbatore City Municipal Corporation,
Coimbatore.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, directing the respondents to disburse the bill amount of Rs.18.64 crores to the petitioner, towards the value of the work done by them in restoration Black Top surface on the roads and also in construction of Retaining walls at various places within the Coimbatore Corporation limits, by considering petitioner's various representations dated 29.11.2020, 18.01.2021, 25.01.2021, 29.01.2021, 02.02.2021, 08.02.2021 and 20.03.2021.

For Petitioner : Mr.C,Mani Shankar, Senior Advocate
for Mr.A.Thiyagarajan
For Respondents : Mr.M.Elumalai, Special Govt. Pleader
for R1& R2
Mr.K.Magesh, Standing Counsel
for R2, R3 & R4

O R D E R

This writ petition is filed by the petitioner to direct the respondents to disburse the bill amount for the value of the work done by the petitioner at various places within the Coimbatore Corporation limits.

2. The petitioner is a class -1 contractor, doing Government contract works, civil works and have also laid several roads in the 3rd respondent Corporation. The details of the works as stated in the petition are as follows:-

S.No .	Date of Work order	Name of Work	Cheque Value
1	11.05.2020	Restoration of BT surface at Siruvani Nagar, G.K.S.Avenue, Shanmuga Chettiar Nagar and Chinmaya Nagar in W.No.18.	Rs.17,99,683/-
2	11.05.2020	Restoration of BT surface at IOB Colony Cut Roads, Onnapalayam, Bharathi Gaden, Maruthamalai Bus Stop Backside, W.No.17.	Rs.45,61,922/-
3	11.05.2020	Construction of retaining wall and BT surface at Onnapalayam buriyal ground in W.No.17.	Rs.44,09,593/-
4	11.05.2020	Restoration of BT surface at Adhiya Avenue, Thoppil Nagar in W.No.16.	Rs.70,588,95/-
5	11.05.2020	Restoration of BT surface at Thirumurugan Nagar, M.G.Colony and Vasantham Nagar in W.No.16.	Rs.60,93,030/-
6	11.05.2020	Restoration of BT surface at Navavoor pirivu, Selvam Nagar, Abirami Nagar and R.K.G.Nagar in W.No.16.	Rs.66,12,028/-

7	11.05.2020	Restoration of BT surface at Maruthamalai Murugan nagar and Arunachalam layout in W.No.16.	Rs.24,26,281/-
8	30.05.2020	Restoration of BT surface at Chandragandhi Nagar, DhamodharasamyNagar, W.No.56, 57.	Rs.91,39,467/-
9	29.06.2020	Restoration of BT surface at GKS Nagar main road, W.No.18.	Rs.16,95,447/-
10	29.06.2020	Registration of BT surface at Alamelu Mangai avenue main road and cross road in W.No.18	Rs.26,86,809/-
11	29.06.2020	Construction of retaining wall and BT surface of Onnapalayam burial ground in W.No.17.	Rs.25,32,898/-
12	01.09.2020	Restoration of BT surface at Adhiya Avenue, Thoppil Nagar in W.No.16.	Rs.19,71,671/-
13	01.09.2020	Restoration of BT surface of Bharathi Nagar in W.No.16	Rs.19,74,114/-
14	01.09.2020	Restoration of BT surface at Nadesa Muthaliyar Street Main road cross road, in W.No.17, West Zone. (14 CFC)	Rs.92,66,882/-
15	01.09.2020	Rstoration of BT surface at Maruthamalai Murugan Nagar and Arunachalam layout in W.No.16	Rs.68,41,546/-
16	02.09.2020	Restoration of BT surface at venkatesapuram Cross Roads, in Ward No.41 and restoration of BT surface at Anjugam Nagar main road in W.No.27, restoration of BT surface at Mini Bus Road in Ward No.42 (Turip - 19-20 Package No.09)	Rs.1,77,18,492/-
17		Restoration of BT surface at Tata Nagar, Sakthi Nagar and Alamelu Mangai Avenue in Ward No.18	Rs.92,50,000/-
18		Restoration of BT surface at Sabapathi Street in Ward No.11	Rs.68,50,000/-
19		Restoration of BT surface at Maruthakonar Street in Ward No.14	Rs.92,45,000/-

20	Restoration of BT surface at Bommanapalayam and IOB Colony 1 st street in Ward No.17	Rs.82,50,000/-
	Total :	Rs.11,99,93,528 /-

The above works were carried out as per the terms of agreement entered between the petitioner and the Corporation of Coimbatore.

3. According to Mr.C.Mani Shankar, learned Senior Counsel appearing for the petitioner, there is a specific class for schedule of payment, which reads as follows:-

"(iii) Payment Schdule: Part of complete payment will be made every month by the Corporation commissioner based on the out turn of satisfactory completion of work in the previous month and value of work executed shall be determined, based on the measurements and check measurements by the Engineer in the M.Book."

4. The learned Senior Counsel would further submit that the petitioner has executed works in the Corporation to the tune of Rs.24 crores, for which the 3rd respondent has paid a sum of Rs.5.36 crores only and yet to pay the balance of Rs.18.64 crores. Demanding this amount, the petitioner has also sent several representations on 29.11.2020, 18.01.2021, 25.01.2021, 29.01.2021, 02.02.2021, 08.02.2021 and 02.03.2021 but the respondent Corporation has not considered the same. He would further submit that in view of the delay in payment by the respondent Corporation, the petitioner is put to great difficulties and is not in a position to pay the outstanding dues to his suppliers and to his workers. It is also stated that the petitioner has borrowed money on interest for execution of these works.

5. The learned Senior Counsel has also pointed out that the respondent Corporation is paying the bills to selective contractors and not to the petitioner alone and therefore, on this huge outstanding, the petitioner left with no other remedy, approach this Court for a mandamus directing the respondents to disburse his bill amount of Rs.18.64 crores to the petitioner in a time bound manner by considering his representations.

6. Mr.K.Magesh, learned Standing Counsel takes notice for the contesting respondents 3 and 4 and Mr.M.Elumalai, learned Additional Government Pleader takes notice for the respondents 1 and 2.

7. The relief sought for in this writ petition is against the respondents 3 and 4. Mr.A.Magesh, learned counsel for the respondents 3 and 4 would submit that due to the prevailing situation, the Corporation is not in a position to collect the property tax effectively and therefore, they are not in a position to pay these bills within a stipulated time. However, he would submit that on 29.03.2021 a sum of Rs.50,00,000/- has been paid to the petitioner.

8.The case of the respondents 3 and 4 is that due to the financial difficulties, they are not in a position to pay the bill amount within a reasonable time. Having floated tenders and after the execution of work, the respondent Corporation is not justified in delaying the payment to the Contractors.

9. Considering the relief sought for in this writ petition, the respondents are directed to consider the representations of the petitioner dated 29.11.2020, 18.01.2021, 25.01.2021, 29.01.2021, 02.02.2021, 08.02.2021 and 02.03.2021 and disburse the bill amount of the petitioner within six months from the date of receipt of a copy of this order on six monthly installments.

10. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Commissionerate of Municipal Administration,
75, Santhome High Road,
Raja Annamalaipuram, Chennai - 600 028.

3.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore 641 001.

4.The Chief Accounts Officer,
Corporation Main Office,
Coimbatore City Municipal Corporation,
Coimbatore.

+1cc to the Government Pleader Sr.21419
+2cc to Mr.A.Thiyagarajan, Advocate Sr.21143
+1cc to Mr.K.Magesh, Advocate Sr.21137

W.P.No. 8552 of 2021
and
W.M.P.No. 9117 of 2021

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