



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. Nos. 16188 & 16191 of 2021

and

WMP Nos. 17135, 17138 & 17139 of 2021

M/s KCP Engineers Pvt. Ltd.,
No.9A-9th Floor, Pricol Caledon Sqaure,
Avinashi Road, Peelamedu,
Coimbatore - 641 004.
Rep.by its Director
K.Muthukumarasamy.

...Petitioner in both WPs

Versus

1. The Superintending Engineer,
Highways Department,
Construction & Maintenance,
Coimbatore Circle, Coimbatore - 18.

2. The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Gobichettyapalayam Division,
Gobichettyapalayam,
Erode District

...Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from preventing the petitioner from executing the balance work and terminating the contract awarded to the petitioner in pursuant to the Tender Notice Nos.21/2020 - 2021/HDO and 22/2020 - 2021/HDO dated 08.01.2021 and 11.01.2021 respectively on the file of the first respondent without following the procedure of law.

For Petitioner : Mr.S.Doraiswamy
in both the Writ Petitions

For Respondents : Mr.R.Shanmugasundaram
Advocate General
assisted by Mr.Stalin Abimanyu
Government Counsel
in both the Writ Petitions



COMMON ORDER

The petitioner herein is a registered Class-I contractor under the Highways Department. He participated in the tenders invited by the first respondent viz., (i) Notice No.21/2020-2021/HDO and (ii) Notice No.22/2020-2021/HDO, relating to strengthening and improving the various roads, which falls within the administrative control of the second respondent herein. The petitioner was declared as the successful bidder and he commenced the work covered under the two tenders on 26.02.2021. According to the petitioner, the value of the two contract is approximately Rs.262 Crores and Rs.148.5 Crores. In order to complete the contractual work within the time stipulated by the respondents, the petitioner has availed loan of Rs.130 crores from the Bank, engaged his men and machinery and swiftly proceeded with the work. However, during May 2021, due to the State wide lock down imposed by the Government to arrest the spread of Covid-19 Pandemic, the workers engaged by the petitioner could not turn up to the work spot. While so, when the restrictions imposed by the Government were relaxed in a phased manner, the petitioner attempted to proceed with the contractual work. However, on 27.07.2021, the officials of the respondents informed the petitioner that the first respondent has decided to terminate the contract awarded to the petitioner. According to the petitioner, such an oral order of termination has come as a rude shock to him especially when he had engaged nearly 250 staff for implementing the project and they include skilled and unskilled workers besides Engineers. Due to the unreasonable action of the respondents, he could not continue the contractual work. The petitioner also submitted a representation on 27.07.2021 to the respondents requesting to permit him to continue the contractual work, but he was not allowed to do so. Therefore, the petitioner has come up with these two writ petitions praying to issue a Writ of Mandamus forbearing the respondents from preventing him from executing the balance work or from terminating the contract awarded to the petitioner without following the procedures contemplated under law.

2. When these writ petitions were taken up for hearing on 03.08.2021, this Court directed the respondents to maintain status-quo as on that date.

3. Heard the learned counsel for the petitioner and the learned Advocate General appearing for the respondents. The learned Advocate General appearing for the respondents, at the outset, raised the issue relating to maintainability of the writ petitions. It is his contention that in contractual matters, this Court will not ordinarily interfere unless there is materials to show that the respondents have acted contrary to



the terms and conditions of the contract. According to the learned Advocate General, the pace of work taken up by the petitioner is not in accordance with the time frame fixed under the contract. The learned Advocate General also relied on the status report filed by the first respondent on 06.08.2021 in which, while denying the various averments raised by the petitioner in the affidavit filed in support of the writ petition, it was inter alia stated that after relaxing the lock down norms, the petitioner has not turned up to resume the work. The officials of the respondents have never prevented the petitioner from taking up the work and therefore, the writ petitions are pre-mature. Above all, the learned Advocate General submitted that if at all any action is to be initiated by the respondents against the petitioner for non-adherence of the terms and conditions of the contract, such action will be resorted to by following all the due process of law.

4. In the light of the stand taken by the respondents in the status report filed on 06.08.2021 and by recording the statement made by the learned Advocate General that the respondents would take action, if any, against the petitioner, only by following the due process of law, both the writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vum/rsh

To

1. The Superintending Engineer,
Highways Department,
Construction & Maintenance,
Coimbatore Circle, Coimbatore - 18.

2. The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Gobichettyapalayam Division,
Gobichettypalayam, Erode District.

+2ccs to M/s.S.Doraisamy, Advocate, S.R.No.39506,39507

+1cc to the Government Pleader, S.R.No.40017,40018

WP Nos.16188 & 16191/2021

PMK[co]

NSK 27/09/2021