



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1428 of 2021

K.P.Munisamy

... Appellant/Petitioner

Vs.

1. The Chief Engineer (Highways),
Project Highways,
3rd Floor, Highways Research Centre,
Guindy, Chennai - 600 025.
2. The Divisional Engineer (Highways),
Project Highways,
Thamarai Thotti Junction,
Alagar Kovil Road, Madurai.
3. The Superintending Engineer (Highways),
Project Highways,
Thamarai Thotti Junction,
Alagar Kovil Road, Madurai.
4. The Assistant Engineer (Highways),
Project Section, Dindigul District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.20251 of 2018, dated 02.02.2021.

Prayer in WP(MD). 20251/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 2nd and 3rd respondents to disburse the requisite amount of Rs.6,31,582 along with 20% additional cash bill for the work of ROB in Chennai - Trichy - Dindigul Road at Km 419/4 and Railway Km 3/100-200 in lieu of existing LC No.5 between Dindigul and Akkaraipatti Railway Stations, based on the petitioners representation dated 07.09.2018

For Appellant : Mr.J.Lawrence

For Respondents : Mr.R.Baskaran,
Standing Counsel for Government



J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.J.Lawrence, learned counsel appearing for the appellant and Mr.r.Baskaran, learned Government Counsel appearing for the respondents.

2. This appeal is directed against the order dated 0202.2021 passed in W.P(MD).No.20251 of 2018.

3. The said writ petition was filed by the appellant to direct the respondents 2 and 3 to disburse a sum of Rs.6,31,582/- along with 20% additional cash bill for the construction work performed by him by considering his representation dated 07.09.2018.

4. The learned Single Bench dismissed the writ petition on the ground that the matter is purely a contractual dispute and if the appellant has raised any additional claim, then in terms of the Commercial Condition No.10 of the agreement, he has to approach the competent civil Court.

5. In our considered view, the learned Single Bench was right in observing that in such contractual matters, the Court should be very slow in interfering, by exercising its jurisdiction under Article 226 of the Constitution of India.

6. Mr.J.Lawrence, learned counsel appearing for the appellant would contend that the respondents being the Governmental Authorities, though the work assigned to the appellant is in a contractual field, yet they are bound to act reasonably and fairly. There can be no quarrel on the aspect that the action of the Government should be fair and reasonable. However, when the dispute between the parties is in the private law field and not in the public law field, then the Courts under Article 226 of the Constitution of India should seldom interfere in such matters, more particularly, when the claims are disputed.

7. The grievance of the appellant is that though a communication was sent by the appellant on 27.05.2016, by the Divisional Engineer to call for a meeting with the appellant, so that the issue can be sorted out, thereafter, the respondents have not even considered the appellant's representation dated 07.09.2018 and the request of the appellant is to examine his representation and if the amount claimed by the appellant is not disputed, then the payment can be released. In the counter-affidavit filed in the writ petition by the Divisional Engineer, it is stated that a sum of Rs.32,62,597/- has been paid to the appellant for the work which has been done after due verification by the Assistant Engineer of the



Department. The remaining amount has been stopped for not complying with the agreement conditions and once the appellant ensures that the specification and standards of work are completed in terms of the agreement, the remaining amount would be released.

8. Further, it is stated that the additional claim to the tune of 20% is the disputed issue and as per the Commercial Conditions No.10 in the agreement, the appellant has to approach the civil Court, since the respondents have stated that if the appellant ensures that the work has been completed as per the specification and standards of work, the balance amount shall be released.

9. If such is the case, one opportunity can be granted to the appellant to demonstrate that he has completed the works as per the specification and standards and if the Department is satisfied, then the balance amount can be released. If not, the Department can give a written reply to the appellant stating as to why the amount cannot be released. So far as the additional claim of 20% is concerned, the appellant has to necessarily approach the civil Court.

10. Therefore, we are inclined to grant a partial relief to the appellant by directing the respondents to consider the petitioner's representation dated 07.09.2018, call upon the appellant to establish that he has complied with the terms and conditions of the said agreement as per the specification and standards and if the Department is satisfied, the balance amount can be released or otherwise, the Department can intimate the appellant as to why the amount cannot be released, therefore, it will enable the appellant to approach the civil Court even for the said amount. As mentioned earlier, so far as the additional claim of 20% is concerned, the appellant is at liberty to approach the civil Court of competent jurisdiction.

11. With the above observations and directions, this **Writ Petition stands disposed of**. No costs.

Sd/-

Assistant Registrar (CO)

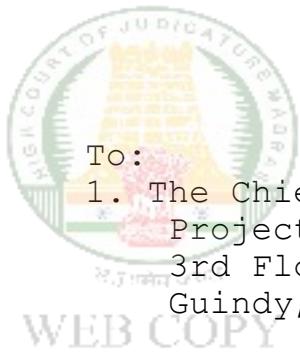
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/ /2021

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:

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+1 CC to M/s.J.LAWRANCE, Advocate (SR-23970[F] dated 27/07/2021)

W.A. (MD)No.1428 of 2021
26.07.2021

RK (04.08.2021) 4P 6C