



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 15.04.2021

CORAM

**THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM**

**AND**

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

WEB COPY

**W.A. (MD)No.762 of 2021**  
**and C.M.P. (MD) No.3425 of 2021**

The Corporation of Thanjavur,  
Rep. by its Commissioner,  
Office of the Corporation of Thanjavur,  
Thanjavur District. ... Appellant/Respondent

Vs.

J.Srinivasan ... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.12785 of 2018, dated 14.11.2019.

Prayer in WP(MD). 12785 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus directing the respondent to pay the sum of Rs.6,20,100/- as per the representation of the petitioner dated 20.03.2018 for the completion of works of supplying water to the Respondent.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.Vijaya Shankar  
for M/s.D.Senthil

\* \* \* \* \*

**J U D G M E N T**

**(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)**

This appeal by the Corporation of Thanjavur, the respondent in W.P.(MD) No.12785 of 2018, is aggrieved by the order dated 14.11.2019, allowing the Writ Petition, filed by the respondent, the contractor, who was engaged by the appellant for man power supply.

2.The prayer of the respondent herein in the Writ Petition is that the appellant Corporation has to pay a sum of Rs.6,20,100/-, being payable for man power supply effected by the

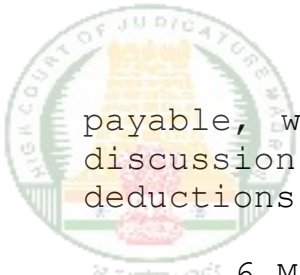


respondent by considering the representation dated 20.02.2018. Since the representation was not considered, the respondent was constrained to file the Writ Petition.

3.The appellant Corporation raised three contentions before the learned Writ Court. Firstly, the Writ Petition is not maintainable as disputed questions of facts is involved. Secondly, the conduct of the officials/Engineers of the Corporation is subject matter of criminal investigation and the matter is sub-judice and the respondent/writ petitioner has been arrayed as third accused. Thirdly, the contract entered into between the appellant and respondent is not statutory contract.

4.We have gone through the reasons assigned by the learned Writ Court and we are not able to accept the reasons made therein, though we agree with the ultimate conclusion of the learned Writ Court. Firstly, the contract is a non-statutory contract and a dispute between the parties to a contract definitely would result in adjudicating disputed questions of fact and Writ Petition would not be normally entertained. Secondly, in non-statutory contract, the terms have to be enforced in accordance with the conditions contained in the contract and not otherwise. Whether a relief of specific performance is possible or not has to be adjudicated by a different forum and not under Article 226 of the Constitution of India. Therefore, under normal circumstances, the Writ Petition should have been dismissed as not maintainable. Unfortunately, what appears to have weighted in the minds of the learned Writ Court is the criminal investigation, which has resulted in registration of F.I.R. against two of the Corporation officials, in which the respondent is included as the third respondent, and whether the pendency of the same should be a bar for refusing the amount payable under the contract to the respondent. The learned Writ Court was convinced that the appellant cannot withhold the amount. We are in agreement with the said finding of the learned Writ Court though not strictly for the reasons given by the learned Writ Court but for the reason, which we assign hereunder.

5.Admittedly, the appellant Corporation has not initiated any action against the respondent/writ petitioner to cancel the contract or issue show cause notice for recovery of excess payment etc., The criminal complaint, which is under investigation is regards culpability of the respondent/writ petitioner with the officials/Engineers of the Corporation. We are informed that the respondent/writ petitioner was not initially arrayed as accused, but subsequently included in the F.I.R. as accused No.3. Therefore, we find that withholding of the amount payable to the respondent for the man power supply could not be justified in the facts and circumstances of the case. However, we are restrained from making any observation as regards the quantum of amount



payable, which has to be decided by the appellant Corporation in discussion with the respondent/writ petitioner, because certain deductions have to be made for statutory payments.

6.Mr.N.Dilip Kumar, learned Standing Counsel appearing for the appellant Corporation expressed an apprehension that any direction issued for the release of the amount should not be considered because in the criminal case the investigation has been completed and the respondent has been arrayed as third accused.

7.In the light of the apprehension expressed by the learned Standing Counsel appearing for the appellant Corporation, we make it clear that the order passed in the Writ Appeal will not have any impact on the criminal proceedings, which is pending in S.C.No.21 of 2020, on the file of the Chief Judicial Magistrate, Thanjavur, which shall be tried uninfluenced by any of the observations made in this appeal.

8.In the result, the order passed in the Writ Petition is confirmed for the reasons assigned by us above and there will a direction to the appellant Corporation to pay the amount payable to the respondent/writ petitioner for the man power supply effected and the quantum shall be arrived at by the officials of the appellant Corporation after holding discussion with the respondent/writ petitioner. This direction will have to be complied with within a period of six weeks from the date of receipt of a copy of this order.

9.The Writ Appeal stands disposed of with the above observations and directions. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(P & A)

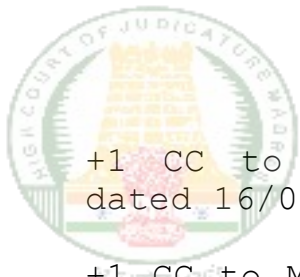
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Sub Assistant Registrar(CS)

sj

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+1 CC to M/s.D.SENTHIL, Advocate ( SR-15928[F]  
dated 16/04/2021 )

+1 CC to M/s.N.DILIPKUMAR, Advocate ( SR-16075[F]  
dated 16/04/2021 )

**W.A. (MD) No. 762 of 2021**  
**15.04.2021**

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