



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.18685 of 2020

S.Murugesan

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Public Works Department,
Fort St.George, Chennai - 9.
- 2.The Superintending Engineer,
W.R.O./P.W.D.,
Thamarabharani River Basin Division,
Tirunelveli -2.
- 3.The District Collector,
Tuticorin District.
- 4.The Commissioner,
Department of Geology and Mining,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai.
- 5.The Commissioner of Commercial Taxes,
Ezhilagam, Chennai.
- 6.The Assistant Director,
Department of Mines and Geology,
Tuticorin.
- 7.The Deputy Commissioner,
Commercial Taxes Department,
Tuticorin.

... Respondents

(R3 to R7 were impleaded vide order of this Court in W.M.P.(MD) No.13461 of 2021, dated 20.09.2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents herein to consider the representation, dated 09.05.2017 made by the petitioner and to refund the sum of Rs.1,99,85,115/ (Rupees One Crore Ninety Nine Lakhs Eighty Five Thousand One Hundred and Fifteen only) paid towards the PWD contract for Slice III vide agreement bearing No. 04 SE/TBC/2015-2016 and Rs.2,61,45,661/- (Rupees Two Crores Sixty One Lakhs Forty Five



Thousand Six Hundred and Sixty One only) paid towards PWD contract for Slice VII vide Agreement bearing No. 07 SE/TBC/2015-2016.

For Petitioner : Mr.Jerin Mathew
for Mr.V.Sukumar
For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.N.Satheeshkumar
Additional Government Pleader

WEB COPY

O R D E R

This Writ Petition has been filed in the nature of Mandamus seeking a direction against the respondents to consider the representation given by the petitioner, dated 09.05.2017 seeking refund of a sum of Rs.1,99,85,115/ (Rupees One Crore Ninety Nine Lakhs Eighty Five Thousand One Hundred and Fifteen only) paid towards the PWD contract for Slice III vide agreement bearing No. 04 SE/TBC/2015-2016 and Rs.2,61,45,661/- (Rupees Two Crores Sixty One Lakhs Forty Five Thousand Six Hundred and Sixty One only) paid towards PWD contract for Slice VII vide Agreement bearing No. 07 SE/TBC/2015-2016.

2.Even while hearing the learned Counsel for the petitioner, this Court had entertained an apprehension whether such an order can be passed by this Court without examining whether the petitioner is actually entitled for such amount and whether the petitioner should be diverted to the Civil Court to seek the amount after paying necessary Court fee.

3.It is the contention of the petitioner that for removal and disposal of the deposited sediments in the water speared area of Srivaikundam, Tuticorin District, tenders have been floated for seven slices. The present Writ Petition is restricted to an amount payable to Slice III and VII. The petitioner had paid earnest money deposit, security deposit and additional deposit towards the execution of the contract. He had also paid seigniorage fee for the materials taken out. It is the further contention of the petitioner that though he had paid those amounts, the contract had not been extended and therefore, he claims the amounts payable to him.

4.The learned Additional Advocate General appearing on behalf of the respondents states that the contract had been interfered with owing to the order passed by the National Green Tribunal and therefore, the respondents were under compulsion to ensure that the orders of the National Green Tribunal are complied with and therefore, did not extend the contract. The learned Additional Advocate General states that therefore, the respondents have not granted permission for further continuation of the contract by the petitioner.



5.A calculation memo had been filed. A perusal of the same shows that for Slice III and VII, the amount payable, even according to the respondents, to the petitioner, are as follows:

"For Slice III

Recovery as per A.G.Audit Para

i. Difference in Cost of Sand =Rs.
=14,17,500.00
40,500xRs.35.00
ii. Excess Payment on Earthwork =Rs.19,10,578.62
=1,29,093.15xRs.14.80
Recovery for Less Payment of Sand=Rs.
cost 2,25,540.00

Penalty as per Agreement

Non achievement of Milestone as per=Rs.
clause 57.2 2.69,932.00
Total Recovery =Rs.38,23,551.12

Calculation for Balance Addl. Security Deposit

Additional Security Deposit =Rs.50,00,000.00
Deduction for Recovery (-) =Rs.38,23,551.12
Refundable Additional Security=Rs.11,76,448.88
Deposit

Total Refundable Amount

Refundable Additional Security=Rs.11,76,448.88
Deposit
Earnest Money Deposit (Bond) =Rs. 37,000.00
Security Deposit (Bond) =Rs. 70,980.00

Total Amount payable by WRD =Rs.12,84,428.88

Details of Amount Deposited on other Department Heads

Description	Amount Received from the Contractor & Deposited in Mines Head 0853 (in Rupees)	Amount for Executed Qty (in Rupees)	Amount for Balance Qty (in Rupees)
Sand (Rs.141.40/Cum)	55,01,160.00	57,26,700.00	-2,25,540.00
Earth (Rs.70.00/cum) (Dept. of Geology & Mining)	66,33,900.00	62,01,520.50	4,32,379.50



Seigniorage Fee for Earth (Rs.20.00/Cum) (Dept. of Geology & Mining)	18,90,000.00	17,71,863.00	1,18,137.00
VAT 5% (Commercial Tax Dept.)	6,18,435.00	5,96,411.02	22,023.98
Total	<u>1,46,43,495.00</u>	<u>1,42,96,494.52</u>	<u>3,47,000.48</u>

"For Slice VII

Penalty as per Agreement

Non achievement of Milestone as per=Rs.
clause 57.2 3,80,904.75

Calculation for Balance Addl. Security Deposit

Additional Security Deposit =Rs.50,00,000.00
Deduction for Recovery (-) =Rs.3,80,904.75
Refundable Additional Security=Rs.46,19,09.25
Deposit

Total Refundable Amount

Refundable Additional Security=Rs.46,19,095.25
Deposit

Earnest Money Deposit (Bond) =Rs. 48,100.00

Security Deposit (Bond) =Rs. 1,04,270.00

Total Amount payable by WRD **=Rs.47,71,465.25**

Details of Amount Deposited on other Department Heads

Description	Amount		
	Received from	Amount for	Amount for
	the Contractor	Executed Qty	Balance Qty
	& Deposited in	(in Rupees)	(in Rupees)
	Mines Head		
	0853		
	(in Rupees)		
Sand	80,92,440.00	0.00	80,92,440.00
(Rs.141.40/Cum)			
Earth	93,61,170.00	0.00	93,61,170.00
(Rs.70.00/cum)			
(Dept.	of		
Geology	&		
Mining)			
Seigniorage Fee	26,67,000.00	0.00	26,67,000.00
for Earth			
(Rs.20.00/Cum)			
(Dept.	of		
Geology	&		
Mining)			



VAT 5%	8,72,681.00	0.00	8,72,681.00
(Commercial Tax Dept.)			
Total	<u>2,09,93,291.00</u>	<u>0.00</u>	<u>2,09,93,291.00</u>

6.A copy of the said calculation memo had also been forwarded to the learned Counsel for the petitioner. Since a larger sum had been sought in the Writ Petition, the learned Counsel for the petitioner naturally raised an objection and stated that further amounts are payable to the Writ Petitioner herein. That would now take me back to the thought process, namely, that the petitioner should approach the Civil Court by paying necessary Court fee and then seek the amounts, which according to the petitioner, are due and payable under the contract.

7.However, since by way of the calculation memo, the respondents have agreed to pay the amounts mentioned therein to the petitioner, a direction is issued to the respondents that with respect to Slice III, a sum of Rs.12,84,428.88/- (Rupees Twelve Lakhs Eighty Four Thousand Four Hundred and Twenty Eight and Eighty Eight paise) and with respect to Slice VII, a sum of Rs.47,71,465.25/- (Rupees Forty Seven Lakhs Seventy One Thousand Four Hundred and Sixty Five and Twenty Five Paise) are paid by the respondents. The other amounts relating to other departments may also be sought by the petitioner from the respective departments on production of a copy of this order. If the petitioner is aggrieved and has a reasonable cause that further amounts are payable, then providing the law of limitation is in favour of the petitioner, the petitioner may take appropriate proceedings, as he is advised.

8.It is hoped that the respondents would pay the amount of Rs.12,84,428.88/- (Rupees Twelve Lakhs Eighty Four Thousand Four Hundred and Twenty Eight and Eighty Eight paise) and Rs.47,71,465.25/- (Rupees Forty Seven Lakhs Seventy One Thousand Four Hundred and Sixty Five and Twenty Five Paise) within a period of twelve weeks from the date of receipt of a copy of this order. Since the order has been passed on the basis of a calculation memo forwarded by the respondents, I am not consciously entering into a discussion on the merits of the case.

9.In view of the fact that the petitioner stands benefited by this order and more importantly, by the respondents having come forward by filing the calculation memo undertaking to pay the amount due according to the respondents to the petitioner, it is only appropriate and I am confident that Mr.Jerin Methew, learned Counsel appearing on behalf of the petitioner would also join in the noble cause of calling upon the petitioner to deposit a sum of Rs.5,00,000/- to the credit of Madurai Bench of Madras High Court Advocates Welfare Fund Trust, Madurai, within a period of four weeks from the date of receiving the amounts mentioned in this order from the respondents.



10. With the said directions, this Writ Petition is disposed of.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

cmr

To

1. The Secretary,
The State of Tamil Nadu,
Public Works Department, Fort St. George, Chennai - 9.
2. The Superintending Engineer,
W.R.O./P.W.D.,
Thamarabharani River Basin Division, Tirunelveli -2.
3. The District Collector, Tuticorin District.
4. The Commissioner,
Department of Geology and Mining,
Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai.
5. The Commissioner of Commercial Taxes,
Ezhilagam, Chennai.
6. The Assistant Director,
Department of Mines and Geology, Tuticorin.
7. The Deputy Commissioner,
Commercial Taxes Department, Tuticorin.

Copy to

The Officer Incharge,
Madurai Bench of Madras High Court
Advocates Welfare Fund Trust, Madurai.

+1 CC to M/s.V.SUKUMAR, Advocate (SR-34858[F] dated 17/11/2021)
+1 CC to M/s.SPL GP (SR-34975[F] dated 18/11/2021)

W.P. (MD) No.18685 of 2020

17.11.2021

RS(30.11.2021) 6P 11C

<https://hcservices.ecourts.gov.in/hcservices/>