



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.02.2021**

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P. (MD) No.20251 of 2018

K.P.Munisamy

... Petitioner

Vs

1.The Chief Engineer (Highways),
Project Highways,
3rd Floor, Highways Research Centre,
Gundy,
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),
Projects Section,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct 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 petitioner's representation dated 07.09.2018.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondents : Mr.C.Ramesh
Special Government Pleader

ORDER

In view of the averments made in the counter affidavit, this Court finds that this writ petition is not maintainable for the simple reason that there appears a disputed question of fact, which cannot be resolved by this Court in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. It is



always open to the petitioner to resort the civil remedy to establish his claim as against the respondents and certainly, such remedy is not available in the extraordinary jurisdiction of this Court.

2. In any case, the learned counsel for the petitioner would submit that a substantial portion of the claim has been settled and only the pending bill amount has not been paid, which has not been disputed by the respondents. The relevant portion of the counter affidavit is as under:-

"5. I submit that already two bills with value of work done as per measurements recorded for Rs.32,62,597/- had been paid to the contractor. These are all done after thorough verification by the Assistant Engineer of the department that the agreed specification has been completed. The remaining amount has been stopped for not complying the agreement. Once the petitioner ensures the specification and standards of work, the remaining amount will be released at earlier. Furthermore, a person who expects his counterpart to perform his part of contract, then he should have been completed his part of contract. But in the present case the writ petitioner is the person who did not perform his legal duty as agreed between the petitioner and the department.

6. I submit that in addition to this, the petitioner made an additional claim to the tune of 20%, it is the matter of dispute between the petitioner and the respondent department and the

same has to be adjudicated as per the agreement in which it was contemplated in Part-II supplementary specifications under the head of Commercial Conditions in Clause-10. If any of the party to the agreement raise claim more than 2 lakhs rupees, then they have to approach the civil Court to adjudicate the same as per the agreement. Hence, the petitioner has no case at all before this Hon'ble Court. On this score alone the writ petition has to be dismissed in limine."

3. In view of the disputed question of fact involved in this case, it is not open to the petitioner still to seek any simple direction from this Court for the payment of Bridge work stated to be outstanding and due to the petitioner.

4. As stated above, it is always open to the petitioner to approach the civil Court to workout his remedies and certainly it is not open to him to approach this Court.



5.This Court therefore finds that this Writ Petition is not maintainable and hence, it stands dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Chief Engineer (Highways),
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- 4.The Assistant Engineer (Highways),
Projects Section,
Dindigul District.

+1 CC to M/s.GP (SR-3085[F] dated 03/02/2021)

W.P. (MD)No.20251 of 2018

02.02.2021

(AC) CO

AP(18/02/2021) 3P 6C