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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.7308 of 2019

S.Sengodan

... Petitioner

Vs

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk,
Chennai - 600 005.

2. The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Coimbatore.

3. The Executive Engineer,
TWAD; RWS Division,
No.175-A, Shola House,
Udagamandalam.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his letter No.211/F.WSIS to Gudalur/BA/2016-17 dated 01.03.2017 quash the same and further direct the respondents to pay the sum of Rs.76,96,465/- towards the interest for delayed payment as per the representation of the petitioner dated 13.11.2018.

For Petitioner : Mr.M.Raja Sekhar

For Respondents : Ms.Mekhala - R1
No appearance - R2 & R3

O R D E R

Heard Mr.M.Raja Sekhar, learned counsel for the petitioner and Ms.Mekhala, learned counsel for R1/Tamil Nadu Water Supply and Drainage Board (in short 'TWAD Board').

2. The petitioner was successful in his bid for the contract for the Water Supply Improvement Scheme in Gudalur Municipality,



Nilgiris District. A work order was issued on 19.11.2007 and Agreement executed in December 2007.

3. The details of the contract may not, per se, be necessary for resolution of the dispute in this Writ Petition, save the details that are specifically referred to herein.

4. There were some difficulties in the commencement of contract and after some delay, the work was entrusted to the petitioner in October 2009 and the same completed on 31.03.2011.

5. The contract provides for year of maintenance thereafter and therefore, on 31.03.2012, the responsibility of the petitioner ended qua the project.

6. The facts above are not in dispute as may be seen from the counter of R2 dated 25.09.2019. Paragraphs 6 to 8 of counter, while pointing out the delay in commencement and completion of the project, had conceded to the position that work had been commenced by the contractor in June, 2009 and completed on 31.03.2011.

7. The petitioner had, admittedly, submitted its bills to the Executive Engineer of TWAD Board and as per clause 44.2 of the General Conditions of Contract, the Executive Engineer is required to scrutinize and settle the bills within 15 days from date of submission of bills by the contractors.

8. In this case, the petitioner is before this Court pointing out that the settlement of bills has happened over a span of six (6) years from 2012 to 2018 leading to delay in settlement thereof.

9. The delay in settlement as averred by the petitioner is not in dispute and the respondent TWAD Board has conceded to this position as well. However, the stand of the respondent is to disavow all responsibility in regard to the delay, stating that the contract is only at the instance of a third party agency.

10. They state that funds were sanctioned belatedly for local body projects funded by other agencies and thus the TWAD Board ought not to be made responsible for the delay in payment. They would argue that the contract, per se, does not contain a stipulation or enabling provision for payment of interest in cases of delay in payment.

11. I am unable to accept the case of the respondents on both the scores as noticed above. On the question of disavowing responsibility, the contract was, entered into between the petitioner and the TWAD Board and thus the terms and conditions thereof would bind both the petitioner and the TWAD Board equally.

12. In line with the requirement that the bills of the



petitioner have to be settled within 15 days from date of receipt of the bill, any delay over and above the stipulated period would have to be compensated adequately.

13. As regards the argument that there is no enabling provision in the contract, this issue has been settled by a decision of a Division Bench of this Court in The Chairman and Managing Director, Tamil Nadu Water Supply and Drainage Board V. P.Kandasamy (W.A.(MD) No.1008 of 2013, decision dated 12.06.2018).

14. In the aforesaid case, the Division Bench was concerned with the claim of interest made by a contractor for non-renewal of security time deposit and for delayed release of security deposit to that petitioner. The TWAD Board, in that case too, had defaulted in not issuing proper instructions for renewal of fixed deposit, leading to loss of interest.

15. The Bench while holding that it was incumbent upon the TWAD Board to have renewed the fixed deposit without any lapse and non-renewal of the same cannot be attributable to the petitioner, confirmed the decision of the learned single Judge granting interest on the delayed payment.

16. The very same Writ Petitioner has filed another Writ Petition in W.P.No.1230 of 2019 seeking interest towards recovery of a sum of Rs.30,22,591/- for the non-production of Central Excise Duty Exemption. A learned single of this Court by order dated 20.08.2019 applied the ratio of the Division Bench of this Court in the case of the very same petitioner, albeit, in a different context and the TWAD Board was directed to compute interest at the rate of 7% p.a. from date of bill till the date of payment, to be made within six weeks from date of receipt of a copy of that order.

17. The contract qua the contractor and the Board is a commercial contract and must be understood and applied in that perspective only. Thus, it does not behove the TWAD Board to disavow its responsibility by putting forth untenable defences. Though, perhaps, at the instance of third party agency the contract was entered into by the petitioner with a TWAD Board only. It is, thus, incumbent upon TWAD Board to settle the bills as per contract within the stipulated time, and any delay is doing so, will entitle the contractor to payment of interest for such belated payment, at prevailing rates.

18. In light of the above discussion, impugned order dated 01.03.2017 rejecting the request of the petitioner for interest on the ground that the agreement did not contain any provision for grant of interest stands quashed. The petitioner will compute interest at the rate of 6% p.a. from date of bill till date of computation as aforesaid and submit the same within a period of one (1) week from date of receipt of a copy of this



order and the same shall be settled by the respondents within a period of four (4) weeks from date of receipt of the computation.

19. This Writ Petition stands allowed in terms of this order. No costs.

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Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
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Chennai - 600 005.
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+1cc to Mr.M.Raja Sekhar, Advocate, S.R.No.23589

W.P.No.7308 of 2019

KK(CO)
CT 25/04/2022