



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.13605, 13627, 13623, 13642, 13631 & 13636 of 2022
and

W.M.P.Nos.12852, 12849, 12823, 12826, 12861, 12884, 12867,
12870, 12883, 12862, 12857 and 12855 of 2022

- | | |
|----------------------|---|
| 1. P.Manikannan | ... Petitioner in
W.P.No.13605 of 2022 |
| 2. V.Murugaiyan | ... Petitioner in
W.P.No.13627 of 2022 |
| 3. S.Geetha | ... Petitioner in
W.P.No.13623 of 2022 |
| 4. R.Sivakumar | ... Petitioner in
W.P.No.13642 of 2022 |
| 5. Girija Kaviarasan | ... Petitioner in
W.P.No.13631 of 2022 |
| 6. D.Saravanan | ... Petitioner in
W.P.No.13636 of 2022 |

Vs.

1. The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
2. The Chief Engineer,
Chennai Metropolitan Water Supply and Sewerage Board,
MRC Nagar,
Chennai - 600 028.
3. The General Manager/Vigilance Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
4. The Purchase Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.



5. The Area Engineer - XIV,
Metro Water Area Office,
Perungudi,
Chennai - 600 096.

...Respondents in all W.Ps.

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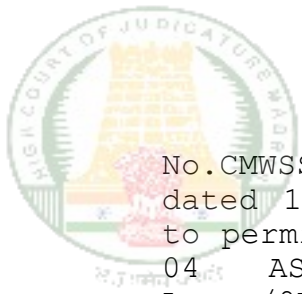
Prayer in W.P.No.13605 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter No.CMWSSB/PUR/Water Lorry/9KL/W.O.No.261/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 25 BC 8190 as per the Work Order No. Water Lorry/9KL/W.O.No.261/2021-2024 dated 26.02.2021.

Prayer in W.P.No.13627 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter No.CMWSSB/PUR/Water Lorry/9KL/W.O.No.95/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 12 AJ 4585 as per the Work Order No. Water Lorry/9KL/W.O.No.95/2021-2024 dated 26.02.2021.

Prayer in W.P.No.13623 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter No.CMWSSB/PUR/Water Lorry/6KL/W.O.No.95/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 18 AQ 8471 as per the Work Order No. Water Lorry/6KL/W.O.No.95/2021-2024 dated 26.02.2021.

Prayer in W.P.No.13642 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter No.CMWSSB/PUR/Water Lorry/9KL/W.O.No.217/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 04 AV 8184 as per the Work Order No. Water Lorry/9KL/W.O.No.217/2021-2024 dated 26.02.2021.

Prayer in W.P.No.13631 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter



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No.CMWSSB/PUR/Water Lorry/9KL/W.O.No.259/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 04 AS 7477 as per the Work Order No. Water Lorry/9KL/W.O.No.259/2021-2024 dated 26.02.2021.

Prayer in W.P.No.13636 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent with regard to the order passed in Letter No.CMWSSB/PUR/Water Lorry/9KL/W.O.No.162/2021-2024/Spl/2022, dated 18.05.2022 and quash the same and direct the respondents to permit the petitioner to operate the lorry bearing Regn.No.TN 07 CS 8077 as per the Work Order No. Water Lorry/9KL/W.O.No.162/2021-2024 dated 26.02.2021.

For Petitioners : Mr.R.Singaravelan
(in all W.Ps.) Senior Counsel
for Mr.V.S.Jagadeesan

For Respondents : Mr.Goutham S.Raman
(in all W.Ps.) for CMWSSB

COMMON ORDER

Heard the learned Senior Counsel for the petitioners and the learned Counsel for the respondents.

2. I am of the view that these writ petitions filed by the petitioners under Article 226 of the Constitution of India are not maintainable. Further, these are several disputed questions of facts which cannot be decided under Article 226 of the Constitution of India. Though the learned Senior Counsel for the respective petitioners would submit that the action of the respondents in terminating the contract with the respective petitioners is arbitrary and contrary to the decision of the Hon'ble Supreme Court in Ram Krishna Dalmia Vs. Mr.Justice S.R.Tendolkar, (1957) 59 BOMLR 769.

3. It is noticed that in the contracts signed with the respective petitioners, there is an arbitration clause. The clause 30 in the respective contracts read identically. They read as below:

"In case of any dispute arising out of this contract the matter will be decided under the Arbitration and Conciliation Act and the arbitrator shall be nominated by the M.D. Both the parties should abide by that arbitrators



decision."

4. The learned Senior Counsel appearing for the petitioners has also relied on the following decision of the Hon'ble Supreme Court in Unitech Limited and Others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and others, 2021 SCC Online SC 99. Wherein in Paragraph 41, it has been ordered as under:

"41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the Jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226, in all cases though, it still needs to be decided from case to case to as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."

5. It appears that these writ petitions were filed on 30.05.2022 and have been numbered by the Registry as Arbitrary



Original Application under Section 9 of the Arbitration and Conciliation Act, 1996 after suitable changes.

6. Considering the same, I am inclined to suspend the Impugned Order dated 02.06.2022 passed by the fourth respondent for a period of ten days only. The petitioners are at liberty to immediately file an appropriate petition/application under Section 9 and/or under Section 17 of the Arbitration and Conciliation Act, 1996, as the case may be within such time.

7. These writ petitions stand disposed of in terms of the above observations. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

rgm

To

1. The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
2. The Chief Engineer,
Chennai Metropolitan Water Supply and Sewerage Board,
MRC Nagar,
Chennai - 600 028.
3. The General Manager/Vigilance Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
4. The Purchase Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
5. The Area Engineer - XIV,
Metro Water Area Office,
Perungudi, Chennai - 600 096.



Copy to:

The Section Officer,
E.R.Section,
High Court,
Madras.

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+6cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.33194

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13631 & 13636 of 2022
and

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12870, 12883, 12862, 12857 and 12855 of 2022

PA(CO)
RN(10/06/2022)