



W.P(MD)Nos.9699 and 9700 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**W.P(MD)Nos.9699 and 9700 of 2009
MP(MD)Nos.1,2,3,4,5 and 1,2,3,4,5 of 2009
and 1 & 1 of 2010**

M/s.Taher All Industries and
Projects Private Limited
represented by its Director,
Mohd.Abdul Rehman
203, I Floor, Mangalapuram
Opp to Co-Operative Press,
Medical College Road,
Thanjavur - 613 007.

... Petitioner in both WPs

Vs

- 1.The Chief Engineer,
TWAD Board,
Southern Region,
Ganesh Nagar,
Melur Road,
Madurai -625 007.
- 2.The Executive Engineer,
TWAD Board, Urban Division,
1-C, Thiruvalluvar Road,
Near Bus Stand,
Dindigul - 624 003.
- 3.The Superintending Engineer,
TWAD Board, MDT Circle,
Ganesh Nagar,
Melur Road,
Madurai.

... Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the
Constitution of India, for issuance of writ of certiorari to



W.P(MD)Nos.9699 and 9700 of 2009

call for the records in Lr.No.F/4271/2006/SDO-1/2009 and Lr.No.F.Vasu CWSS/2009/SDO2/C&A dated 18.09.2009 on the file of the first respondent and quash the same.

For Petitioner : Mr.P.Radhakrishnan
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.R.Satheesh
for TWAD

COMMON ORDER

These writ petitions are filed challenging orders of the respondent in Lr.No.F/4271/2006/SDO-1/2009 and Lr.No.F.Vasu CWSS/2009/SDO2/C&A dated 18.09.2009 by the first respondent the Chief Engineer, TWAD Board.

2.The petitioner company is a manufacturer of mild steel and pre-stressed pipes and they have executed several projects for the Tamil Nadu Water Supply Drinking Scheme for more than ten years. The petitioner company has also executed one of the biggest projects of TWAD Board, namely, Vedaranyam Combined Water Supply Scheme. The petitioner has been allotted with contract work of drinking water supply scheme at Vasudevanallur, Rayagiri and Sivagiri and various other panchayats to the tune of Rs.27.93 crores in the year 2006. The contract period is for 18 months. The petitioner alleges that there was four months



W.P (MD) Nos. 9699 and 9700 of 2009

delay in allotting the work and there was escalation of raw materials during the relevant point of time. Therefore, there was some delay in completing the project as per the terms of the contract. Hence the petitioner made a request for extension of time and time was also extended. However the petitioner company could not complete the work even by the extended period. Before the extended time was over, the respondents have terminated the contract by the impugned communications. Aggrieved over the same, the present writ petitions are filed.

3.The learned Counsel for the petitioner submits that the petitioner company was awarded contract work in respect of drinking water supply scheme at Vasudevanallur, Rayagiri and Sivagiri and various other panchayats in the year 2006 and the period of contract was 15 months. Though the petitioner was awarded with the contract, the site was not handed over to the petitioner's company in time. While so, in the year 2008, the respondent board directed the petitioner to execute certain additional work on emergency basis and therefore, the materials meant for the Vasudevanallur Drinking Water Scheme were diverted to other emergency work. Further there was some delay in payments and therefore, this project work got delayed.



W.P (MD) Nos. 9699 and 9700 of 2009

4. According to the learned Counsel for the petitioner the petitioner company made a proposal for sub-leasing the execution of this work, which was not permitted by the respondent board. On this stand taken by the Board, the work could not be executed in time and the respondent board realising the same has extended the period to complete the work till 31.12.2009 & 31.03.2010. However even before the expiry of the extended period, the respondent board issued a show cause and unilaterally cancelled the contract vide the orders impugned in these writ petitions. He claims that the petitioner company has already completed around 40% of the work at a cost of Rs.2.50 crores and the same is yet to be settled to the petitioner.

5. Mr. Veera Kathiravan, learned Additional Advocate General, assisted by Mr. R. Satheesh, learned Counsel appearing for the respondent board submits that the contract awarded to the petitioner is a drinking water supply scheme to Vasudevanallur, and other village panchayats and therefore, it had to be completed within the prescribed time. The petitioner failed to execute the work as per the terms of the contract. The work ought to have been commenced on 11.09.2006 and should have been completed on or before 10.12.2007. However, the petitioner without taking any initiative to complete the work in time, had



W.P(MD)Nos.9699 and 9700 of 2009

8.The Additional Advocate General in addition to his submission has also submitted written submission on the reason for cancelling the contract, which are extracted as follows:

- The target date set in the agreement for completion is 11.12.2007 (i.e., 15 months from duration for execution). The petitioner/contractor (M/s.Tahir Ali) had given program schedule for completion of scheme upto 11/2009.
- As agreed, the petitioner did not complete the scheme as per above program schedule ie., 11/2007 or even on 11.12.2007. Only 15% of the works were completed at the end of the agreement period.
- Based on the request from the petitioner with revised program schedule 31.12.2008, an extension of time was accorded from 12.12.2007 to 31.12.2008 for completing the scheme by the Superintending Engineer on 08.07.2008 with Rs.1.00 lakh fine for slow progress.
- The petitioner could complete only 27% of work by 31.12.2008. The incremental increase in progress for 1 years is only 12%.



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W.P(MD) Nos. 9699 and 9700 of 2009

- The petitioner has said that the progress of work could not be achieved due to financial crisis in the letter dated 28.08.2008.
- Again the petitioner requested extension of time upto December 2009 to complete the balance work. An extension of time was accorded from 01.01.2009 to 31.12.2009 for completing the scheme by the Superintending Engineer on 06.07.2009 imposing a fine for a total value of Rs.20.06 lakh for slow progress.
- 40% of work had been completed as on 07.09.2009. The Chief Engineer issued final notice stating that why the agreement shall not be terminated and the excess amount to be incurred by TWAD Board for the execution of balance portion of the project shall not be recovered for the reasons as stated above.
- The petitioner has miserably failed in all fronts either to take timely action or effective steps to utilise the chances offered by TWAD Board to complete the project in time.



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W.P(MD) Nos.9699 and 9700 of 2009

- Considering all the above aspects and to bring the scheme to beneficial use, the employer decided that no other way except terminate the contract of the work as per the agreement condition on 18.09.2009.
- After cancelling the petitioner's contract, considering the necessity of the project, the balance works were split up into 8 packages for early completion and the works were awarded by calling of 8 tenders as per the Tamil Nadu Tender Transparency in Tender Rules 2000, after duly publishing the notification in News papers and the lowest tender were accepted and works were awarded.
- The details of additional expenditure incurred for completing the project are also summarised as follows:

Total Value of the agreement : including tender premium(-)2.1% (A)	Rs.268,89,766.00
Total value of the work done by : the contractor(B)	Rs.10,65,12,023.53



W.P(MD) Nos.9699 and 9700 of 2009

Total payment made to the : Rs.8,48,916.77
Contractor as per agreement
condition (C)
Amount withheld as per agreement : Rs.42,44,346.00
(B-C) = (D)
Security deposit @ 5% : Rs.42,44,346.00
Total payment due to the : Rs.2,58,69,452.76
contractor(D+E)

Recovery from the original contractor M/s.Tahir Ali(P)
Ltd, Hyderabad.

Excess cost for de-linked portion
prior to termination of original : Rs.44,11,872.00
contract

Excess cost involved for 8
packages (consequent on the : Rs.7,09,23,510.00
termination of original contract
- vide statement)

Expenditure incurred for
conducting trial run
departmentally (which ought to : Rs.70,25,000.00
be done by the original
contractor at free of cots)

Additional amount required for
further trial run to be done by : Rs.40,00,000.00
departmentally to convey water to
tail end.

Total Recovery amount from the
original contractor (ieM/s.Tahir : Rs.8,63,60,382.00
Ali Industries (P) Ltd, Hyderabad

Cost Liability of the original contractor M/s.Tahir Ali
(P) Ltd, Hyderabad.



W.P(MD)Nos.9699 and 9700 of 2009

Total recovery from the original : Rs.8,63,60,382.00
contractor
Total cost due to the contractor : Rs.2,58,69,452.00
Liability of the original : Rs.6,04,90,930.00
contractor

- The reasons for cancelling the contract of the petitioner, in WP(MD)No.9700 of 2009 as claimed by the respondent are summarised as follows:

Name of the M/s.Tahilr Ali Industrial and Projects
contractor Private Limited, Hyderabad
26.12.2006 Work order issued by the Chief Engineer,
Madurai.
09.01.2009 Date of commencement of work
02.03.2007 Date of conclusion of agreement for the
value of Rs.27,92,82,907/-
Agreement No.35/2006-07, dated 02.03.2007,
Chief Engineer, TWAD Board, Madurai
08.07.2008 Intended date of completion of work as per
agreement (duration 18 months)
28.05.2009 Permission accorded by the Executive
Engineer to sublet the works
10.07.2009 First show cause notice served (percentage
of work completed 7%)
25.07.2008 Second show cause notice served
(percentage of work completed is only 7%)
04.08.2008 Third show cause notice served (percentage
of work completed is only 7%)
08.09.2009 Final show cause notice served by CE/
Madurai
18.09.2009 Termination order served as per clause 33
and 41 of general condition (percentage of
work completed is only 10%)
Time lapsed 2.75 years (32 months)
by this place, the contractor would have
taken another 24 years (288 months) to
complete the work
Total value of agreement Rs.27,92,82,907/-



W.P(MD)Nos.9699 and 9700 of 2009

Total value Rs.2,78,20,731/- at the time of
of work termination (about 9.96% of agreement
done value)

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- Extension of time was granted to the petitioner on 17.07.2009 from 09.07.2008 to 31.03.2010 for 21 months. Even after providing 21 months of time, the contractor has not shown substantial progress during July 2009 and August 2009. Since it is a water supply scheme, the department terminated the contract as per the agreement conditions and separate estimates for 8 packages were prepared for the the balance works and sanctioned by the competent authorities based on the ratification orders issued by MD/TWAD on 19.10.2009. Tenders were invited through dailies for completion of the balance work on 24.09.2009. Lowest estimation was taken into account and necessary work orders were issued by the Chief Engineer, Madurai 11.12.2009 for the 8 packages.
- The works in all 8 packages were completed in November 2010 and trial of water supply started on 14.11.2010. After completion of successful trial the drinking water supply scheme was started



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W.P(MD)Nos.9699 and 9700 of 2009

01.08.2011 and brought for public use based on TWAD

MD letter dated 21.10.2011.

- The additional expenditure of Rs.8 crores is calculated as follows:

a.Pre final bill prepared for a gross value after termination	Rs.20.42 Lakh
b.With held amount	Rs.5,09,837/-
c.Total amount with the department (a+b)	Rs.25,51,837/-
d.Total fine imposed	Rs.113.48 Lakh
e.Total fine recovered	Rs.22,73,106/-
f.Balance fine to be recovered (c-d)	Rs.90,74,894/-
g.Balance amount to be recovered (f-c)	Rs.65,23,057/-

- Excess amount to be recovered from the original contractor for the executed balance works alone by the third party contractor.

Agreement value of balance works in the original contract	Rs.5,14,64,176/-
Total agreement value of 8 packages (without tender premium)	Rs.3,49,30,328/-
Add tender premium 13.5% for packages 1 & 2 and 13% for other packages	Rs.3,98,46,461/-
Total agreement value of 8 packagers (with tender premium)	Rs.7,47,76,789/-
Difference in value (Rs.37,47,76,789 - Rs.25,14,62,176/-)	Rs.2,33,14,163/-



W.P(MD)Nos.9699 and 9700 of 2009

Total amount to be recovered from the original contractor Rs.65,23,057 + Rs.12,33,14,613	Rs.2,98,37,670/-
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9.This Court considered the submissions made on either side and perused the materials placed on record.

10.The petitioner was awarded with the contract to execute the drinking water supply scheme. The period of the said contract work was 15 months. But the petitioner did not complete the work as per the terms of the contract. Thrice time was extended by the respondent board enabling the petitioner to work. However, contract was cancelled vide impugned order in these writ petitions, even before the expiry of the date of extension.

11.The petitioner alleges that the delay in executing the work was only on the part of the board due to not handing over the site in time, diverting the materials for some other project and not releasing the amount spent by the petitioner.

12.The respondent board claims that since it is a drinking water supply scheme, it needs to be completed in a time bound manner and though the petitioner was provided extension of time thrice, the petitioner has not completed the work and therefore,



W.P(MD) Nos. 9699 and 9700 of 2009

considering the necessity of the scheme and to complete it in time, the contract of the petitioner was cancelled and it was awarded to a third party by following the due process of law. Further in view of the inordinate delay in completing the project, the respondent board has incurred an additional expenditure of Rs.8 crores.

13.This is purely a contract between the petitioner and the respondents. Admittedly, there is no provision for any arbitration in the terms of contract. Clause 67 of the terms of contract enables the parties to resolve the dispute, if any, before the competent civil Court having jurisdiction over the place where the contract is awarded and the agreement is concluded. This Court under Article 226 of the Constitution of India cannot conduct a roving enquiry on these disputed grounds raised on either side. Therefore, this Court disposes of the writ petitions with liberty to the petitioner to approach the appropriate civil Court. In the event the petitioner approaches the appropriate civil Court and till the disposal of the suit, the bank guarantee furnished by the petitioner shall be kept alive and the respondent Board shall not make any coercive steps to recover the amount. The plea raised by the petitioner and the respondents before this Court are left open and can be raised



W.P(MD)Nos.9699 and 9700 of 2009

before the civil Court. The civil Court shall decide the suit independently, uninfluenced by any of the observations made by this Court or the respondents in the impugned orders. There shall be no order as to costs. Consequently connected miscellaneous petitions stand closed.

27.04.2022

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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W.P (MD) Nos. 9699 and 9700 of 2009

B. PUGALENDHI, J.

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**W.P (MD) Nos. 9699
and 9700 of 2009**

27.04.2022