



*W.P.(MD).No.10162 of 2012*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.10162 of 2012**

1.Mohamed Hussain (Died)

2.Balkees Beevi

3.Nasrath Begam

... Petitioners

***(P2 and P3 are substituted, vide Court order, dated 18.07.2022, in W.M.P.(MD) No.10707 of 2022 in W.P.(MD)No.10162 of 2012)***

Vs.

The Managing Director,  
Tamil Nadu Co-operative Milk  
Federation Limited,  
Aavin Illam,  
Madhavaram Milk Colony,  
Chennai-51.

... Respondent

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in his proceedings No.27489/Engg.2/1995, dated 19.09.2011 and to quash the same as arbitrary, illegal and consequently, to direct the respondent to pay a sum of Rs.86,418/- with interest of 12% from 21.05.2002 till payment.



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For Petitioners  
For Respondent

: Mr.K.Baalasundharam  
: Mr.P.Thilak Kumar  
Government Pleader  
for Mr.M.Ramesh  
Government Advocate

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### **ORDER**

The present writ petition has been filed challenging an order passed by the respondent herein under which they have deducted a sum of Rs.86,418/- as 5% penalty for the delay in completing the contractual work.

2.Admittedly the petitioner is the successful bidder for carrying out certain construction work for the respondent. The petitioner has entered into an agreement with the respondents on 03.09.1998. As per the said agreement, the work has to be completed on or before 07.07.1999. However, the petitioner has sought for extension of time and the first extension was granted up to 30.04.2000. Thereafter, the extension has been granted till 30.12.2000. However, the petitioner has completed the work only on 20.05.2002. Hence, at the time of releasing the final bill, the respondent authorities have deducted a sum of Rs. 86,418/- on the ground that there is a delay of 2 years 20 days in



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completing the project.

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3.A perusal of Rule 57 of general conditions of contract discloses that a notice has to be issued to the contractor before imposing penalty of 5%. In the present case, the learned Government Pleader for the respondent contends that a showcause notice was issued to the petitioner before imposing the penalty. However, the penalty could be imposed only for the period during which the work was delayed. In the present case, extension was granted up to 30.12.2000. The work has been completed on 20.05.2002 with a delay of 1 year and 5 months. However, penalty has been imposed on the ground that there is a delay for a period of 2 years and 20 days beyond the extended time.

4.In view of the above said discussion, it is clear that the order impugned in the writ petition imposing penalty has been passed without properly appreciating the fact that the delay is only for a period of 1 year and 5 months and not for 2 years and 20 days. In view of the above said facts, the impugned order imposing penalty Rs.86,418/- is set aside. The



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matter is remitted back to the file of the respondent. The respondent is directed to pass fresh orders after affording due opportunity to the petitioner.

5. With the above said observation, the writ petition is allowed. No costs.

**10.08.2022**

Index : Yes / No  
Internet : Yes / No  
Tmg

To

The Managing Director,  
Tamil Nadu Co-operative Milk Federation Limited,  
Aavin Illam,  
Madhavaram Milk Colony,  
Chennai-51



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**R.VIJAYAKUMAR ,J.**

Tmg

**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.

Order made in  
W.P.(MD).No.10162 of 2012

**10.08.2022**