



W.P.(MD).No.12500 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.07.2022

ORDER PRONOUNDED ON : 19 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12500 of 2011

M.Krishnakumar

...Petitioner

Vs

1.The Secretary to Government
Public Works Department
Fort St.George
Chennai -9

2.The Engineer in Chief
PWD Water Resources Organisation
Chepauk
Chennai – 5

3.The Chief Engineer
PWD Water Resources Organisation
Tallakulam
Madurai -2

4.The Executive Engineer
PWD Water Resources Organisation
Anti Sea Erosion Division
Nagercoil

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the



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proceedings of the fourth respondent vide Ka.No.Va2/Ko.101/79M/2011 dated 10.08.2011, quash the same and consequently direct the respondents to pay the interest for the delayed payment for the work done by the petitioner vide Circle Agreement No.22SE/TBC/07-08 from July, 2008 to February 2011 at the rate of 12% per annum.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mr.S.Shanmugavel
Additional Public Prosecutor

ORDER

The writ petition has been filed by a Contractor whose request for payment of interest for delayed disbursal of the due to the settlement of payment of the contractual amount was rejected.

2.It is the case of the petitioner that he entered into an agreement for construction of Rubble mount sea wall at Rajakkamangalam Thurai, Kanyakumari District. As per the said agreement, he had commenced the work on 11.02.2008. Though he has to complete the work within a period of one year, he had completed the work within a period of six months namely in July 2008. The completion of work was also certified by the Assistant Executive Engineer PWD. However, the final payment was not at all settled by the second respondent.



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3. According to the petitioner, as per the agreement, the earnest money deposit has to be refunded after a period of six months from the date of completion of the work. Similarly, the withheld amount has to be refunded after one year from the date of completion of the work. The said period has been introduced only to find out whether there are defects in the construction work carried out by the petitioner. Though the said period has been expired, the bill amount of the writ petitioner was not settled by the second respondent herein. Hence, the petitioner filed W.P(MD).No.1724 of 2010 before this Court seeking a mandamus for directing the second respondent to pay the final payment for the work done by the petitioner with interest. By an order dated 16.02.2010, the writ petition was allowed directing the petitioner to give another representation to the second respondent within a period of 15 days and on such representation, the second respondent was directed to consider the same and arrange to settle the payment within a period of three months thereafter.

4. The petitioner has further contended that in compliance with the order of the High Court, he made a representation on 04.03.2010. However, no order was passed in compliance with the order of the High Court in WP(MD).No.1724 of 2010. Hence, the petitioner was constrained to file the contempt petition in Cont.P(MD).No.565 of 2010. Only thereafter, the fourth



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respondent by his proceedings dated 12.02.2011 informed the petitioner to receive the deposit receipts from his office and they paid a sum of Rs.6,62,492/- on 08.02.2011. The petitioner had further contended that though he had completed the work in the month of July 2008, the bill amount was finally settled only on 08.02.2011. Hence, he claimed that he is legally entitled to get interest for the delayed payment of the work done by him. According to the petitioner, he is entitled to receive a sum of Rs.4,76,496/- towards interest on delayed payment. Hence, he has sent a representations on 23.03.2011 and 03.05.2011 requesting them to make payment towards interest at the rate of 12% per annum.

5.Since the representations were not considered, the petitioner filed W.P(MD.No.6292 of 2011 seeking direction to pay the interest for the delayed payment from July 2008 to February 2011. The writ petition was disposed of on 04.07.2011 directing the authorities to consider the request of the petitioner and dispose of the same within a period of 8 weeks. Thereafter, the fourth respondent has passed the impugned order on 10.08.2011 rejecting the request of the petitioner for payment of interest on the ground that there is no clause in the agreement for payment of interest. Further, the fourth respondent has stated that in the order passed by the High Court there is no direction for payment of interest. Hence, the request of the payment of



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interest was rejected. As against the same, the present writ petition has been filed.

6.The learned counsel for the petitioner had further contended that though a period of one year was fixed for completion of the said contract, the petitioner had completed the work within a period of 6 months i.e in July 2008. Only after filing of several writ petitions and contempt proceedings, the payment was ultimately made on 08.02.2011. Hence, according to the learned counsel for the petitioner, the delayed payment made by the second respondent herein shall pay interest for the said period. Moreover, there is no allegation on the part of the respondents that the construction was not completed in time or there were defects in the said construction. When there is no dispute with regard to the quality of the construction and the period within which the construction was completed, there cannot be any dispute whatsoever to make the payment immediately on completion of the work. However, they have taken nearly three years to clear the payment. Hence, he is entitled to interest at the rate of 12 % p.a from the date of completion of the work till 08.02.2011.

7.Per contra, the learned Additional Government Pleader had contended that there is no clause in the agreement for payment of interest due



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to delayed dispersal of the amount. The petitioner had filed two writ petitions earlier. Though he had prayed for payment of interest, in none of the writ petition, the said prayer was granted. Hence, the petitioner would not be entitled to interest as claimed by him. Hence, he prayed for sustaining the impugned order.

8.I have considered the submissions made on either side.

9.Admittedly, the petitioner had commenced his work in February 2008 and completed the work in July 2008. From then onwards, he has been making the request for disbursal of the contractual amount due to him. No valid reason has been offered by the respondents for the delay in making such payment. There is no allegation of any defect in the work or delay in completion of the work as against the writ petitioner. In the counter affidavit also, no reason has been pointed out on the side of the respondent for non payment of the contractual amount. Hence, it is clear that there is no dispute that the petitioner is entitled to the said amount.

10. The petitioner was forced to file W.P(MD).No.1724 of 2010 seeking final payment of work done by him. This Court has directed the department to settle the payment within a period of three months. The said order has been passed on 16.02.2010. Even within the said period of three months, the amount has not been settled. The amount was finally settled only on 08.02.2011. Hence,it could be seen that the petitioner had been forced to



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approach this Court on every occasion for final payment for the work he has completed in July 2008. No plausible or acceptable reason has been assigned on the side of the respondents for the delay in making the payment to the writ petitioner. When the delay in payment had happened without any reasonable cause or fault on the part of the writ petitioner, certainly the writ petitioner is entitled to claim interest for the said delayed payment. Hence, the contention of the respondents that there is no clause in the agreement for the delayed payment is not sustainable in the eye of law.

11.The petitioner had prayed for 12% interest from July 2008 till 08.02.2011. Considering the fact that it is a commercial transaction, this Court feels that it would be in the interest of justice that the petitioner is entitled to receive an interest at the rate of 9% per annum from 01.08.2008 till 31.01.2011 at the rate of 9% per annum for a sum of Rs.6,62,492/-. The said interest amount shall be disbursed to the writ petitioner within a period of 8 weeks from the date of receipt of a copy of this order.

12. With the above observation, the writ petition stands allowed. No costs.

19 .07.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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