



W.P.(MD).No.14147 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.14147 of 2011

and

M.P(MD)Nos.1 of 2011 & 1 of 2015

R.M.Karuppiah

... Petitioner

Vs.

The District Collector,
Pudukkottai District,
Pudukkottai.

... 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 relating to the impugned order of the respondent made in Rc.No.A/3537/04, dated 05-11-2011 and quash the same in so far as he does not honour the bill submitted by the petitioner along with representation dated 28-02-2011 in full and consequently directing the respondent to pay the balance amount of Rs.20,46,093/-.

For Petitioner : Mr.J.Anand Kumar

For Respondent : Mr.P.Thambi Durai
Additional Government Pleader



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ORDER

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The present writ petition has been filed challenging an order, dated 05.11.2011 passed by the respondent herein, under which a payment of Rs.2,03,907/- (Rupees Two Lakhs Three Thousand Nine Hundred and Seven only) was sanctioned in favour of the writ petitioner for a part completion of the work.

2. The petitioner has contended that he was issued with a work order on 15.05.2004 and formally an agreement was also entered into for completion of four projects. Out of the said four projects, according to the petitioner, he has completed three projects. When one of the projects, namely, road connecting Thekkattur to Munasanthai was half way through, by way of proceedings, dated 28.05.2007, the respondent had stopped the work due to difficult site conditions. Thereafter, dispute arose between the petitioner and the respondent herein with regard to the quantum of work that has already completed, so that the contractual amount could be arrived at.



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3. The petitioner herein had originally filed W.P.No.6246 of 2009, directing the respondents to pay a sum of Rs.22,53,960/- (Rupees Twenty Two Lakhs Fifty Three Thousand Nine Hundred and Sixty only) for part completion of the work, which was stopped by the first respondent herein by his proceedings, dated 28.05.2007. The said writ petition was disposed of with a finding that the respondents were willing to make payment, provided the bills and other related documents are produced by the writ petitioner. The writ petition was dismissed, granting liberty to the petitioner to submit the bills and other documents required by the Government for making payment.

4. Thereafter, the writ petitioner has sent a detailed representation on 17.12.2009 submitting all the documents and the bills relating to the said work carried out by him. Thereafter, the petitioner had filed W.P.No. 1718 of 2010 seeking a Mandamus to make payment to the writ petitioner in terms of the first respondent's proceedings, dated 28.05.2007 in the light of the measurements found in the corresponding M.book. In the said writ petition, the respondent herein had filed a counter that M.book is not available. This Court had issued a direction



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on 03.01.2011 to consider the representation of the petitioner on merits and in accordance with law and pass an order within a period of eight weeks.

5. The petitioner was called for an enquiry on 17.02.2011. Thereafter, it was found that the M.book, in which the measurements and quantum of work are being recorded, (signed by the contractor and countersigned by the highways officials) was found missing. Hence, the District Collector was constrained to constitute a three member committee to assess the work. The said committee submitted its report. Based upon the report, the District Collector had passed the impugned order on 05.11.2001, sanctioning a sum of Rs.2,03,907/- (Rupees Two Lakhs Three Thousand Nine Hundred and Seven only). Aggrieved over the said order, the present writ petition has been filed.

6. According to the learned counsel for the petitioner, the M.book would reveal that higher quantum of work has been carried out by the writ petitioner and in the absence of the M.book, the District Collector was not right in constituting a committee to assess the quantum of work said to have been completed by the writ petitioner. He further contended



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that even in his representation, dated 17.12.2009, he had contended that the M.book is available with Assistant Engineer, by name, Kalanithy. The M.book is always retained only by the PMGSY scheme authorities. Hence, the petitioner cannot be found to be at fault for not producing the M.book. Hence, he sought for setting aside the order and directing the authorities to arrive at the quantum of work based upon the M.book.

7. Per contra, the learned counsel for the respondent had filed a counter contending that being a class I contractor for so many years, he is aware of the fact that the M.book is countersigned by the Assistant Executive Engineer and the same is also endorsed by the contractor. According to the respondent, when no entry is found in the M.book, the payment cannot be made in favour of the writ petitioner. He has further contended that since the M.book was not traceable, the District Collector was within his powers to appoint a committee, consisting of engineers of Highways Department and others to assess the quantum of work carried out by the writ petitioner. In such circumstances, the impugned order cannot be found fault with. Hence, he prayed for sustaining the impugned order.



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

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9. While the writ petition was pending, this Court has directed the respondent authorities to make an attempt to trace out the M.book, so that the whole issue could be solved. Accordingly, the respondent authorities have traced out the M.book and it was produced before this Court. Once the M.book is made available, the entire quantum of work said to have been carried out by the writ petitioner will be reflected in the M.book. Hence, the question of relying upon the committee report does not arise. The impugned order is solely based upon the committee report, which was appointed due to the absence of the M.book. Now, the M.book has been traced and it is made available. The authorities are expected to rely upon the M.book to assess the quantum of work carried out by the writ petitioner.

10. Since the M.book has already been traced, the impugned order, which is based upon a committee's report is set aside. The matter is remitted back to the file of the respondent herein. The quantum of work carried out by the writ petitioner shall be assessed based upon the



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M.book and the amount shall be sanctioned as per the assessment found in the M.book. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. With the above said observations, this Writ Petition is allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

12.07.2022

Index : Yes / No
Internet : Yes / No
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To

The District Collector,
Pudukkottai District,
Pudukkottai.



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R.VIJAYAKUMAR ,J.

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