



W.P(MD).No.17152 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 10.11.2022

ORDER PRONOUNCED ON : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.17152 of 2013

and

M.P(MD)No.1 & 2 of 2013 and 1 of 2015

N.Kannan

... Petitioner

Vs.

- 1.The Special Secretary to Government,
Public Works Department,
St.George Fort,
Secretariat, Chennai-600 009.
- 2.The Engineer in-Chief (Water Resources
Organisation) & Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005.
- 3.The Chief Engineer, Public Works Department,
Water Resources Organisation,
Madurai Region, Thallakulam,
Madurai.
- 4.The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Periyar Vagai Basin Circle, Madurai.



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5.The Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.

6.The Assistant Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.

7.The Superintending Engineer,
Irrigation Central Circle,
Thrissur, Kerala-680 020.

..... 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 pertaining to impugned Letter vide Ka.No.118m / va.pa/va.a.2/ ko.46(11)/2013 dated 10.09.2013 and consequential letter vide Ka.No./va.pa/va.a.2/ko.46(11)/2013 dated 03.10.2013 issued by the 5th respondent and quash the same and consequently direct respondents to reschedule the quantity of work carried out by the petitioner and prepare finished level chart with help of expert committee consisting of 4th and 7th respondents and disburse the amount payable to the petitioner on the basis of reschedule.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.B.Saravanan
Additional Government Pleader



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ORDER

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The present writ petition has been filed challenging an order passed by the 5th respondent herein, under which he has rejected the representation of the writ petitioner for a revised estimate and for disbursal of additional amount over and above the contractual amount.

2. The petitioner has contended that he is a registered contractor of the Public Works Department. The Periyar Dam water is being utilized for power generation, drinking purposes and irrigation purposes through a leading channel off take at Thekady Boat landing and ends at Thekady Head Sluice. The said leading channel was heavily silted and it affected the free flow of water. The committee appointed by the Hon'ble Supreme Court had directed the de-silting of the said channel and in obedience to the said order, the 5th respondent had invited tender to carry out the work of de-silting the leading channel.

3. The petitioner has further contended that as per the tender, the estimated cost was Rs.23,50,000/- (Rupees Twenty Three Lakh and Fifty Thousand only). The said estimation was arrived by the 5th respondent



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tentatively by dividing the nature of work to be carried out under 11 headings. The petitioner had participated in the tender and he had quoted the rate per cubic meter and the same was accepted and he was declared to be a successful tenderer. The agreement between the petitioner and the respondent was signed for the above work for the value of Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only).

4. According to the petitioner, the 5th respondent, by his communication, dated 21.02.2003, requested the petitioner/contractor to put up a ring bund across the channel to stop the flow of the water so as to commence the silting work. The work site was handed over to the petitioner on 07.03.2013. The petitioner was not permitted by the Kerala Forest Department to carry the materials to the work site through lorries and hence, the materials required for putting up the ring bund could not be transported beyond a point. Hence, they were carried through head loads by around 2450 men to 'O' point, which is around 850 meters away from the place where the materials were unloaded.

5. The petitioner has contended that the ring bund work was completed on 12.04.2013 with great difficulty and huge expenses were incurred due to



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transportation of materials by head load, which was not included in the estimated tender amount. Hence, the petitioner requested the 5th respondent to revise the value of tender by preparing a supplemental agreement. Though the respondent had originally agreed to revise the value of tender, later, he did not come forward for reasons best known to him.

6. When the ring bund was put up at '0' point, people of Kumuli Panchayat had gathered there and objected that the ring bund had stopped the drinking water available to their Panchayat. Hence, the petitioner was forced to put up another ring bund 650 meters away from '0' point enabling them to draw drinking water from the channel to Kumuli Panchayat. Hence, the petitioner had spent additional expenses and this additional work was not included in the tender agreement.

7. The petitioner has further contended that the prescribed width of the ring bund was less in character, whereas the actual width was much more. The respondents have failed to identify the actual width of the channel and therefore, the actual quantity of the work escalated to more than the estimated quantity arrived at by the 5th respondent herein. The petitioner has further contended that he had completed the work on 03.06.2013 to the utmost



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satisfaction of the respondents. He further contended that he had taken photograph at each stage of the de-silting in order to project the extent of work and in order to disclose that the actual work had highly differed from the estimated quantity of work.

8. According to the petitioner, he has sent a representation on 29.04.2013 to the respondents, requesting them to prepare supplemental agreement so as to including the quantity of work, which was not in the original agreement. Another representation was sent by the writ petitioner on 05.06.2013 to the same effect. The 5th respondent has sent the impugned communication on 10.09.2013 stating that the tender amount would be disbursed on the basis of the schedule, which was already prepared and there is no need to prepare a revised schedule and the petitioner is not entitled to any additional amount as claimed by him. This communication of the 5th respondent is under challenge in the present writ petition.

9. The learned counsel for the petitioner made elaborate submission relying upon various clauses in the tender agreement and the inspection report carried out by the concerned authorities. The major contention of the writ petitioner is that the work carried out by him has not been properly



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recorded and the bill amount has not been disbursed as per the quantity of the work carried out by him. The learned counsel for the petitioner has further contended that the tender was invited based upon some tentative assumption, which has to be finalized only after taking final measurements at unit prices. Therefore, the measurements to be taken at the site assumes importance. The respondent authorities have refused to properly record the measurement of the works carried out by the writ petitioner as a contractor and they attempt to stick on to their own measurements, which is quite contrary to the actual work done by the writ petitioner. The learned counsel for the petitioner made elaborate submissions citing his representations and the measurements that were taken by him in the course of the contractual work carried out by him.

10. The learned counsel for the petitioner has also drawn the attention of the Court to the various communications addressed by him to the respondent authorities with regard to the difficulties faced by him in carrying out the work within the forest area, which is under the control of the Kerala Forest Department. The petitioner has also produced photographs to establish the fact that (due to the objection raised by the Kerala Forest Department for movement of vehicles into the forest area), the petitioner had to carry the materials for the ring bund only through head loads for about 800 meters



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away from the unloading point. According to the learned counsel for the petitioner, this has incurred huge expenses to the contractor.

11. The learned counsel for the petitioner had made elaborate submissions to the effect that there was provision for only one ring bund in the contract, but he was forced to form a second ring bund due to the objection raised by the Kumuli Panchayat for carrying drinking water. The formation of the second ring bund was not part and parcel of the agreement and hence, his request for revised estimate ought to have been considered positively.

12. The learned counsel for the petitioner has also placed reliance upon his various representations, under which he has pointed out the difficulties, additional work done by him and the additional expenses incurred during the performance of the contract, which was not envisaged in the contract. The petitioner has also made elaborate submissions to the effect that a sum of Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) mentioned in the general conditions of the contract is only a tentative one and hence, the contention of the respondent authorities that there is no scope for a revised estimate or supplemental agreement is not



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legally sustainable. The learned counsel for the petitioner further pointed out that appendix-II (a) clearly mentions that a sum of Rs. 20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) is only tentative and ultimately the final measurements at unit prices have to be taken. Hence, the learned counsel for the petitioner had contended that the order impugned in the writ petition is arbitrary, illegal and hence, the same is liable to be set aside and consequentially the 5th respondent should be directed to re-schedule the quantity of work carried out by the petitioner and prepare finished level chart with the help of expert committee and disburse the amount payable to the petitioner on the basis of re-schedule.

13. Per contra, the learned Additional Advocate General appearing for the respondent authorities has contended that, the work that was handed over to the writ petitioner was just a de-silting work and the estimate of the work was Rs.20,65,937/- (Rupees Twenty Lakh Sixty Five Thousand Nine Hundred and Thirty Seven only). The lowest tender quoted by the petitioner was accepted at the rate of 0.02% less that is Rs.20,65,524/-(Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) on 12.10.2012. The petitioner was instructed to put up a ring bund across the channel for commencing the de-silting work and he had completed the ring



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bund on 12.04.2013. The request of the contractor for revise the estimate and prepare a supplemental agreement for the work of conveying the materials to the site by head load is not legally sustainable in view of the fact that the rate for forming the ring bund at the work site is included in the specification itself.

14. The learned Additional Advocate General further contended that as far as the formation of the second ring bund is concerned, the level of water flow from Periyar Dam had come down and hence, the estimated height of the ring bund was not required. Hence, the balance sand bags were utilized for the formation of the second ring bund. Therefore, it is not a case of formation of two independent ring bunds, but it is a case of division of single ring bund into two ring bunds.

15. The learned Additional Advocate General further contended that de-silting work was commenced on 20.05.2013 and it was completed on 02.06.2013. The entire work was monitored by the committee members appointed by the Hon'ble Supreme Court. After completing the clearing works, the finished levels were also taken by the director of CWC. The quantity of de-silting work was finalised and found that the executed quantity



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is less than the agreement quantity. Each item of the work, was executed under the supervision of the monitoring committee formed by the Hon'ble Supreme Court, so there is no deviation in the final quantity arrived at by the department engineers and hence, there is no need for any supplemental agreement. After completion of each work, the measurements were taken by department Engineers as per the instructions given by the monitoring committee and found that there is no additional quantity of work done by the writ petitioner. Hence, the petitioner was informed that there is no necessity for ensuing into supplemental agreement.

16. The Additional Advocate General also drew the attention of the Court to clause 60.1, wherein it has been categorically found that any variation done by the contractor or any additional work could only be carried out only after the written sanction of the Executive Engineer. Without the written sanction from the Executive Engineer, if any additional work is executed, the contractor is ineligible to raise an additional payment or claim. The Additional Advocate General further contended that in the present case, after taking measurements, it was found that the petitioner/contractor has executed a work, which is less than the agreement quantity and hence, only a sum of Rs.17,37,024/- (Rupees Seventeen Lakh Thirty Seven Thousand and



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Twenty Four only) was paid to the writ petitioner after deducting the income tax on 27.03.2014.

17. The learned Additional Advocate General further contended that clause 4 of the contract provides for arbitration when the value of the claim does not exceeds Rs.50,000/- (Rupees Fifty Thousand only). If the value of the claim exceeds Rs.50,000/- (Rupees Fifty Thousand), the remedy of the petitioner will be only through a competent Civil Court. The learned Additional Advocate General pointed out that the petitioner, by his representation is claiming a sum of Rs.9.66 Crore under the guise of carrying out some additional work, which was not found in the original contract.

18. The learned Additional Advocate General further contended that as per the directions of the High Court, dated 12.10.2022, a sum of Rs. 3,10,954/- (Rupees Three Lakh Ten Thousand Nine Hundred and Fifty Four only) has been deposited before the High Court on 18.10.2022. Hence, according to the learned Additional Advocate General, the entire amount for the work carried out by the writ petitioner has already been released as per the measurements taken by the department engineers under the supervision of the monitoring committee appointed by the Hon'ble Supreme Court. Hence,



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the petitioner is not entitled to any further amount and the amount deposited before the High Court may be directed to be refunded to the 5th respondent herein.

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

20. The main contention of the writ petitioner/contractor is that the estimate cost of Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) found in the agreement is only tentative in nature and where an additional work is undertaken, a revised estimate has to be arrived at and a supplemental agreement has to be entered into by the 5th respondent with the petitioner/contractor. A perusal of the general conditions of the contract does not disclose that a sum of Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) is tentative in nature. The petitioner has signed the acceptance order for a sum of Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) on 26.10.2012. Hence, the contention of the writ petitioner that the said sum quoted in the agreement is tentative in nature is not legally sustainable.



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21. The nature of the work allotted to the writ petitioner indicates that it is nothing but a de-silting contract of the leading channel from Thekkady Boat landing to Thekkady Head Sluice for ensuring free flow of water. Therefore, it is clear that no construction activity or civil work has been entrusted to the writ petitioner under the contract. What was entrusted to the writ petitioner is just a de-silting work of a channel for a particular length. The length and width of the channel remains constant and the only work entrusted to the writ petitioner is to de-silt the said channel. The major contention of the writ petitioner is that he had to incur huge expenses towards the formation of two ring bunds. It could be seen from the photographs that the ring bunds are nothing but stocking of sand bags across the channel so as to prevent flow of water. This would enable the carrying out of de-silting work. According to the writ petitioner, he had to form a second ring bund due to the objection raised by the Kumuli Panchayat. The learned Additional Advocate General has pointed out that due to lesser flow of water, the ring bund was not raised up to the original level and there were balance sand bags. Those balance sand bags were utilized for the formation of the second ring bund. The contention of the Additional Advocate General has to be looked into, from the period, during which, the said formation of ring bund was carried out by the writ petitioner. Admittedly, the ring bunds have been



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created in the month of March and April 2013, which is a non-monsoon season for the said region. Hence, the contention of the learned Additional Advocate General has to be accepted that due to lesser flow of water, the ring bund was created for a lesser height and the balance sand bags were utilized for formation of another ring bund. Therefore, the contention of the writ petitioner that he had incurred the expenses for the formation of additional ring bund, which was not found in the original contract is not legally sustainable.

22. The petitioner has further contended that he had to carry the sand bags through head load for about 800 meters to reach the site due to the objections raised by the Kerala Forest Department for movement of vehicles. The petitioner being a Class-I contractor of Public Works Department, should have inspected the site before quoting the tender and should have understood the difficulties in carrying out the work. In fact, the agreement itself points out that the work has to be carried out in consonance with the forest laws of State of Kerala. Hence, the petitioner after quoting the amount, cannot turn around and contend that he had incurred additional expenses due to unforeseen circumstances.



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23. The petitioner has now raised an additional demand of Rs.9.66 crore for the de-silting work carried out by him. In such an event, the estimated cost of the work would be around Rs.10 crore. If that be the case, more number of contractors would have participated and some other contractor is likely to be the lowest bidder. The petitioner having agreed and quoted Rs.20,65,524/- (Rupees Twenty Lakh Sixty Five Thousand Five Hundred and Twenty Four only) cannot now turn around and contend that he had incurred a sum of Rs.9.66 crore, which is around 50 times more than the estimated cost agreed by the petitioner.

24. The petitioner has raised various issues with regard to the measurement of the work said to have been carried out by him. Even as per the averments in the writ affidavit, the Hon'ble Supreme Court has directed the de-silting of the said channel for free flow of water. Accordingly, a committee has been appointed by the Hon'ble Supreme Court. The committee has supervised the entire work carried out by the writ petitioner/contractor. According to the learned Additional Advocate General, the measurements were taken only in the presence of the Hon'ble members of the said committee. It is an admitted fact that the measurements were taken everyday and recorded by the department engineers. The petitioner has not raised any



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objections to the said measurement at any point of time. None of the representations made by the writ petitioner relate to the allegation with regard to the alleged erroneous measurement. Only after completing the work, the petitioner has raised objections with regard to the measurements recorded by the respondent authorities.

25. The 5th respondent herein, relying upon the measurements taken in the presence of the monitoring committee appointed by the Hon'ble Supreme Court, has already disbursed the amount that is due to the writ petitioner. If at all, the writ petitioner feels that the measurements relating to the de-silting of the work has not been carried out in a proper manner, it is a factual dispute and it requires oral and documentary evidence. This Court while exercising its power under Article 226 of the Constitution of India, cannot go into the said issue and render any finding with regard to the alleged discrepancy in the measurements. Therefore, it is for the petitioner to approach the competent Civil Court to vindicate his grievances, if he is so advised.

26. In view of the above said discussion, I do not find any merits in the writ petition for invoking the jurisdiction of this Court under Article 226 of the Constitution of India and the same is dismissed, granting liberty to the



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writ petitioner to approach the competent Civil Court to redress his grievances. Registry is directed to refund a sum of Rs.3,10,954/- (Rupees Three Lakh Ten Thousand Nine Hundred and Fifty Four only) deposited by the 5th respondent herein on 18.10.2022.

27. With the above said observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.11.2022

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Internet : Yes/No

Index : Yes/No

To

1.The Special Secretary to Government,
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St.George Fort,
Secretariat, Chennai-600 009.

2.The Engineer in-Chief (Water Resources
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- 3.The Chief Engineer, Public Works Department,
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Pre-delivery order made in

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