



W.P(MD)No.5140 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.11.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.5140 of 2013

and

W.M.P(MD).Nos.1 & 2 of 2013

M/s.P&C Constructions (P) Ltd.,
Rep by its Authorized Signatory,
Mr.S.P.Rajesh,
P & C Tower, 2nd Floor,
140, Perundurai Road,
Erode 638 011.

... Petitioner

Vs.

1.M/s. Tamil Nadu Water Supply and
Drainage Board (TWAD)
Rep.by its Executive Engineer (I/C),
TWAD Board, RWS Division,
Opp.Mattuthavani Bus Stand,
Ganesh Nagar,
Melur Road, Madurai 625 007.

2.The Executive Engineer,
TWAD Board,
Project Division, (Ramnad CWSS),
3/840, B-9, 2nd Floor, Bharathi Nagar,
Paramakudi 623 707.

3.The Executive Engineer,
TWAD Board,



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Urban Division,
No.1, Maiginam Street,
Opp.Rost Mary Matriculation School,
Palayamkottai,
Tirunelveli-2

4.The Executive Engineer,
TWAD Board, Major Project Division (Item-I),
No.12, 3rd East Cross Street,
Gandhi Nagar, Vellore-6.

5.The Executive Engineer,
TWAD Board, RWS Division,
No.10, Muthusamy Street,
Sathy Road, RR Lodge Back Side,
Erode-638 003.

6.The Executive Engineer,
TWAD Board,
Maintenance Division,
Opp. to Shanthi Theatre,
Tiruchengode Road,
Namakkal 637 001.

7.The Executive Engineer,
TWAD Board, Urban Division,
No.1-C, Thiruvalluvar Road,
Near Bus Stand, Dindigul-1,

8.The Chief Engineer,
TWAD Board, Southern Region,
Opp. Mattuthavani Bus Stand,
Ganesh Nagar, Melur Road,
Madurai 625 007.

9.The Superintending Engineer,
TWAD Board,



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Madurai-Dindigul-Theni Circle,
Opp.Mattuthavani Bus Stand,
Ganesh Nagar, Melur Road,
Madurai 625 007.

10.The Chief Engineer,
Tamil Nadu Housing Board,
331, Anna Salai, Nandanam,
Chennai-600 031.

11.The Chief Engineer,
State Highways,
Panagal Building, Saidapet,
Chennai-600 015.

12.The Chief Engineer,
Public Works Department Buildings,
Chepauk,
Chennai-600 005.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the first respondent in Lr.No.27213/F.Anaiyur/JDO2/2013 dated 27.02.2013 and quash the same.

For Petitioner	:Mr.S.Venkatesh
For Respondents	:Mr.R.Satheesh
	Standing Counsel for R1 to R9
	:Mr.R.Sivakumar
	Standing Counsel for R10
	:Mr.M.Lingadurai
	Special Government Pleader
	for R11 to R14



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ORDER

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The present Writ Petition has been filed challenging an inter communication dated 27.02.2013 issued by the first respondent herein to withhold the payments due to the writ petitioner, so as to adjust the same in the liability that is likely to arise in view of the contemplated action as against the writ petition herein.

2. According to the learned counsel appearing for the petitioner, though he has completed the work, the respondent authority has not released the amount as per the contract. However, by way of an inter departmental communication, the first respondent has chosen to stop all payments to the writ petitioner, which is due to him from the other wing of the same department. Hence, the present writ petition.

3. Per contra, the learned Standing Counsel appearing for the respondents brought to the notice of this Court that a show cause notice has been issued to the writ petitioner on 27.02.2013 calling for an explanation while penal clause to the agreement could not be invoked against him. Only in view of the said show cause notice, the present



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impugned inter departmental communication has been issued by the authorities. Once an action is contemplated by the authorities for invoking the penal clause, naturally the amount due to the writ petitioner, has to be with held by the other wing of the same department. He further contended that the show cause notice dated 27.02.2013 has not been averred in the writ affidavit and hence the present writ petition is not maintainable.

4.From the narration of the above said fact, it is clear that the respondent board has contemplated to initiate action as against the writ petitioner company for invoking the penal clause in the agreement for the delay in replacing the defects that were pointed out by the board. Since a show cause notice has been issued, it is natural that the amounts due to the writ petitioner has to be with held in contemplation of an enquiry. In such circumstance, the inter departmental communication cannot be found fault with. It is not brought on the record, whether the petitioner has sent an explanation to the show cause notice or any proceedings has been initiated pursuant to the show cause notice. Incase, the petitioner has so far not submitted his explanation, the petitioner is at liberty to



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submit his explanation. On submission of the said explanation, the same shall be considered on merits and in accordance with law and proceed thereafter. Till such time the impugned order will have to be sustained.

5.In view of the said fact, no further order can be passed in the present writ petition and the petitioner has to submit his explanation for the show cause notice dated 27.03.2013. Based upon the out come of the said enquiry, the respondent board, shall release the balance amount, if any.

6.With the above observations, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition are also closed.

01.11.2022

Index :Yes / No
Internet :Yes / No
Speaking Order/Non-Speaking Order

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To

1.Executive Engineer (I/C),
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Opp.Mattuthavani Bus Stand,
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R.VIJAYAKUMAR, J.

This matter is listed today under the caption 'for being mentioned'.

2. Learned counsel for the petitioner submits that in paragraph 5 of the order of this Court dated 01.11.2022, there is an omission to mention the time frame to pass orders.

3. In view of the above submission, Registry is directed to add the following line at the end of paragraph 5 and issue fresh certified copy:

“The 8th respondent is directed to pass orders within a period of twelve weeks from the date of receipt of explanation.”

09.12.2022

abr