



W.A.(MD)No.873 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.A(MD)No.873 of 2022

and

C.M.P.(MD)Nos.7190 and 7192 of 2022

S.Subbiah

... Appellant

Vs.

1.The Superintending Engineer (Highway),
NABARD and Rural Road,
Tirunelveli.

2.The Divisional Engineer (Highway),
NABARD and Rural Road,
Tirunelveli.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order passed by this Court in W.P.(MD)No.12196 of 2022, dated 17.06.2022.

For Appellant

:Mr.R.Anandharaj

For Respondents

:Mr.S.P.Maharajan

Special Government Pleader

* * *



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JUDGMENT

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This Writ Appeal is directed against the order of Writ Court dated 17.06.2022 made in W.P.(MD) No.12196 of 2022.

2. Heard Mr.R.Anandaraj, learned counsel for the appellant and Mr.S.P.Maharajan, learned Special Government Pleader, appearing for the respondents. By consent of both sides, this Writ Appeal is taken up for final disposal at the admission stage itself.

3. The appellant is a Class – I Contractor as recognized by the Highways Department. It is stated that the appellant has undertaken several works in the Tamil Nadu Highways Department and he is in the field for few decades. The appellant participated in the tender floated by the Highways Department under NABARD and Rural Roads Circle, Tirunelveli for the upgradation of Panchayat or Union Roads in Tirunelveli and Nagercoil divisions. Since the appellant quoted the lowest rate, his tender was accepted. Work order was issued to the appellant by the first respondent by proceedings dated 17.09.2022. As against the value quoted for the six works, which is around Rs.6.20 Crores, the appellant quoted Rs.4,90,03,234/-. Apart from depositing a sum of Rs. 2,75,000/- towards Earnest Money Deposit, the appellant deposited Rs.20



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lakhs towards security deposit. As per the agreement, the appellant undertakes to complete the work within a period of six months from the date of agreement.

4. Though the appellant was expected to complete the work before the end of May, 2021, it is pointed out by the appellant that he could not complete these works and started requesting the respondents to give time for completion of the work. From the records, it is seen that the first respondent has given extension of time by passing orders on five occasions atleast and finally time was given upto 31.05.2022 to complete 90% of the work to avoid termination of the contract. However, it is admitted that the appellant as on date has completed considerable part of the contract in respect of four works, has just commenced work in respect of one work by collecting materials and yet to commence the remaining work. Hence, by the impugned order, the contract awarded to the appellant was cancelled. Challenging the same the appellant filed W.P.(MD) No.12196 of 2022 before the learned Single Judge. Since sufficient time was given to the appellant to complete the work, the learned Single Judge found that the appellant has not given sufficient reasons to interfere with the order terminating the contract. Aggrieved by the above, the writ appeal is preferred.



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5. The details and stages of completion in respect of all the six works as on 12.05.2022 as admitted by respondents are as follows:

Sl. No.	Name of the Road	Estimated Amount in lakhs	Tender Amount in lakhs	Stage of work as on 12.05.2022 and % of work completed	% of work completed
1.	Road that starts from Tirunelveli – Kanniyakumari road to Vemmangudi	110.00	94.65 (18.16%)	Completed 18.16%	18.16
2.	Kaithavilagam – Melamidalam Inayam Road	138.50	115.73 (22.19%)	Picking Completed 2.22%	2.22
3.	Mullanginavilai – Edaiyankottai road	130.00	108.61 (20.83%)	Work not started	0
4.	Nallgayankovil to Melamootu Vilagam road	106.00	88.99 (17.07%)	Work completed	17.07
5.	Viricode to Kollenchy Road	30.00	24.09 (4.62%)	Out of 540 m length, 370 m work completed	3.23
6.	Thittanganavilai – Kulapuram road	106.00	89.25 (17.12%)	GSB Completed	4.28

6. The learned counsel for the appellant has stated that the appellant has almost completed item 1 and 4 works and has done substantial work in respect of items 5 and 6. While claiming collection of 10% of GSB required for the second work, the appellant has admitted



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that he has not commenced any work in item No.3. It is now stated by the learned Special Government Pleader appearing for the respondents that the first respondent has floated fresh tender to complete the works as the department is put to tremendous pressure by the local body and public.

7. The delay in executing the work has of course caused much inconveniences to the public as the materials collected by the appellant and the semi finished work would indicate that public is put to a lot of inconveniences. However, this Court having regard to the nature of work and the stage of completion is unable to justify termination of contract in relation to all the works. Apart from that, no show cause was issued to the appellant before termination of the contract.

8. Considering the fact that substantial work had been done in respect of four works (It is admitted that atleast more than 95% work is completed in respect of two works), this Court is of the view that going for a fresh tender will not be in the interest of public as it will take a minimum of six months to complete the tender process and thereafter to commence the work. Since rainy season may commence during the middle or in the end of September, it will be in the interest of public to complete the work before the end of September. Learned counsel appearing for the petitioner states that the appellant will be able to



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complete 100% works within forty five days except item No.3.

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9. Though the appellant has just commenced the work by doing only 'picking' the damaged existing road in Kaithavilagam – Melamidalameayam road, the learned Special Government Pleader states that this work may also be undertaken by the appellant to avoid delay. This Court appreciates the officer, who is present before this Court and her concern to complete the remaining work at the earliest in public interest. The undertaking as stated by the counsel for appellant is recorded.

10. In view of the above, this Writ Appeal is partly allowed and the order of the learned Single Judge in the Writ Petition is set aside. While quashing the impugned order in respect of all works except item No.3, which is the road connecting Mullanginavilai and Edaiyankottai Road, having regard to the facts admitted as on date, this Court grants 45 days to the appellant to complete the work except item No.3 i.e., the road connecting Mullanginavilai and Edaiyankottai Road. The work should be in progress on day to day basis and the appellant shall report the progress of work once in two days to the respondents, which should be supervised by any of the officers, who may be assigned for this purpose. In case, the respondents find no progress continuously for two



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weeks in relation to any road work, it open to the respondents to approach this Court for appropriate directions or to recall this order. The appellant is warned that this Court will not hesitate by permitting the respondents to appoint any other registered contractor to complete the work even without resorting to the process of tender. The appellant is directed to complete the work strictly in adherence to the standards specified in the terms of the tender and the agreement. It is open to the respondent to invite fresh tender as regards Mullanginavilai - Edaiyankottai Road. No costs. Consequently, connected Miscellaneous Petitions are closed. The time starts from 16.08.2022 and the work shall be completed in all respects by the end of September, 2022.

Post the matter on 1st September, 2022 for filing report on the progress of work in relation to each of the 5 items.

[S.S.R., J.] [S.S.Y., J.]
12.08.2022

Index : Yes / No

sj
To
1.The Superintending Engineer (Highway),
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Note: Issue copy on 17.08.2022



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and

S.SRIMATHY, J.

sj

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