



W.P(MD)No.17859 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2022

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.17859 of 2015

Singarammal Construction,
Represented by its Partner,
U.John Arumugam.

... Petitioner

Vs.

1.The Superintending Engineer,
Highways,
Tirunelveli.

2.The Divisional Engineer,
Highways (Construction & Maintenance),
Tuticorin-2.

... Respondents

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 impugned order of the 2nd respondent dated 24.04.2015 in Na.Ka.No.Ve.Ko./2011-12/A3 quash the same and consequently direct the respondents to disburse the bill amount for work of diversion of road and escalation charges for work of construction of cause way in K.M 6/0-4 of Kularani-Thadavankadu road.



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For Petitioner : Mr.J.Anand Kumar
For Respondents : M/s.D.Farjana Ghousia
Special Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the 2nd respondent, under which he has rejected the request of the petitioner for escalation charges on the ground that the project was not completed within a period contemplated under the agreement.

2. The facts of the case are that petitioner being a successful bidder, had entered into an agreement with the respondent on 28.02.2011 for construction of causeway. As per the said agreement, he had to complete the construction of causeway within a period of one year from the date of agreement. During the construction of the causeway, it was necessitated for a diversion road and therefore, the respondents have called for another tender, in which also he was a successful bidder and he had entered into an agreement with the respondent for the formation of a diversion road on 24.06.2011. As per the agreement, the causeway ought to have been completed on or before 27.02.2012. Due to intermittent



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rain, the construction could not be carried out and therefore, he has made a request for extension of time. Considering the rainfall, a period of two (2) months was given. A further extension of time was also granted to him on 25.04.2012, granting him time to complete the construction on or before 30.06.2012. The petitioner had completed the work on 25.06.2012. Thereafter, he had made a request for payment of escalation charges for the increase in prices of raw materials. The said request was rejected on the ground that he had completed the project beyond the agreed period. As per clause (vii) of Government Order in G.O.Ms.No. 101, Public Works (G2) Department, dated 10.06.2009, the price adjustment mechanism will cease to operate for value of work executed beyond the agreement period. An exclusion clause has been given, i.e., when an extension of time is permitted for any valid reasons then such price adjustment is available. Considering the request of the petitioner, the 2nd respondent had extended the period for completion of the project and therefore, it was contended that the reasons assigned by the 2nd respondent in rejecting the claim of the petitioner for escalation charges is arbitrary and therefore, the petitioner had sought this Court to interfere with the same.



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3. M/s.D.Farjana Ghousia, learned Special Government Pleader would submit that the delay has been caused by the petitioner and therefore, he would not be entitled for any escalation cost. She would further contend that the reasons assigned under clause (vii) of the said Government Order is only for reasons such as war, natural calamities, like flood, earthquake and others, arising out of acts of god during the agreement period and for any reasons of land acquisition process, change in design, change in scope of work, etc., which is given in writing by the Tender Calling Officer. According to the learned Special Government Pleader, the first extension was granted for a reason that there were intermittent rain. However, the 2nd extension was granted considering the request of the petitioner that he was not able to complete the work. She would further contend that it is for the contractor to speed up the work and if it is not done so, he ought not to have entered into an agreement. Therefore, she prayed that he is not eligible for any escalation/price adjustment. Apart from that, she would vehemently contend that as per clause (xi) of the agreement, this writ petition would not be maintainable and the petitioner will have to invoke the arbitration proceedings.



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4. I have carefully considered the rival submissions made on either side.

5. It is an admitted case that G.O.Ms.No.101 Public Works (G2) Department, dated 10.06.2009 is applicable to the agreement, dated 28.02.2011. The said Government Order deals with the price adjustment/escalation and its applicability. It is also an admitted case that the agreed work was completed beyond the period of the agreement. Clause (1) (b) (vii) deals with the price adjustment mechanism when the work is executed beyond the agreed period. For better appreciation, the aforesaid clause is extracted hereunder:

“(vii) The price adjustment mechanism will cease to operate for value of work executed beyond the agreement period. But agreement period shall include the “actual period” for which the work was “suspended officially” and extension of time permitted for any valid reasons such as, war, natural calamities, like flood, earthquake and other risks arising out of acts of God during the agreement period; work delayed due to the land acquisition process; change in design, change in scope of work, etc., which is



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*given in writing by the Tender Calling Officer of the
respective work;”*

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(a) A reading of the said clause would show that the price adjustment mechanism will cease to operate for the value of work done beyond the agreement period.

(b) If the period is extended for any valid reasons such as war, natural calamities, etc., then, the price adjustment mechanism will continue to operate.

6. In the present case, the respondent had rejected the request of the petitioner on the ground that the project has been executed beyond the agreement period. He has not considered the entire aspect in the proper perspective. As per first part of the clause (vii), the price adjustment mechanism will cease to operate only for the value of the work executed beyond the agreement period. It is not the case of the respondent that the entire cost that was sought as an escalation by the petitioner was for the work that was executed beyond 27.02.2012, which is the date on which he ought to have completed the work as per the agreement, dated 28.02.2011. That apart, the same clause also provides for application, if an extension has been granted.



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7. I am not in agreement with the contention of the learned Special Government Pleader that the valid reasons such as war, natural calamities etc., as given in the clause of the said Government Order is not available in the present case. Since the expression used therein is “valid reasons such as” that would only mean that the instances stated subsequently are examples and not exhaustive. In the present case, the respondents themselves have extended the period of contract and therefore, the reasons assigned by the respondents to reject the claim of the petitioner for escalation charges in my view is arbitrary and therefore, it is liable to be interfered.

8. In view of the aforesaid reasoning, the impugned order, dated 24.04.2005 in respect of the rejection of escalation charges/price adjustment alone is set aside and the matter is remitted back to the file of the 2nd respondent to consider the case of the petitioner in proper perspective and pass appropriate orders within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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9. With the above said observations, this Writ Petition stands allowed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU,J.

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Order made in
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