



W.P.Nos.11212 & 11213 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2023

Pronounced on : 03.11.2023

CORAM: JUSTICE N.SESHASAYEE

WP.Nos.11212 & 11213 of 2023

Subaya Constructions Co. Ltd.,
Rep. by its Director Mrs.S.Meenakshi
No.21, Soundarapandian Salai
Ashok Nagar, Chennai - 600 083. ...Petitioner in both WPs

-Vs-

1.The Chief Engineer
TWAD Board, (Tamil Nadu Water and Drainage Board)
30, Bharathi Park Road
Siruvani Nagar
Coimbatore - 43. ... 1st Respondent in both WPs

2.The Executive Engineer
TWAD Board, (Tamil Nadu Water and Drainage Board)
Sewerage Division
Pollachi.
... 2nd Respondent in WP.No.11212 of 2023

3.The Executive Engineer
TWAD Board, (Tamil Nadu Water and Drainage Board)
RWS Division, No.5, Arignar Anna Street
Bharathi Nagar, Ranipet - 632 403.
... 2nd Respondent in WP.No.11213 of 2023



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4.The Managing Director

TWAD Board, (Tamil Nadu Water and Drainage Board)

Chepauk Chennai.

... 3rd Respondent in both WPs

5.The State of Tamil Nadu

Rep by its Chief Secretary to Government

Fort St.George, Chennai - 600 009. ... 4th Respondent in both WPs

[R4 suo motu impleaded vide order dated

03.08.2023 in both W.P.No.11212 & 11213 of 2023)

Prayer in both WPs: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents to form a committee of experts to finalise the percentage of increase/decrease of price of materials and labour wages in accordance with the prevailing market rates every quarter for the purpose of the price adjustment and consequently direct the second respondent to accordingly make payments to the petitioner.

For Petitioner : Mr.V.Raghavachari, Senior Advocate
(in both WPs) Assisted by Mr.P.J.Rishikesh

For Respondents : Mr.R.Shanmugasundaram
(in both WPs) Advocate General
Assisted by Ms.S.Mekhala
Standing Counsel for R1 to R3
Mr.C.Kathiravan
Special Government Pleader for R4



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COMMON ORDER

The petitioner herein has been awarded a contract by the TWAD Board for underground drainage system in Pollachi and Arakkonam. The contract was fully executed and the petitioner has presented his bills, which are under consideration of the respondents.

2. The points the petitioner has raised in these petition are that:

- a) The contract which the petitioner had entered into with the respondents, provides for price variation in materials during the term of the contract, for which specific provisions are made in Clause 49.1. In this connection Clause 49.2 prescribes the formula for price adjustment.
- b) The pricing must be done quarterly in terms of clause 49.1(ix). But so far as this State is concerned, more particularly that of the respondent Board is concerned, there is no Committee constituted for fixing of prices every quarterly as contemplated by the contract.



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- c) The failure to fix rates at which bills are required to be prepared by the contractors, leads to a situation where the rates at which the bills are prepared by the contractors, and the rates which the department concerned offers to make payments vary. Ultimately they land up in litigations, which necessarily involves a certain cost, both for the contractors and also for the Government.

It is in these circumstances the petitioner requires that a direction be issued to the respondents 1 and 2 for the formation of Committee of experts to come out with quarterly statement on price variation, to enable price adjustments.

3 The respondents did not file any counter, but filed a paper-book comprising of four Government Orders, all dated between 14.03.2008 and 23.11.2009.

4. Mr.V.Raghavachari, the learned senior counsel for the petitioner submitted that price adjustment for price escalation is entirely different from the need for quarterly fixation of prices. He also emphasized the



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need for constituting a Committee for fixing the price quarterly, since there are situations where the market price is lower than the rate as per the price index. In particular, he submitted that in Pollachi UGSS, in 2017 while the market price of pig-iron was Rs. 3848.50 per tonne, its price, as per the price index was Rs. 4430.11. Similarly for the year 2018, while the market price remained the same as was in 2017, the rate as per price-index was Rs.5599.63. And in Arakkonam area, in the year 2016, the market price of pig iron was Rs.5565/- per tonne, and its price as per the price index was Rs.3720.11. And for the year 2017, while the market price remained the same as was in 2016, the rate as per price-index was Rs.4484.29. This implies, that the Government ends up paying more than the market price in some places, but insists on paying lower than the market price. The learned counsel then brought to the notice of the Court, the mechanism in the adjacent Andhra Pradesh and Telangana states, where the pricing mechanism is done monthly, and is very effective.

5. Heard the learned Advocate General for the respondents. The learned



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Advocate General made two pointed statements:(a)If a committee is to be constituted, it is for the Government of Tamil Nadu to do, and that it can have effect only for the future; and (b) So far as the executed contracts are concerned, it will be nigh difficult for any Committee to fix the price for the past contracts, since different bills would be from different contractors may relate to different periods. He also circulated a set of Government Orders passed by the Public Works Department.

6. If the submissions on either side is carefully weighed for their merit, it may have to be stated that the petitioner had set the context adequately well, signifying the need for constituting a committee for quarterly price fixation. And, the learned Advocate General's statement does not appear to be against the price fixation, but it only underscores that it is the job of the Government and not the Court. And the Advocate General's statement also adds a rider that past contracts cannot be revisited for price fixation as it may complicate the issue.

7. If the Government Orders (G.O.Ms.No.60 & G.O.Ms.No.101 of Public



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Works (G2) Department dated 14.03.2008 and 10.06.2009, B.P.Ms.No.93 (CO M Wing) dated 12.08.2009, and G.O.(Ms) No.227 Municipal Administration and Water Supply (MA3) Department dated 23.11.2009) circulated by the respondents are read together, they provide for price adjustments where the fluctuation of rates exceed by 3% when compared with the estimated rates as per RBI Index. The method for calculating price variation is also provided.

8. It is not so much about the availability of a formula for calculating the price variation, but it is all about doing it actually both for the benefit of the Government and also for the contractors. If the statement of the counsel for the petitioner on the price variance between the cost of pig iron as per price index and market value in 2017 and 2018 is trusted, then it may lead to a situation where the Government might be coughing up lot of money since the market price is far below the rate of pig iron as per price index.

9. There is no adequate clarity as to who should form this Committee for



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such price fixation. And since all the Government contracts involves civil works, there is an immediate need for constituting the Committee of experts for price fixation, in order it may be broad based. This Court therefore, thought it fit to implead the State of Tamil Nadu, through its Chief Secretary, to enable the Government to constitute a suitable Committee with appropriate experts from across various departments, if it becomes necessary. Accordingly, the State of Tamil Nadu, Rep by its Chief Secretary to Government, Fort St.George, Chennai - 600 009, is suo motu impleaded as 4th respondent in both these petitions.

10. It is made clear that any Committee that would be constituted eventually may not carry out the exercise retrospectively as regards contracts which have already been fully worked, or which are pending either before arbitrators, or before the Court.

11. To conclude, this Court directs the 4th respondent, the Chief Secretary, to either constitute or to ensure the constitution of an appropriate Committee of experts for fixing the rates of materials every



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quarterly to commence from 01.01.2024. The Government may also consider Andhra Pradesh and Telangana model of fixing the rates every month, and bring in a greater accuracy. After all, at the end of the day, a proper fixation of rates and settlement of bills based on those, provide a greater certainty and definiteness, which if undertaken, is likely to avoid litigations, and hence, may reduce the burden on the legal system.

12. The writ petitions are disposed of accordingly. No costs.

03.11.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

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Pre-delivery order in
WP.Nos.11212 & 11213 of 2023

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