



WEB COPY



Writ Petition No.31408 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/1/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.31408 of 2022

U.P.Rammaiah

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Petitioner

Vs

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003.

2. The Zonal Officer
Zone IX, Nungambakkam
Greater Chennai Corporation
Chennai 600 034.

3. The Executive Engineer
Zone IX, Nungambakkam
Greater Chennai Corporation
Chennai 600 034.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to refund the retention amount regarding the tender in Z.O.IX.C.No.E1/2176/13 by considering the petitioner's representation dated 8/8/2022.



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For Petitioner ... Mr.V.Lakshmi Naayanan
for Mr.J.Hariharan

For respondents ... Mr.P.T.Ramadevi

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ORDER

This writ petition has been filed to direct the respondents to refund the retention amount, regarding the tender in Z.O.IX.C.No.E1/2176/13 by considering the petitioner's representation, dated 8/8/2022.

2. Brief facts which are necessary for the writ petitioner are as follows:-

The petitioner is a qualified Class – I Contractor of the Corporation of Chennai. Corporation has invited tender for the roads falling within the zones of Corporation in the form of packages. In Ward 119 falling under Zone IX, one such package (33 roads) was invited for tender, in which the petitioner had applied for the contract and emerged as a successful bidder. Accordingly, the petitioner was awarded with the tender by a Letter of Acceptance, dated 10/5/2013 by the second respondent, in Letter No.Z.O.O.C.No.E1/2176/2013.



3. According to the petitioner, out of 33 roads, he has completed 32 roads. As far as 33rd road is concerned, the road was handed over to the petitioner, on 25/11/2013 and the petitioner has completed the project, within eight months, thereafter. He has been issued with the completion certificate. Five years defect liability period was expired, on 27/12/2018. Hence, the petitioner had sent a representation to the second respondent, dated 28/12/2018, seeking to refund the retention amount of Rs.15,19,948/-, i.e., 30% of the tender amount. Despite various representations sent from the year 2018, the respondents have not acted. Hence, the petitioner has filed the instant writ petition praying for the relief as stated therein.

4. Heard Mr.V.Lakshminarayanan, learned counsel for the petitioner and Mrs.P.T.Ramadevi, learned counsel for the respondents.

5. The learned Standing Counsel appearing for the respondents submitted a counter affidavit, duly signed by the Executive Engineer – IX, Corporation of Chennai, wherein it is stated that the petitioner was deputed with the contract work to be completed in 180 days, but the petitioner had completed the work in 19 months, i.e., further than the time prescribed.



6. He further submitted that A.G Audit has imposed a levy at the rate of 0.05% of the contract value of work for each day. The total liquidated damages calculated for the delay in execution of work comes to Rs.28,87,860/-. The file of the petitioner for the above said contract is pending before the A.G.Audit and the release of the retention amount will be considered, within a period of six months.

7. Learned counsel appearing for the petitioner submitted that there is no dispute with regard to the completion of work in 32 roads. As far as 33rd road is concerned, CMWSSB has made the road cut for installing the sewerage pipes and completed the work on 18/11/2013. Thereafter, the site was handed over to the petitioner on 25/11/2013 and the petitioner has completed the same on 30/7/2014. Such being a position, now the respondents cannot take a different view.

8. It is his further contention that the very Corporation itself has addressed a letter to the Chief Audit Officer, admitting the facts to the AG. Therefore, merely on the basis of the AG Audit, they cannot retain the retention amount.



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9. I have perused the materials available on record.

10. Learned Standing counsel appearing for the respondents not disputed the letter, dated 7/12/2018, addressed by the Corporation by the Chief Audit Officer. In such a view of the matter, this Court is of the view that merely on the basis of the audit objection raised, retention amount cannot be retained. In fact, the very Corporation itself has addressed the letter pointing out that there is no mistake on the contractor in carrying out the work. In such a view of the matter, the amount may not be with held and hence the same should be refunded, within a period of two months, from the date of receipt of a copy of this order.

11. With the above direction, this writ petition is disposed of. No costs.

5/1/2023

mvs.

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: Yes/No



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To



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