



WEB COPY



Writ Petition No.33136 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/1/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.33136 of 2022

N.Natarajan

...

Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Secretary to Government
Municipal Administration and
Water Supply Department
Fort St. George
Chennai 600 009.

2. The Commissioner
Kanchipuram Municipal Corporation
Annai Indhra Gandhi Salai
Kancheepuram 631 502.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of mandamus to direct the second
respondent to consider the representation of the petitioner, dated 26/9/2022
and refund the sum of Rs.3,23,790/- with interest at the rate of 12% p.a.,
from 1/1/2016 till date.



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For Petitioner ... Mr.G.Adithyaraj
For respondents ... Mr.K.Karthik Jegannath
Government Advocate

ORDER

This writ petition has been filed to direct the second respondent to consider the representation of the petitioner, dated 26/9/2022 and refund the sum of Rs.3,23,790/- with interest at the rate of 12% p.a., from 1/1/2016 till date.

2. It is the case of the petitioner that the petitioner was issued with the work orders, under the Tamil Nadu Urban Road Infrastructure Project 2011 – 12, dated 22/11/2020, for the work of “laying of cement concrete roads, in Ward Nos.43 & 45” and the work order, dated 9/2/2012, under Special Road Programme 2010 – 11, for the work of “laying of cement concrete roads, in Ward Nos.1,3,7,9,11,12,13,15,17 and 18. In spite of the successful completion of these projects, respondents have refused EMD and FSD amounts to the petitioner to the tune of Rs.6,44,040/-.

3. Amounts retained by the respondents are only to ensure that quality of the work done is proper. Once the defect liability period is over,



amount ought to be refunded by the respondents to the petitioner. But the respondents failed to repay. Hence the petitioner had made representations, dated 18/12/2014, 14/12/2017, 7/12/2020 and 6/1/2021 to the respondents. Since the same has not been refunded, the petitioner has come forward with the instant writ petition praying for the relief as stated therein.

4. Counter has been filed by the second respondent, wherein, it is stated that vide, G.O.Ms.(Rural Development) No.621 of 1980 dated 8/4/1980, the State Government has specifically instructed and prescribed the local bodies, the manner in which the lapsed deposits are to be dealt with. Though a sum of Rs.3,18,290/- has already been refunded to the petitioner, the remaining amount could not be disbursed due to G.O.

5. Corporation has been disbursing the deposit amounts to the respective Contractors in accordance with the rules and bye-laws. Being the Contractor, under the Corporation (Government), petitioner is also governed by the bye-laws, rules and regulations of the Corporation.

6. Heard Mr.G.Adithyaraj, learned counsel for the petitioner and Mr.S.Rajesh, learned Government Advocate for the respondents.



7. It is relevant to note that admittedly, a sum of Rs.3,18,290/- has been refunded to the petitioner, for SRP 2010 – 11 (package – 2), S.R.P.2010 – 11 (package – 2) and SRP 2010 – 11 (package – 3). Now, for SRP 2010 – 11 (package – 3) and TURIP 2011 – 12 (Package 3), the respondents cannot take advantage of the G.O.

8. It is also relevant to note that after the work has been completed, several representations have been made by the petitioner. This fact has not been disputed in the counter. When the petitioner has made a request for repayment of EMD or ASD, within a period of limitation and failure to pay the amount by the respondents and treating it as lapsed deposit itself is contrary to law.

9. When the petitioner has made a representation as early as on 18/12/2014, which has not been disputed, E.M.D amount also not in dispute, respondents ought to have made the payments and they cannot take advantage under the G.O., to contend that once the deposit is lapsed, the same is not liable to be refunded.



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10. When the claim has been made within the period of limitation and the when authority has not considered the same, refusal of the respondents to refund these amounts is nothing but an unjust enrichment at the hands of the respondents. Hence, the second respondent is directed to refund the amount, which is not in dispute, to the petitioner, within a period of one month, from the date of receipt of a copy of this order.

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

6/1/2023

mvs.

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: Yes/No



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To

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