



W.A(MD)No.154 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 22.02.2023

Delivered On: 31.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)No.154 of 2023

N.Kannan

... Appellant/
Petitioner

Vs.

1.The Special Secretary to Government,
Public Works Department,
St. George Fort,
Secretariat, Chennai-9.

2.The Enginner in Chief (Water
Resources Organisation) &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005.

3.The Chief Engineer,
Public Works Department,
Water Resources Orgainsation,
Madurai Region,
Thallakulam, Madurai.



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4.The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Periyar Vaigai Basin Circle, Madurai.

5.The Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.

6.The Assistant Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.

7.The Superintending Engineer,
Irrigation Central Circle,
Thrissur, Kerala-680 020.

... Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to pass an order to allow this appeal and to set aside the order passed by the Single Judge of this Court in W.P(MD)No.17152 of 2013 dated 18.11.2022 and to pass such further or other orders as this Court.

For Appellant : Mr.S.Alagarsamy

For Respondents : Mr.Veera. Kathiravan
Additional Advocate General-III
Assisted by
Mr.P.T.Thiraviyam
Government Advocate



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JUDGMENT

[Judgment of the Court was delivered by **L.VICTORIA GOWRI, J.**]

This Writ Appeal is preferred challenging the order passed by the learned Single Judge in W.P(MD)No.17152 of 2013 which was filed challenging the letter bearing Ka.No.118m/va.pa/va.a.2/ko.46(11)/2013 dated 10.09.2013 and the consequential letter bearing Ka.No./va.pa/va.a.2/ko.46(11)/2013 dated 03.10.2013 issued by the fifth respondent, quash the same and consequently direct the respondents to reschedule the quantity of work carried out by the Appellant and prepare finished level chart with the help of expert committee consisting of the respondents 4 and 7 and disburse the amount payable to the Appellant on the basis of reschedule.

2. The Appellant / Petitioner's Counsel contended that the Appellant is a registered contractor of the Public Works Department for the past five years, who has an unblemished record. The Periyar Dam was constructed during the year 1995 and that Dam is continuously



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maintained by the Tamil Nadu Public Works Department. The Periyar Dam water is being utilized for power generation and drinking purposes, besides irrigation purposes through a leading channel off take at Thekkady boat landing and ends at Thekkady Head Sluice. The said leading channel was heavily silted, thereby affecting the free flow of water.

3. At the instance of the empowered Committee, the Hon'ble Supreme Court was pleased to permit the Government of Tamil Nadu to carry out the work of clearing silt and debris in the leading channel. For this purpose, the Hon'ble Supreme Court constituted a three member Committee headed by the Director of Central Water Commission. The respondents 4 and 7 were the members of the said Committee constituted for the purpose of monitoring the clearing work in the leading channel.

4. He further contended that the fifth respondent invited tender as per the direction of the Hon'ble Supreme Court for carrying out the work of clearing the leading channel from Thekkady boat landing to Thekkady



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head sluice for ensuring the free flow of water at the estimated cost of Rs.23,50,000/-. The silting work was intended to be carried out in the deep and dense reserved forest area of Periyar Tiger Reserve within the territory of Kerala under the control of Kerala Forest Department.

5. He further contended that the fifth respondent had described the estimated quantity of work to be done in schedule 'A'. The scheduled quantity of work was mentioned in serial Nos.1 to 5 of schedule 'A'. The Appellant participated in the tender and he quoted the rate as per cubic meter. The rate quoted by the Appellant was accepted and he was declared to be a successful tenderer. The agreement signed by the Appellant for the said work was executed for the value of Rs.20,65,524/-. The fifth respondent wrote a letter dated 21.02.2013, requested the Appellant to put up a ring bund across the channel stagnating the water flow and commence the silting work. Through the Appellant's letter dated 02.03.2013, the Appellant requested the fifth respondent to hand over the site, after getting permission from the Kerala Forest Department, so as to enable the Appellant to take the vehicles, machineries and



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labours to carry out the work as the work spot was situated within the territory of Kerala Forest Department. On the basis of the Appellant's letter, the Junior Engineer, PWD, Section IV, Thekkady, and the Deputy Director, Periyar Tiger Reserve, Thekkady gave necessary permission for transporting the machineries and materials of the Appellant and the work site was handed over to him on 07.03.2013.

6. He further contended that the fifth respondent had sent a letter dated 19.03.2013 directing the Appellant to commence the work in the presence of Empowered Committee consisting of the fourth and seventh respondents as members of the Committee which was headed by the Director of Central Water Commission. Thereafter, when the Appellant arranged the vehicles, machineries and other materials necessary to transport to the work site for putting up the ring bund, he was prevented from transporting the same by the Kerala Forest Department. Despite these unforeseen circumstances the fifth respondent had sent a letter stating that the Appellant did not start the work of putting up a ring bund and hence he is liable to be imposed with a fine of Rs.10,000/-.



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“(i) The clearing work was carried out as per the direction of the Hon'ble Supreme Court as monitored by the Empowered Committee constituted by the Hon'ble Supreme Court.

(ii) The day by day increase in water flow which could reach its full capacity of 136 feet in the dam, insisted the Appellant to put up the ring bund across the channel with immediate effect, for the purpose of avoiding the ring bund from being washed away by the increasing inflow of water or else the clearing work could not have been completed within the time as stipulated by the Hon'ble Supreme Court.

(iii) The necessity for the Appellant to complete the work within the stipulated period of time emanated from the threat of the respondents from cancelling the tender agreement allowing the Appellant to sustain huge financial loss, besides subject to black listing his contract.

(iv) Since the Mullai Periyar Dam issue was a sensational issue at that point of time any stoppage of clearing work midway would have led



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to law and order problem among the people of Kerala and Tamil Nadu.

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(v) For the interest of the people of both the States, the clearing work was completed without any delay on a day to day basis and for all these reasons, the Appellant could not stop the work in between.”

8. When the Appellant started to put on '0' point, the people of Kumuli Panchayat Union and other local political leaders gathered at '0' point and objected to put up ring bund at '0' point stating that they could not get drinking water if the Appellant put the ring bund at '0' point. Therefore, the Appellant had to put up another ring bund about 650 meters away from the '0' point enabling them to draw drinking water from the channel to Kumuli Panchayat Union, for which he had to spend additional expenses towards putting up the second ring bund. However, that additional work was not included in the tender agreement. Moreover, the Appellant was compelled to put up a ring bund which was larger in area than the estimated work quantity by the respondents.



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9. The Appellant was further directed to release water for about 10 days for the purpose of celebrating Gowmariamman Temple Festival, Veerapandi at the instance of the District Collector. As a result of which, 50% bags of the stitched stone dust were washed away resulting in heavy loss. The clearing work was commenced on 20.05.2013 and was completed on 03.06.2013 with utmost satisfaction of the respondents.

10. The Appellant's Counsel further contended that the channel was found out with a concrete bed (width 9.5 meters) and two side walls with concrete structure (each 1.80 meters height). However, since the clearing work was not done more than 80 years, the respondents were not aware of the actual nature, landscape, width and depth of the channel. Of which, the respondents arrived at the quantity of work in the Tender Agreement only on the basis of assumption, presumption and belief. As such the Appellant was forced to execute enormous extent of work than the quantity of work earmarked by the respondents.



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11. As per the tender condition, the excavated earth, silt and slush has to be deposited on the bank of channel within initial lift of two meters. However, due to the objection of the officials of Kerala Forest Department, the excavated earth on the bank of channel was directed to be transported to a far away place and to an extent of 1425 meters away from the '0' point to reach the upper level and again it was transported 2,000 meters to reach the place identified by the officials. This caused additional expenditure to the Appellant for which he made several representations to re-evaluate the extent of work done by him and sanction additional amount by rescheduling the tender valuation.

12. Finally on 29.04.2013, 18.06.2013 and 10.09.2013, he sent several representations to the respondents requesting to prepare additional supplement, so as to include which was actually not included in the original agreement. In response to the same, the fifth respondent had sent the impugned communication dated 10.09.2013 stating that the tender amount would be disbursed on the basis of the schedule which was already prepared and no need to prepare any revised schedule and



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that the Appellant is not entitled for any additional amount as claimed by him. Lastly, for the Appellant's communication dated 10.09.2013, the fifth respondent has issued another impugned communication dated 03.10.2013 reiterating the earlier stand dated 10.09.2013. The Appellant's Counsel further contended that the learned Single Judge failed to consider the following aspects:

“(i) The Public Works Department owned by the Government of Tamil Nadu is an instrumentality under Article 12 of the Constitution of India and breach of practice made by the Tamil Nadu Public Works Department can be questioned under Article 226 of the Constitution of India whenever the facts are in dispute.

(ii) The learned Counsel for the Appellant submitted that there was a long dispute between the Government of Tamil Nadu and the Government of Kerala. The Periyar Dam issue was also a sensible issue and the work was taken at a period of time, when the Appellant cannot wait for the respondents to execute a supplemental agreement to



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complete his work and any delay in extent of the work would have compelled the respondents to terminate the tender and also black listing the Appellant.

(iii) The clearing work was carried out only at the instance of the Empowered Committee of the Hon'ble Supreme Court in a time scheduled manner.

(iv) The respondents have not given the actual estimation of work of clearing the leading channel. On the other hand, the tender was arrived at by the respondents only on assumption and presumption thereby estimating the cost to a tune of Rs.23,50,000/-. The Appellant has made several entries in executing the work by the Kerala Forest Department and the local bodies causing several unavoidable deviations in the estimated work incorporating huge expenditure. The respondents failed to get prior permission from the Kerala Forest Department before handing over the site to the Appellant, enabling the Appellant to take his infrastructure to the work spot without impediment.



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(v) The Appellant commenced the work when the water in-flow was increasing day by day, in such circumstances, he cannot delay the work and the work was done in an hour to hour basis to avoid the ring bund from being washed away by the in-flow of water facilitating the clearing work swiftly. The official measurements taken by the respondents were completely different from the actual measurement for that particular silt clearing work as deviated by the respondent and the huge difference in work was a result of the little knowledge of the respondents with respect to the work site and the nature of work undertaken by the Appellant.

(vi) The respondent was unjustified in imposing a penalty of Rs.10,000/- at the first instance without any supplemental agreement in the name of speeding up the de-silting work. None of the General Conditions of Contract Rules Section XIX Tamil Nadu Building Appendixes with respect to the settlement of dispute was followed by the respondents in the case of the Appellant.



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(vii) When there is a specific arbitration clause in para 69 of the General Conditions of Contract Rules under the clause (J) without directing the fifth respondent to place the dispute to the arbitrator, who had been assigned with a responsibility to settle the dispute, the learned Single Judge dis-allowed the writ petition. The order passed by this Court in W.P(MD)No.17152 of 2013 dated 16.07.2015 directing to pay the petitioner a balance amount of Rs.3,10,954/- by the fourth and fifth respondents was not considered, on the other hand, the Appellant was directed to approach the competent civil Court to redress his grievance in this regard.

(viii) The learned Single Judge failed to consider clause 4 and clause 6 of the special conditions since both the clause were dealing with the quantities and payments.”

13. Per contra, the learned Additional Advocate General appearing for the respondent authorities contended that the estimation for the work of clearing the leading channel from Thekkady Boat landing to Thekkady



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Head sluice for ensuring free flow of water was prepared on the direction of the Hon'ble Supreme Court by well experienced Engineers of Public Works Department with handsome experience and was worked out to Rs.23,50,000/- and the said estimate was accorded technical sanction by the Department. Following which, a tender was called for on 24.08.2012 in which two contractors participated. The lowest tender was quoted by the Appellant at the rate of 0.02% less, that is Rs.20,65,524/- on 12.10.2012, for an agreement period of six months. On 21.02.2013, the Appellant was instructed to put up a ring bund across the channel at '0' point to stop the flow of water in the leading channel and commenced de-silting work. On the request of the Appellant to get permission from Kerala Forest Department, duly the Engineers of the first respondent's Department contacted the Deputy Director of Tiger Reserve and obtained the necessary permissions and handed over the work site to the Appellant on 07.03.2013.

14. He further contended that the allegation of the Appellant that the imposition of a fine of Rs.10,000/- at the first instance for not



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completing 15% of works within one month as per the agreement condition vide office letter No.58M/DB/DO/C.5/2/2013 dated 08.04.2013 is unwarranted. However, later the same was waived by the fourth respondent and hence the claim of the Appellant is untenable.

15. The allegation of the Appellant is that he had to engage 2450 coolie workers for transporting all the materials to the work site by head load for which the Appellant is entitled to seek revision of the estimate by preparing a supplemental agreement is incorrect and intended. Item No.5 of the agreement schedule had a clear specification as to the fact that the rate is included for conveyance of all materials required for forming ring bund to the work site. The specification in the agreement schedule item No.5 was also duly informed to the Appellant enlightening him that a supplemental agreement for conveyance of materials could not be arrived at. In addition to that, special conditions were also appended with the tender schedule as well as the agreement wherein it was clearly mentioned that the Appellant shall abide by the Kerala Forest Department Rules in the wild life area. Fully going through the tender



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specifications, the Appellant had quoted the rates in the tender. Hence, his claim to revise the tender rate is unacceptable. The insistences of the Appellant that he had continued the work without stopping the same is something which do not invite additional appreciation, for the reason that it is the duty of the Appellant as a contractor to complete the de-silting work without stopping the same within the stipulated period as mentioned in the agreement.

16. The Appellant's grievance is that he was compelled to put up two ring bunds, while estimated tender agreement was to form only one ring bund is also baseless. The reason for directing the Appellant to put up another ring bund is justifiable. In the estimate, the original ring bund was proposed to be formed with a dimension of $(20+3)/2 \times (7+15)/2$ and to be a height of 4.85 meter and the quantity for the same was calculated as 625 M3. But the Appellant had done a quantity of 472.81 M3 with a height of 3.75 M3 only, which is why the Appellant was instructed to form another ring bund at L.S 650 meter using the balance quantity of work and the same was done to a tune of Rs.108.10 M3. Thus, the



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Appellant did not do any additional quantity of work for the second ring bund than which he accepted to execute. Even the claim of the Appellant that he was compelled to dump the de-silted soil to a faraway place is untenable because the estimate was prepared by well experienced engineers and the work was executed under the supervision of monitoring committee formed by the Hon'ble Supreme Court without permitting either the official respondents or the Appellant / Contractor to make any deviation in the quantity of work and for this reason alone the request for supplemental agreement is unreasonable. With respect to the Appellant's representations dated 29.04.2013, 05.06.2013 and 18.06.2013 seeking the respondents to include the quantity of work which was not included in the original agreement, it was promptly replied to the Appellant by the Department that the entire works were executed under the supervision of the Monitoring Committee members constituted by the Hon'ble Supreme Court, as a result of which the quantity of each item of work were verified and financed by the Monitoring Committee and the entire measurement were taken by the Department engineers as per the conditions given by the monitoring





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instructions given by the CWC Director and hence there is no change in the final bill quantity. Actually, the Appellant / Contractor has done all the five items of works within the agreement quantity and hence in the absence of any additional quantity, the question of arriving to take a supplemental agreement will never arise.

19. The Appellant had quoted rate for the items from serial Nos.1 to 5 as required by the Tender Schedule. In fact after completing works, separate labourers were engaged to remove the ring bund departmentally. The Appellant never engaged any labourers in this regard and the Appellant did not do any work in the removal of ring bund after clearing silt and debris. Similarly, the provision for providing scaffolding, strutting and under pinning at various places to lift the excavated sand, silt and loose boulder were also carried out by the Department and Appellant never had any work in this L.S Provision. In addition to this, the other provisions provided in serial Nos.8 to 11 in the schedule were not executed and hence, the Appellant is not eligible to get the lump sum amount. In the estimate a quantity of 14350M3 has been provided for the



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22. Further the learned Single Judge observed that the nature of work allotted to the Appellant was nothing but a de-silting contract of the leading channel from the Thekady Boat landing to Thekady Head Sluice for ensuring free flow of water. Therefore it is clear that no construction activity or civil work was entrusted to the Appellant / contractor under the contract, but only a de-silting work of a channel for estimated length which will always be for a particular length which will never change. The Appellant's lament that he has incurred huge expenses towards the formation of two ring bunds is not justifiable as it could be understood from the photographs of the ring bunds that it is quite nothing but stocking of sand bags across the channel so as to prevent flow of water. According to the Appellant, he had to form a second ring bund due to the objection raised by the Kumuli Panchayat. The learned Additional Advocate General stated that due to lesser flow of water, the ring bund was not raised up to the original level and as a result of which, there were balance sand bags which were utilised by the proper guidance and supervision of the respondent engineers towards formation of the second ring bund. Admittedly, the ring bunds were created in the month of



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March and April 2013 which is a non monsoon season for the said region and hence, the contention of the learned Additional Advocate General that there was lesser flow of water and that the ring bund was created for a lesser height and the balance sand bags were utilised for formation of another ring bund is reliable. The Appellant's exasperation that he was made to carry the sand bags through head load for about 800 meters to reach the site with coolies due to the objection raised by the Kerala Forest Department for movement of vehicles is not justifiable. The learned Single Judge observed that the Appellant being a Class-I contractor of Public Works Department should have understood the difficulties in carrying out the work. In fact, the agreement itself points out that the work has to be carried out in consonance with the forest laws of the State of Kerala and hence, the Appellant ought to have been aware of the consequence of the nature of the work he was entitled to involve. Hence, the Appellant after quoting the amount cannot turn around and contend that he had incurred additional expenses due to unforeseen circumstances.



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23. The Appellant's abnormal additional demand of Rs.9.66 crore for the de-silting work carried out by him cannot be justified in anyway. In such an event, the estimated cost of the work would be around Rs.10 crore. In that case, more number of contractors would have participated and some other contractor would have been the lowest bidder. The Appellant agreed to quote Rs.20,65,524/- cannot turn around and contend that he had incurred a sum of Rs.9.66 crore, which is around 50 times more than the estimated cost agreed by him after the completion of work.

24. Various issues with regard to the variation in the arrangement of work which has been claimed by the Appellant cannot be sustained for the reason that the entire work was completely executed under the careful supervision of the special Committee constituted by the Hon'ble Supreme Court exclusively for the said purpose. It is an admitted fact that the measures were taken everyday and recorded by the department engineers on a day to day basis. Also the Appellant raised objections with regard to the measurements recorded by the respondent authorities only after the



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completion of work. The fifth respondent relying upon the measurements taken in the presence of the Monitoring Committee appointed by the Hon'ble Supreme Court has already disbursed the amount that is due to the Appellant. The learned Single Judge observed that, if at all, the Appellant felt that the measurements relating to the de-silting of the work was not carried out in a proper manner, it is a factual dispute and it requires oral and documentary evidence.

25. Be that as it may, for better appreciation of the factual dispute of this case, the concluding portion of the representation made by the Appellant dated 10.09.2013 is extracted as follows:

“It is pertinent to mention here that when the fifth of you directed me to appear before you, I appeared on 04.09.2013 in person, submitted the details of variations and additions once again for consideration requesting to conduct field inspect, measurement on ground work, verification of records and revised estimate as per the execution of work carried on by me and not covered by the tender. The details of variations and additions not covered under the tender contract pending



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consideration at your end by way of dispute and claim are extracted hereunder for easy reference:-

<i>Sl. No.</i>	<i>Extent of work as per tender</i>	<i>Varied and additional work executed in connection with and completion of tender work</i>
<i>1.</i>	<i>Length of the channel 2000 meters</i>	<i>Work executed for 2135 meters</i>
<i>2.</i>	<i>Breath of the channel 7 meters</i>	<i>Work executed for 9.50 meters breath in the channel</i>
<i>3.</i>	<i>Ring Bund Measurement provided as $(7+15)/2$</i>	<i>Executed extent of ring bund $(10+28)/2$.</i>

Thus value and extent of work executed varied with the tender price and tender work and my dispute and claim are based on extent of work executed by me. I also requested for sub-agreement for the tender work for varied and additional work as hereunder:-



Sl. No.	Heads of varied and additional items
1.	For want of permission to bring the vehicles to the place of work, materials were packed into bags and brought to the work site as head load for a distance of 850 meters to lay the ring bund.
2.	Ring bund has been laid in a different place as instructed by the 5 th of you due to the objection raised by the villagers at Kumuli.
3.	Waste and debris taken from the channel were not allowed to keep on the bund but directed to a place at a distance of 1425 to 2000 meters from "0" point engaging tippers as against the conditions of contract of 1 meter lead. One lead is equal to 10 meters and debris were taken upto 150 to 250 meters.
4.	Laying temporary road for the vehicles on the channel bund.
5.	Use of diesel pump to dry the water in the channel to bring the vehicle and machineries in the channel.

However, the 5th of you threatened me that unless I sign the bill already prepared by them without taking the pre-level and completion level of clearing the channel, without assessing the extent of work, variations and additions, I will be black listed and the balance payment will be deposited into the government account and in which event I may not make any further claim. In such event, the 5th of you ought to have referred the disputes made by me on 09.04.2013, 29.04.2013, 13.05.2013, 18.06.2013 and my consequent claim to resolve the dispute made on 05.06.2013, 18.06.2013 and 06.08.2013



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enclosing statement of extent of variations and additions and value thereof.

In fact, the said dispute and claim were also brought to the notice of the 1 to 4 of you for intervention to resolve the dispute and the first of you by letter dated 23.07.2013 directed the 3rd of you to look into the matter and the 3rd of you by letter dated 20.08.2013 informed that necessary action will be taken in this regard. Despite the same, the claim made by me on and from 05.06.2013 to the tune of Rs.9,66,09,679/- (Rupees nine crores sixty six lakhs nine thousand six hundred seventy nine only) has not been settled to me by all of you and dragging on the matter. For ready reference the statement of variations and additions of work and its value are herewith enclosed. If the above dispute and claim raised by me are not agreeable, the same ought to have been referred to Arbitration by appointing an Arbitrator. But neither the claim amount is settled nor the arbitrator is appointed in the event the claim amount is not agreeable by the State. In the above circumstances, I have no other option than to compel you to appoint an Arbitrator to settle the dispute and claim together with interest at 24% on your part within a week's time, failing which I will have to seek appropriate remedy both before the Competent Court and the court which directed the clearing of channels. Please consider



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my above request and resolve the dispute and settle my claim by appointing an Arbitrator.”

26. Moreover it is a settled position of law that, the interpretation of contracts shall not generally be done in the writ jurisdiction. We are of the considered view that though the dispute arisen in this case may look like a factual dispute requiring oral and documentary evidence, the learned Single Judge ought not to have directed the Appellant to approach the competent civil Court to vindicate his grievance when there is a specific clause (J) dealing with settlement of disputes in the agreement document, wherein in paragraph No.69 under the title 'Arbitrations' state as follows:

“69. Arbitrations:

69.1. In case of any dispute or difference between the parties to the contract either during the progress or after the completion of the works or after the determination abandonment or breach of the contract, or as to any matter or thing arising thereunder except as to the matters left to the sole discretion of the Executive Engineer under clauses



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18,20, 25-3, 27, 34, 35 and 37 of 'General conditions of contract' or as to the with holding by the Executive Engineer of payment of any bill to which the contractor may claim to be entitled, the either party shall forthwith give to the other notice of such dispute of difference, and such dispute or difference shall be and is hereby referred to the arbitration of the Superintending Engineer of the nominated circle mentioned in the 'Article of Agreement' (hereinafter called the 'Arbitrator').

Subject as aforesaid to the provisions of the arbitration Act, 1940, or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the Arbitration Proceeding under this clause.

Upon every and any such reference the costs of and incidental to the reference and award respectively shall be discretion of the arbitration subject to the condition that the amount of such costs to be awarded to either party shall not, in respect of a monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, costs and expense incurred by either party provided that where a monetary claim is disallowed in full the said percentage shall



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be calculated on the amount of the claim. The arbitrator may determine the amount of the costs be awarded or direct the same to be taxed as between solicitor and client or as party and partly and shall direct by whom and to whom and in what manner the same shall be borne and paid.

The percentage above referred to in this clause are 5 per cent on any such monetary award which does not exceed Rs.10,000, 3 per cent on the next Rs.40,000 or any part thereof, 2 per cent on the next Rs.50,000 or any part thereof and 1 per cent on any excess over Rs.1,00,000.

Provided that the Government shall not be liable to any claim in respect of any such dispute or difference until the liability and the amount thereof shall have been referred to and decided by the Arbitrator and decreed by the Court.”

27. The Hon'ble Supreme Court in a judgment reported in ***AIR 1996 SC 3515*** in the ***State of Uttar Pradesh and Others Vs. Bridge & Roof Company (India) Limited*** in paragraph Nos.23 & 24 has held as follows:

“23. Before parting with this appeal, we must mention that counsel for both the parties have urged several other contentions of fact and law and relied upon several other



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clauses of the contract apart from those mentioned supra. We have not set them out herein because, in our opinion, they are outside the ken of a writ petition. It shall be open to the parties to urge and rely upon them at the proper stage and before the appropriate forum.

24. For the reasons mentioned hereinabove, the appeal is dismissed subject to the observations and clarifications aforementioned. It shall be open to the respondent, if it so chooses, to either raise a dispute and ask for reference of the dispute to arbitration as provided by the contract or to approach the civil court according to law, as the case may be.”

28. The Hon'ble Supreme Court in a judgment reported in **AIR 2000 SC 2573** in **Kerala State Electricity Board and Others Vs. Kurien E.Kalathil and Others** in paragraph No.11 has held as follows:

“11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or



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public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil Court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the Appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies.”

29. The Hon'ble Supreme Court in a judgment reported in **(2010) 11 SCC 186** in **Zonal Manager, Central Bank of India Vs. Devi Ispat**



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Limited and Others in paragraph No.28 has held as follows:

“28. It is clear that, (a) in the contract if there is a clause for arbitration, normally, writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable.....”

30. The Hon'ble Supreme Court in a judgment reported in **AIR 2021 SC 4187** in **Union of India (UOI) and Others Vs. Puna Hinda** in paragraph No.24 has held as follows:

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private



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law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the Appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of Joint Survey Report by the competent authority, no right would accrue to the writ Petitioner only because measurements cannot be undertaken after passage of time. May be, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ Petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads.”

31. The judgment reported in **2022 (1) SCC 75 in Bhaven Construction Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another** submitted by the learned Additional Advocate General is not applicable to the facts and circumstances of this case.



33. More over we are conscious of the fact that the contract was for the purpose of a public utility and it was awarded by the statutory body and the obligations imposed by the parties in the contract comes within the purview of the contract Act. Hence, we are of the considered view that when there is a special clause in the agreement document executed between the Appellant and the respondents which envisages settlement of disputes through arbitration, the learned Single Judge ought to have given liberty to the contractor under the said clause (J) para 69 of the Agreement Document to invoke the Arbitration clause of the said agreement rather to approach the competent civil Court to redress his grievance.



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34. With the above said observation, the impugned order of the learned Single Judge is duly modified directing the Appellant and the respondents to invoke the Arbitration clause as provided by clause 69.1 of the Agreement Document and on that basis this writ appeal stands partly allowed. There shall be no order as to costs.

(D.K.K.J.,)

(L.V.G.J.,)

31.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR

To

1.The Special Secretary to Government,
Public Works Department,
St. George Fort,
Secretariat, Chennai-9.

2.The Enginner in Chief (Water
Resources Organisation) &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005.

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3. The Chief Engineer,
Public Works Department,
Water Resources Organisation,
Madurai Region,
Thallakulam, Madurai.
4. The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Periyar Vaigai Basin Circle, Madurai.
5. The Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.
6. The Assistant Executive Engineer,
Water Resources Organisation,
Periyar Dam Special Division,
Cumbum, Theni District.
7. The Superintending Engineer,
Irrigation Central Circle,
Thrissur, Kerala-680 020.



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D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

BTR

Judgment made in

W.A(MD)No.154 of 2023
and
C.M.P(MD)Nos.2207 & 1437 of 2023

31.03.2023