



W.P(MD)Nos.13496, 13499 and 13502 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.02.2023

Pronounced on : 26.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.13496, 13499 and 13501 of 2020

and

W.M.P.(MD)Nos.11250, 11252, 11254, 11256, 11253,
11257, 11258, 11259, 11260, 11262, 11263 and 11265 of 2020

S.Peter

... Petitioner in all W.Ps

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Fort St.George, Secretariat,
Chennai.

2.The Superintending Engineer,
WRO / PWD Projects Circle,
Tirunelveli – 2.

3.The Executive Engineer,
WRO / PWD Special Project Division,
Nanguneri, Tirunelveli District.

4.The Assistant Engineer,
Mines and Minerals Department,
Tirunelveli District.

5.The District Collector,
Tirunelveli District.

... Respondents in all W.Ps



W.P.(MD)Nos.13496, 13499 and 13502 of 2020

Prayer in W.P.(MD)No.13496 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 3rd respondent vide Lr.no.VaPa/Ko 12(HR)/ 19M/2020 dated 06.07.2020 and the consequential proceedings vide Lr.no.20 M/VaPa/ E.Ni.Va. Tho.A/Ko.12 (HR)/2019 dated 13.07.2020 of the 3rd respondent and quash the same as illegal and direct the respondents to segregate and stack the hard rock and permit the Petitioner to remove the remaining 10 – 30% of the rocks in his packages as per the work order issued by the 3rd respondents in contract Nos 1DL 2015-2016, 2DL 2015-2016, 3DL 2015-2016, 4DL 2015-2016, 5DL 2015-2016, 6DL 2015-2016, 7DL 2015-2016, 8DL 2015-2016, 2DL 2015-2016, 3DL 2015-2016, 4DL 2015-2016, 5DL 2015-2016, 6DL 2015-2016, 1DL 2016-2017, 2DL 2016-2017, 3DL 2017-2018, 4DL 2017-2018, 5DL 2017-2018, 6DL 2017-2018, within the extended time frame as may be fixed or directed to be granted by the respondents by this Court.

Prayer in W.P.(MD)No.13499 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 3rd respondent vide Lr.no.37M/Va.A/Ko. 32/2020 dated 08-07-2020 and quash the same as illegal and direct the respondents to segregate and stack the hard rock and permit the petitioner to remove the remaining 10 percent-30 percent of the rocks in



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his packages as per the work order issued by the 3rd respondent in contract Nos. 1DL 2015-2016, 3DL 2017-2018, 4DL 2017-2018 and 5DL 2017-2018, within the extended time frame as may be fixed or directed to be granted by the respondents by this Court.

Prayer in W.P.(MD)No.13501 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 3rd respondent vide Lr.No.33 M/E.Va.A/Ko.56 dated 14.07.2020 and quash the same as illegal and direct the respondents to segregate and stack the hard rock and permit the Petitioner to remove the remaining 10 percentage - 30 percentage of the rocks in his packages as per the work order issued by the 3rd respondent in contract Nos 7DL 2015-2016, 3DL 2016-2017, 5DL 2016-2017, 6DL 2016-2017, 7D1 2016-2017, 1DL 2017-2018, 1D1 2017-2018, and 2DL 2017-2018, within the extended time frame as may be fixed or directed to be granted by the respondents by this Honble Court

(In all W.Ps)

For Petitioner : Mr.Sricharan Rangarajan, Senior Counsel,
For Mr.D.Saravanan

For Respondents : Mr.R.Baskaran,
Addl. Advocate General,
Assisted by Mr.A.K.Manikkam,
Spl. Government Pleader.



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COMMON ORDER

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The writ petitioner herein entered into contracts with WRO / PWD department for removal of blasted rocks. The Government had envisaged a river linking project to benefit the drought hit regions of Tirunelveli and Thoothukudi Districts. It involved disposal of a substantial quantity of excavated hard rock stones. The petitioner's offer was the highest. He paid a sum of Rs.2.5 Crores. In other words, the petitioner fulfilled the financial obligations arising under the contracts. Though the rocks had been purchased by the petitioner in terms of the contractual obligations, he was also bound to remove them from the site. Since they are minerals, there are further formalities involving Mines and Minerals Department as well as the Revenue Administration. Transit passes and permits had to be obtained from them. The contracts also contemplated removal within a certain time frame. There was periodical extension of time till 31.10.2020. However, by the impugned proceedings, the earlier orders granting extension of time stood cancelled. Questioning the same, these writ petitions came to be filed.



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2.The matter was taken up for admission on 30.09.2020 and since the cancellation orders were passed without complying with the principles of natural justice, an order of interim stay was also granted. These writ petitions were also heard finally and reserved for orders on 15.02.2023.

3.The learned senior counsel for the petitioner reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Advocate General took through its contents. The prime argument of the learned Additional Advocate General is that the petitioner having failed to fulfil the contractual obligations in time cannot maintain these writ petitions. It is not as if the premises on which the impugned orders are anchored are false or incorrect. It is not enough that the petitioner had fulfilled the financial part. The more important part is the removal of stones. The petitioner had miserably failed to



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adhere to the extended time lines. In fact, the petitioner was given extensions on quite a few occasions. On account of abnormal delay in completing the work, the impugned orders came to be passed. The contractual terms empowered the authority to pass the impugned orders. Since the issue falls exclusively in the realm of contract, the Writ Court ought not to exercise its power of judicial review. If at all, the petitioner has to be relegated to avail the remedies set out in the contract. He pressed for dismissal of these writ petitions.

5.I carefully considered the rival contentions and went through the materials on record. As already noted, the petitioner had paid close to Rs.2.5 Crores. The learned senior counsel for the petitioner has demonstrated that though the original time lines set out in the contracts had expired, on every occasion, finding justification in the petitioner's request for extension of time, the PWD engineers have recommended for further extension of time. This is because the PWD engineers are not competent to issue transit passes. Mines and Minerals department as well as the District Collector are involved in the process. When a recommendatory proposals were sent by PWD for grant of one year



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extension, by the time the files reached the District Collector and orders issued, the operating time enjoyed by the petitioner was substantially and considerably lessened.

6.It can be seen from the materials on record that the extension of time had been issued in almost all the cases upto 30.10.2020. Once the authority had satisfied himself that a case for extension of time has been made out and extension of time has also been granted, it cannot be once again reviewed. In these cases, extension of time had been granted upto 31.10.2020. This could not have been cancelled by passing the impugned orders. The petitioner had specifically urged that this was done without notice to him. The violation of principles of natural justice is evident. For non-issuance of show cause notice, the impugned orders deserve to be set aside. They also suffer from an apparent lack of jurisdiction. The third respondent could not have unilaterally issued the impugned orders of cancellation. It is seen that the petitioner had substantially completed the work of removal of the rocks. The petitioner cannot be blamed for the delay that occurred due to the pendency of these writ petitions. The learned senior counsel for the petitioner would



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submit that the petitioner apart from paying a sum of Rs.2.5 Crores to the department towards purchase of rocks had also invested substantially.

7. Therefore, even while setting aside the impugned orders, I direct the second respondent to consider the petitioner's representation and grant him reasonable time to remove the remaining rocks. The second respondent will associate the petitioner before deciding on the time limit. The writ petitioner will have to work round the clock and adhere to the time limit to be stipulated by the second respondent.

8. These writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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- 2.The Superintending Engineer,
WRO / PWD Projects Circle,
Tirunelveli – 2.
- 3.The Executive Engineer,
WRO / PWD Special Project Division,
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- 4.The Assistant Engineer,
Mines and Minerals Department,
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- 5.The District Collector,
Tirunelveli District.



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G.R.SWAMINATHAN, J.

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**Pre-Delivery Common Order in
W.P(MD)Nos.13496, 13499 and 13502 of 2020**

26.06.2023