



W.A.(MD)No.608 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.608 of 2014

and

M.P.(MD)No.1 of 2014

- 1.The Secretary to Government,
Government of Tamil Nadu,
Rural Development and Panchayatraj Department,
Fort St.George, Chennai-600 009.
- 2.The Project Director,
Tsunami Project Implementation Unit,
Rural Development and Panchayat Raj Department,
No.4 & 4A, Clive Battery Office Complex,
Rajaji Salai, Chennai-600 001.
Now at. No.100, Anna Salai,
Guindy, Chennai.
- 3.The Chief Engineer,
Tsumani Project Implementation Unit,
Rural Development and Panchayat Raj Department,
No.4 & 4A,
Clive Batter Office Complex,
Rajaji Salai, Chennai-600 001.
Now at. No.100, Anna Salai,
Guindy, Chennai.

...Appellants

/Vs./



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1.M/s.Pal Promotors Private Limited,
Represented by its Managing Director,
P.Panneerselvam, 4/.158, Lake Area,
Melur Road, Madurai-625 107.

2.R.P.P.Selvam Infrastructure Pvt.Ltd.,
26, Chellammal Street,
Shenoy Nagar,
Chennai-600 030.

3.M/s.Rajendran Associates,
58, Srirama Srinivasa Road,
Venus Colony,
Alwarpet,
Chennai-600 018.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.(MD)No.3426 of 2009 dated 08.01.2014.

For A1	: Mr.T.Amjadkhan Government Advocate
For R3	: Mr.S.Venkatesh
For R1 & R2	: No Appearance

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH , J.**)

This Writ Appeal has been filed by three appellants, who were the official respondents in W.P.(MD)No.3426 of 2009. Of the three appellants, A2 and A3 have been closed finding there is no necessity to



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continue the Tsunami Project Implementation Unit. Hence, this appeal is pursued only by the first appellant, the Secretary to Government, Rural and Panchayat Raj Department, represented by Mr.Amjadkhan, learned Special Government Pleader.

2. There has been no appearance on behalf of the first and second respondents, writ petitioner and L2 (successful bidder), respectively, and R3 in the writ appeal is represented by Mr.S.Venkatesan, learned counsel.

3. The writ petitioner had aggrieved by the rejection of his request for return of security deposit and hence, challenged the order of rejection dated 15.12.2008 and sought consequential direction for refund of amount of Rs.18 lakhs with interest at 18% per annum from 17.11.2008, when the deposit had been made till the date, when it was so refunded.

4. The petitioner was engaged in construction work and had responded to an invitation for bid, dated 29.02.2008 issued by the



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appellants. Deposit had been made pursuant to such response by the writ petitioner. The scope of work involved construction of SHG building complex for the usage of persons affected by the Tsunami in Tamil Nadu.

5.While so, that bid came to be cancelled. Pursuant to a proposal for such cancellation, on 17.07.2008, there was a re-invitation after obtaining NOC from the Asian Development Bank on 30.07.2008. The bidders in the first round of bid were duly put to notice and had been advised to obtain refund of earnest money deposited by them. This was on 04.08.2008. The re-invitation for tender was issued on the same date i.e., 04.08.2008. The writ petitioner responded on 05.09.2008 at the fag end of the period provided.

6. The writ petitioner was thereafter aggrieved by an assurance extended by the official respondents, as seen from the General conditions of Contract (GCC, in short) as well as Particular conditions of Contract (PCC, in short), that the overseeing of the construction would be by the Engineering Specialist of the Tsunami Project Implementation Unit. This specifically flows from Section 8 of the PCC setting out the contract



data, which reads thus:

Section 8-Particular Conditions of Contract
Part A-Contract Data

<i>Conditions</i>	<i>Ref.GCC</i>	<i>Data</i>
.....	...	
<i>Engineer's name and address</i>	<i>1.1.2.4 & 1.3</i>	<i>Engineering Specialist, Tsunami Project Implementation Unit, 4 & 4A Rajaji Salai, Chennai-600 001.</i>
....		...

7.The name of the employer and address had been set out as Tamil Nadu Rural Development and Panchayat Raj Department, 4 & 4A, Rajaji Salai, Chennai-600 001. The Engineer's name and address have been specified as Engineering Specialist, Tsunami Project Implementation Unit, 4 & 4A Rajaji Salai, Chennai-600 001.

8.To our mind, there has been a categoric representation by the appellants that the Engineer would be the specialist in Chennai from the Tsunami Project Unit. Undoubtedly, the contract provides for appointment of the Engineer by the employer. The duties of the Engineer and other details of his roles and responsibilities are set out in Clause 3.1 onwards of the GCC.



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9.Clause 3.4 of the GCC extracted below, provides for a situation where the employer may wish to replace the Engineer and vests full discretion in the employer to do so:

3.4.Replacement of the Engineer:

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer, if the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to the objection.”

10.However, such replacement is to preceded by a notice of not less than 21 days before the intended replacement, conveying to the contractor, the name, address and relevant experience of the intended replacement Engineer. Thereafter, the contractor is granted the option of objecting to the intended replacement with supporting particulars of why they so object, and the employer is expected to address full and fair consideration to such objection.



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11.The writ petitioner objected to the appointed of a private concern as Engineer and such objections were premised entirely on the contractual position that the Engineer appointed would be the specialist Engineer of the Tsunami Project Unit only. While so in a meeting held on 19.11.2008, the writ petitioner was given to understand orally that Engineer was, in fact, a private party, arrayed as fifth respondent in the writ petition and third respondent before us in the writ appeal.

12.This choice did not find favour with the writ petitioner. It is in these circumstances, that it expressed its inability to proceed with the contract and sought refund of EMD. Such request having been rejected and the appellants forfeiting the EMD, the writ petition came to be filed before this Court.

13.The writ Court considered the stand of the respondents /appellants in writ appeal that the appointment of private Engineer had been done by way of agreement dated 10.12.2007. Admittedly, neither the writ petitioner nor any other probable contractor was a party to that agreement. Thus, we do not find any merit in the



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Appellant relying on agreement dated 10.12.2007, as that agreement was never available in public domain and in any event, the choice of engineer had never been conveyed to the writ petitioner.

14. There is yet another aspect to the matter and that is that the dated 10.12.2007 had itself been entered into in the first round of bids that had been cancelled on 30.07.2008. Thus, even on this score, reliance upon agreement dated 10.12.2007 does not advance the case of the appellant.

15. In fact agreement dated 10.12.2007 was not produced before the writ court and is produced for the first time in appeal. We maintain that it is not of any relevance to the case of the appellants. The Writ Court has looked into the GCC as well as the PCC and has noted the settled position that the PCC would prevail over the GCC.

16. We have called for and perused the extracts of the GCC as well as PCC and find that Section 8 of the PCC is specific as to the Engineer to be appointed. The writ Court has noted the position that



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there has been no intimation qua replacement of the Engineering specialist with a private Engineer and has concluded that the objection of the writ petitioner is well founded. We are in agreement with the writ Court on this score.

17.Learned SGP would urge that had the writ petitioner attended the pre bid meeting held on 20.03.2008 he would have been aware of the selection of the private party as engineer. The minutes of pre-bid meeting have been placed before us and we find that as on that date, no tender schedules had been purchased and there were not even any bidders as on that date. In any event the responsibility was of the Appellant to have informed the writ petitioner of the change in engineer to a private party and thus the blame cannot be shifted onto the petitioner in this regard.

18.Admittedly, the writ petitioner submitted its bid only on 05.09.2008 long after the pre bid meeting on 20.03.2008. That apart, the change of Engineer was something that the appellants clearly intended to act on as agreement dated 10.12.2007 makes it very clear that they



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intended to associate only with M/s.Rajendran and Associates. It would been appropriate for the State Departments to have been open and transparent in this regard.

19.Having contracted with the private Engineer on 10.12.2007 and engaged his services, the Appellants have continued to stipulate in the contract, both in the first and second rounds, that an Engineer, Specialist of Tsunami Project Implementation Unit would be engaged.

20.In light of the discussion as above, we concur with the writ Court that the writ petitioner was fully justified in not wishing to proceed with the contract as the appellants have not acted in line with the stipulations under the clauses of the GCC and PCC. This writ appeal is dismissed.

21.We reiterate the directions in para 16 of the order of the writ court to the effect that the security deposit of Rs.18 lakhs with interest at 8% as ordered by the writ Court, effective till 17.04.2014, when the order of the writ court was stayed. We see no necessity to continue the



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direction for interest thereafter, since R1 has not appeared in the writ appeal. Compliance within 8 weeks from date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
23.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
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Dated:
23.08.2023