



W.P(MD)No.13350 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13350 of 2015

and

M.P(MD)No.1 of 2015

M/s.P & C Construction (P) Ltd.,
Represented by its Chairman &
Managing Director,
P & C Towers,
No.140, Perundurai Road,
Erode – 638 011.

... Petitioner

Vs

The Commissioner,
Tirunelveli City Municipal Corporation,
SN High Road,
Tirunelveli – 1.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to disburse the final bill payment of Rs.1,20,76,356/- and the price adjustment / escalation amount to the tune of Rs.92,85,445/- under the Tirunelveli Water Supply Improvement Scheme - Package - II on the basis of the representation dated 14.07.2015 within a time frame fixed by this Court.



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For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For Respondent : Mr.Aayiram K.Selvakumar
Standing Counsel

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondent Corporation.

2. The petitioner had carried out certain contract works for the Corporation. They raised their final bill. They also had other claims against the Corporation. But the Corporation did not honor the petitioner's claim. That led to the filing of this writ petition.

3. When the matter was taken up on the previous occasions, I had suggested that the petitioner and the officials of the Corporation can sit across the table and arrived at the figure payable to the petitioner herein. According to the respondent, in respect of the petition mentioned transactions, the Corporation is liable to pay a sum of Rs.29,45,012/- (Rupees Twenty Nine Lakhs Forty Five Thousand and Twelve only).



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4. The learned Standing Counsel appearing for the Corporation submitted that the Corporation would release the said payment provided the petitioner executes a full quit receipt.

5. I am not able to appreciate the stand of the respondent Corporation. When the similar stand was taken by the Food Corporation of India in W.P(MD)No.23040 of 2021 (K.Senthilvel Vs The Regional Manager & Others) dated 22.06.2023, I held as follows:

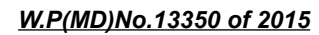
“3.I carefully considered the rival contentions and went through the materials on record. Central Warehousing Corporation is a Government of India Undertaking. It is a State instrumentality. No doubt, the subject matter pertains to the realm of commercial contract. But a State instrumentality must conduct all its transactions in a fair manner. The sweep of Article 14 of the Constitution of India will embrace even the contractual transactions of Central Warehousing Corporation which was established by the Warehousing Corporations Act, 1962. It is true that there is considerable discrepancy between the claim of the petitioner and the stand of the respondents. The writ court cannot venture into disputed facts and claims. They may have to be resolved either before the jurisdictional civil Court or through arbitral process, if available. But the



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petitioner is not calling upon this Court to direct the corporation to honor his claim in its entirety. Far from it. What is demanded is only payment of the admitted amount. Even, it has been admitted in the counter affidavit that the net payable amount to the petitioner comes to Rs.23,74,921/- as per the respondents books of account. The respondents are not being fair when they insist that unless “No Demand Certificate” is submitted, this admitted amount would not be paid. A contractor after completing his contract would be badly in need of funds. This precarious condition of the contract ought not to be exploited by the State instrumentality. In labour jurisprudence it has been observed that the State must conduct itself as a model employer. This ideal standard is applicable even in commercial transactions. Withholding the admitted amount is clearly unreasonable, arbitrary and unfair. Article 14 of the Constitution of India has been breached in this case. Any aggrieved individual is entitled to seek legal and judicial redress in respect of their grievances. This is a fundamental right. By insisting that “No Demand Certificate” must be signed by all the legal heirs, the corporation is effectively taking away the fundamental right of the petitioner to seek judicial redress. Elsewhere I have held that if due to pressure of the situation, the contractor signs on the dotted lines that he has no further claim on the department, that would still not operate as an estoppel. The petitioner must be paid the admitted dues and left free to pursue his remedies for establishing his claim that a further amount is due and payable to him.



The respondent is a State instrumentality within the meaning of Article 12 of the Constitution of India. It will have to be necessarily fair in all its dealings including commercial transactions. Therefore, the respondent has to necessarily say what according to it, is the admitted amount due and payable to the petitioner herein. The petitioner can very well receive the same without prejudice to his contention that they are eligible and entitle to receive the higher payment.

6. The respondent is directed to pay the admitted amount as undertaken before this Court to the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is open to the petitioner herein to approach the jurisdictional civil Court or the departmental authorities or invoke arbitral remedy for recovery of what according to them is the balance amount.



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7. This writ petition is allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

31.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Commissioner,
Tirunelveli City Municipal Corporation,
SN High Road,
Tirunelveli – 1.



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G.R.SWAMINATHAN, J.

MGA

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