

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.16955 of 2016
W.M.P(MD).Nos.12286 and 13933 of 2016

V.Meenal

... Petitioner

Vs.

1. The Government of Tamil Nadu
Rep.by Secretary to Government,
Public Works Department,
Fort St.George, Secretariat,
Chennai-600 009.
- 2.The Chief Engineer (General),
Highways Department
HRS Complex,
Guindy,
Chennai-600 032.
- 3.The Superintending Engineer, Highways
(Construction and Maintenance)
Highways Department,
Construction & Maintenance Circle,
Madurai-625 002.
- 4.The Divisional Engineer, Highways
Construction and Maintenance,
Sivagangai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the fourth respondent herein relating to the proceedings of the fourth respondent in K.No.C-49/2016/A3 dated 01.09.2016 and quash the same and consequently forbear the respondents herein from in any manner effecting recovery of any amount from the bills of the petitioner in respect of other works carried out by her pursuant to the said impugned order or otherwise.

For Petitioner :Ms.A.L.Gandhimathi
Senior Counsel for
Mr.C.Mahadevan

For Respondents :Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

The petitioner assails proceedings dated 01.09.2016 of the fourth respondent by which a decision was taken to deduct the amount specified therein towards price variation in relation to a construction contract awarded to the petitioner.

2. The petitioner states that a contract was awarded by the Government of Tamil Nadu to carry out improvements to specific segments of road and for re-construction of minor bridges and culverts. The contract was executed to the satisfaction of the respondents and final bill payment was also made in the year 2014. The petitioner states that the relevant contract contained a price variation clause. The said price variation was to apply subject to conditions specified in G.O.(Ms).No.101, Public Works (G2) Department, dated 10.06.2009 as modified by G.O(Ms).No.60, Public Works (G2) Department, dated 14.03.2008. The petitioner states that the respondents applied the price variation formula and made payments to the petitioner in terms thereof.

3. About two years after completion of work and after receipt of payments under the final bill, it is stated that the impugned proceedings were issued by the fourth respondent without putting the petitioner on notice and providing an opportunity to the petitioner. By these proceedings, the petitioner states that it was decided to effect the deductions in the manner specified in Annexure-II of the impugned proceedings.

4. Learned senior counsel for the petitioner submits that the impugned proceedings are unsustainable inasmuch as the principles of natural justice were contravened by not providing a reasonable opportunity to the petitioner. Learned senior counsel contends that the respondents are not entitled to unilaterally decide to make such deductions and should have approached the jurisdictional civil court for a determination.

5. Learned Special Government Pleader for the respondents submits that the relevant contract provides for arbitration if the claim is below Rs.2,00,000/- (Rupees Two Lakhs only) and for parties to approach the jurisdictional civil court, if the claim is above Rs.2,00,000/- (Rupees Two Lakhs only). She places reliance on an earlier order of this Court in a batch of writ petitions of which the lead case was W.P.No.29871 of 2016. She points out that the Court concluded that the writ petitions are not maintainable and that parties should approach the jurisdictional civil court for redressal of grievances.

6. It is evident that the dispute arises out of a construction contract. Ordinarily, in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, this Court does not interfere in contractual disputes. In this case, however, it appears that the contract was duly executed and the final bill was paid to the contractor. After the payment of the final bill, by the impugned proceedings, it appears that the respondents decided to effect a deduction towards price variation. In the counter of the fourth respondent, in paragraph No.11, the fourth respondent has stated that the impugned proceedings were triggered by the fact that the price of bitumen during the execution of the contract was lower than the price at the time of bid submission. Therefore, it is stated that the deduction is entirely in accordance with clause (iv) of the relevant contract.

7. By taking into account the fact that the deduction has been effected after the final bill was paid and without notice to the petitioner, I am inclined to interfere with the impugned proceedings. Consequently, the impugned proceedings are quashed and the matter is remanded for

reconsideration. It is made clear that the merits of the matter have not been examined. After providing a reasonable opportunity to the petitioner, the fourth respondent may decide on the deduction, if any, on account of price variation. If the petitioner is aggrieved by the decision of the fourth respondent, the petitioner should approach the jurisdictional civil court in such regard.

8. Accordingly, W.P(MD).No.16955 of 2016 is allowed. There shall be no order as to costs. Consequently, connected W.M.P(MD).No.12286 of 2016 is closed and connected W.M.P(MD).No.13933 of 2016 is dismissed.

30.03.2023

NCC :No
Internet :Yes
Index :No
ssb

To

1. The Government of Tamil Nadu
Rep.by Secretary to Government,
Public Works Department,
Fort St.George, Secretariat,
Chennai-600 009.
- 2.The Chief Engineer (General),
Highways Department
HRS Complex,
Guindy,
Chennai-600 032.
- 3.The Superintending Engineer, Highways
(Construction and Maintenance)
Highways Department,
Construction & Maintenance Circle,
Madurai-625 002.
- 4.The Divisional Engineer, Highways
Construction and Maintenance,
Sivagangai.

W.P.(MD)No.16955 of 2016

SENTHILKUMAR RAMAMOORTHY, J.

ssb

W.P.(MD)No.16955 of 2016

30.03.2023