



W.P.(MD)No.17320 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.17320 of 2016
W.M.P(MD).No.12574 and 13932 of 2016

P.Ramu

... 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.



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5.The Assistant Divisional Engineer (H),
(Construction and Maintenance),
Karaikudi.

6.The Assistant Engineer(H),
Construction and Maintenance,
Karaikudi.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents herein from in any manner effecting recovery of any amount from the bills of the petitioner as per the calculation dated 18.07.2016 of the respondents 5 and 6.

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

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

ORDER

The petitioner seeks a direction to forbear the respondents from effecting recovery of any amount from the bills of the petitioner as per the calculation dated 18.07.2016 of the respondents 5 and 6.



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2. The petitioner states that a contract was awarded by the Government of Tamil Nadu to carry out improvements to specific segments of road. The contract was executed to the satisfaction of the respondents and final bill payment was also made. 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. After completion of work and receipt of payments under the final bill, by the proceedings dated 18.07.2016, it was decided to effect the deductions in the manner specified therein.

4. Learned senior counsel for the petitioner submits that the respondents are not entitled to unilaterally decide to make such deductions



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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



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of the final bill, by the proceedings dated 18.07.2016, 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 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 is proposed to be effected after the final bill was paid, I am inclined to restrain the respondents from making such deduction until the matter is reconsidered by the fourth respondent. 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.



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8. W.P(MD).No.17320 of 2016 is disposed of on the above terms.

There shall be no order as to costs. Consequently, connected W.M.P(MD).No.12574 of 2016 is closed and connected W.M.P(MD).No.13932 of 2016 is dismissed.

30.03.2023

NCC :No
Internet :Yes
Index :No
ssb

To

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SENTHILKUMAR RAMAMOORTHY, J.

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