



W.P.(MD)No.20102 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 26.08.2022
DELIVERED ON : 11.04.2023**

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)No.20102 of 2017
and
W.M.P(MD)Nos.16388 & 16389 of 2017**

D.Thanislal

... Petitioner

Vs

- 1.The State represented by
The Secretary to Government,
Public Works Department,
Chennai.
- 2.The District Collector,
Kanyakumari District,
Nagercoil.
- 3.The Superintending Engineer,
Tambarabarani Basin Circle,
Tirunelveli.
- 4.The Executive Engineer, WRO, PWD,
Public Works Department,
Kothaiyaaru Basin Division,
Nagercoil,
Kanyakumari District.



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5. The Assistant Engineer, WRO, PWD,
Public Works Department,
Neyyar Section – 1,
Kuzhithurai,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the fourth respondent in connection with the impugned order of rejection passed by him vide his proceedings in Lr.No.3747/2016-1/Tha.2 dated 30.05.2017 and quash the same as illegal and arbitrary and consequently direct the respondents to settle the pending payment of bill with interest for the urgent Flood Damage Repair Work completed by the Petitioner in TLBC L.S.No. 0/400 in Thirparappu Left Bank Canel during the month of December 2010 to February 2011 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalamutharasu

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

The case of the writ petitioner is that the Left Bank Canal in Thirparappu suddenly developed a breach and he was emergently required by the concerned authority to take up the repair works without waiting for any formal order. The petitioner states that he carried out the said work but that he has not been paid for the work. His request for payment was rejected. Questioning the same, the present writ petition came to be filed.



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WEB COPY 2. When the matter was taken up on 18.07.2022, the following direction was given:

“The petitioner, who was a Class-II Contractor, states that since Thirparappu, Left Bank Canal suddenly developed a breach, the petitioner was emergently required by Thiru.Baskaradass, Superintendent Engineer, W.R.O., P.W.D., Tirunelveli, to take up the works without waiting for any formal orders. He states that the matter was followed up by Thiru.Subramani, who was the then Executive Engineer in Kanyakumari District. He further states that the petitioner worked in co-ordination with two other officials, namely, Melki Sadhek, Junior Engineer and Jacob, Assistant Engineer. The petitioner had produced certificate dated 23.12.2010 issued by the Assistant Engineer, W.R.O., P.W.D., that the gravel / red earth conveyed from Cheruppalloor PWD Campus to the Thirparappu Left Bank Canal (TLBC) via Kulasekharam, Thirparappu for the purpose of closing breach. The petitioner states that he was not paid for the said work done by him. Some photographs have also been enclosed. Since specific allegation has been made, the counter affidavit should come from the persons concerned. It is reported that two of them already retired and Melki Sadhek and Jacob are still in service. The second respondent shall cause filing of counter affidavit by such persons. The second respondent shall also summon Thiru.Baskaradass and Thiru.Subramani and



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enquire them and file a statement before this Court on 08.08.2022.”

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Pursuant to the said direction, the District Collector, Kanyakumari District filed status report. The status report reads as follows:

“7. ... After hearing both sides, the issue under consideration are as follows:

(1) Whether breach happened in L.S. 0/400 K.M and the work as claimed by the contractor was done.

(2) If there are 2 different works done by the contractor, then the work claimed to have been done by the petitioner (and denied by PWD) at L.S. 0/4000 K.M. Is 5 times the value of work estimated between L.S. 0/450 K.M. To L.S. 0/800 K.M.

(a) If this is true, then the work done at L.S. 0/400 K.M. should be substantially large enough that physically the work should be identifiable distinctly in the ground.

(8) In this regard the Sub Collector, Padmanabhapuram was directed to inspect the land with PWD and contractor and submit filed report on the points (1) and (2)

(9) The Sub Collector, Padmanabhapuram has reported that during the inspection it is found that there was no breach happened in L.S. 0/400 K.M. in Thirparappu Left Bank Channel and no work was done there by the contractor. The contractor



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identified the work done by him between L.S.0/567 K.M. and L.S. 0/800 K.M. which was agreed by Assistant Executive Engineer, PWD (WRO). Maintenance work was done by the contractor between L.S. 0/567 K.M. and L.S. 0/731 K.M. Breach work was done (earth work) for a length of 18 meters between L.S. 0/731 K.M and L.S. 0/749 K.M. Again maintenance work was done by the contractor from L.S. 0/749 K.M to L.S. 0/800 K.M. All the work done by the contractor including breach work and maintenance work were included in 2011-2012 maintenance work bill and the contractor has received the payment for the same. The contractor has also agreed that he had received amount for the maintenance work.

(10) Under such circumstances it is clear that the writ petitioner carried out the repair work in the Thirparappu Left Bank Channel only from L.S. 0/450 K.M. to L.S. 0/800 K.M and no flood damages occurred at L.S. 0/400 K.M and no repair work as claimed by the writ petitioner was carried out. As per filed report, the work claimed to have been done by the petitioner at L.S. 0/400 K.M and the work done by the petitioner in L.S. 0/700 K.M are one and the same. Both the maintenance and breach works done at one stretch between L.S.0/567 K.M and L.S. 0/731 K.M and between L.S. 0/731 K.M and L.S. 0/749 K.M respectively in various periods of time were at the same spot. For that final settlement bill was sanctioned amounting to Rs. 6,31,623/- and after deducting Income Tax (IT) and Sale Tax (ST) an amount of Rs.5,96,884/- disbursed to the petitioner, which



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includes the payment for transporting earth for 11 K.M amounting to Rs.3,29,529.91/-. Permits were issued for transporting the earth and payments for such transportation has been made as part of the payment amounting to Rs.5,96,884/-. Hence, there is no proof or evidence to establish that the petitioner has done work of L.S. 0/400 K.M in Thirparappu Left Bank Channel, and for which the petitioner is yet to be paid any pending payment. Therefore, this statement may be accepted and the petition may be suitably dismissed.”

3. This Court cannot go into disputed facts. If the petitioner has been issued with the formal work order and there is a material to show completion of the work, this Court can definitely grant relief to the petitioner. But unfortunately, in this case the petitioner carried out the work without issuance of such a formal work order. I wondered if I can invoke the principle of quantum meruit. I could have definitely applied the said principle if it could have been shown that work was actually done by the petitioner. The status report filed by the District Collector states that there is no proof or evidence to establish that the petitioner had done work in L.S. 0/400 K.M in Thirparappu Left Bank Canal. In these circumstances, this Court is not in a position to grant any relief to the petitioner.



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4. This writ petition is dismissed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

11.04.2023

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

To

- 1.The Secretary to Government,
Public Works Department,
Chennai.
- 2.The District Collector,
Kanyakumari District,
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G.R.SWAMINATHAN, J.

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Pre-delivery Order made in
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