



WEB COPY

WP No.5759 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2024

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.5759 of 2023

And

WMP No.5752 of 2023

A.Ambika

.. Petitioner

-VS-

1.The Tamil Nadu Water Supply and Drainage Board,
By its Managing Director,
Chepauk,
Chennai-600 005.

2.Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Vellore.

3.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RWS Division (Defunct Urban Division),
Villupuram.

.. Respondents



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Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Lr.No.F.31442/2018/LC/DO I/2018 dated 21.01.2020 and quash the same and further direct the respondents to pay bank interest at the rate of 18% p.a., towards disturbing the part amount of sum of Rs.1,41,99,562/- from March 2009 to 03.05.2016 to the petitioner as per the representation dated 03.02.2020.

For Petitioner : Mr.M.Rajasekhar

For Respondents : Mr.A.Abdul Hameed,
Senior Counsel for
Ms.S.Mekhala,
Standing Counsel for TWAD Board.

ORDER

The writ petition has been instituted challenging the order dated 21.01.2020 issued by the first respondent to reject the claim of the writ petitioner for payment of interest for the belated settlement of contract amount.



2. On 22.10.2007, the second respondent executed contract for supply of WSIS in favour of the petitioner's husband for Villupuram Municipality and the period of contract was twelve months. The value of contract was Rs.8,26,52,705/-. The husband of the petitioner underwent surgery during the year 2008.

3. The second respondent-Tamil Nadu Water Supply and Drainage Board executed another contract for supply of WSIS in favour of petitioner's husband for Gingee Municipality in the year 2009 for the value of contract was Rs.9,73,00,000/-. However, the contract for Villupuram Municipality was terminated on 09.02.2009. With reference to Gingee Municipality, the husband of the writ petitioner had completed the works in the year 2010. Left-over works were executed by another contractor, namely, M/s.Nagarajan Construction Company.

4. The learned counsel for the petitioner would submit that the husband of the petitioner had executed the works and regarding the works executed, payment was made belatedly. An amount of Rs.1,35,95,770/- was



paid towards part amount regarding Gingee Municipality works and a sum of Rs.2,76,84,955/- for Gingee Project and Rs.41,51,019/- for Villupuram Projects were settled in the year 2016.

5. The respondents withheld a sum of Rs.1,33,93,325/- towards the alleged extra financial commitment for Villupuram contract. The husband of the petitioner and the petitioner, made several representations to the respondents, to pay interest for the belated settlement of contract amount.

6. Since the request of the petitioner was not acceded, the petitioner instituted the present writ petition before this Court and a direction was issued to dispose of the representation and consequently, the impugned order has been passed in proceedings dated 21.01.2020, which is under challenge in the present writ proceedings.

7. The learned counsel for the petitioner would submit that the petitioner is entitled for interest for the belated settlement of contract amount. The petitioner is entitled for interest under the Interest Act. The



Courts have held that belated payment of contract amount attracts interest and thus the impugned order is liable to be set aside.

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8. The learned Senior Counsel, appearing on behalf of the respondents, would oppose by stating that the disputed fact exists between the parties and regarding the execution of contract, both at Villupuram Municipality and at Gingee Municipality.

9. Admittedly, the contract works were not completed in entirety by the husband of the writ petitioner. The amount due to the contractor was settled in the year 2016. There is no clause under the contract for payment of interest and therefore, the respondents are not obligated to pay any interest to the petitioner. More-so, the husband of the writ petitioner has committed certain breach of terms and conditions of the contract and those instances are also enumerated in the order impugned. When the disputed facts between the parties exist, the present writ petition is not maintainable.

10. Considering the arguments as advanced between the parties



to the lis on hand, admittedly, the contract was executed in the year 2007 and in respect of the contract executed by the husband of the writ petitioner in the year 2009, the works were not completed in entirety. Regarding the works performed, initial settlement was made in the year 2015 and further, payment was made in the year 2016.

11. The petitioner has not initiated immediate action. The first writ petition was filed in the year 2019, after a lapse of about three years from the date of last settlement of contract amount and this Court directed the respondents to dispose of the representation. Accordingly, the impugned order has been passed.

12. The impugned order reveals that the actual excess financial commitment was worked out only for the items and the quantity executed by the new Agency for the items left out by the husband of the writ petitioner. The break-up details, provided in the impugned order, would reveal that it requires an elaborate adjudication based on the documents and the evidences available on record.



13. The learned counsel for the petitioner, though made a submission that the order impugned has been passed only on 21.01.2020, the same cannot be accepted in view of the fact that the cause of action, which lapsed, was restored after many years by filing the writ petition.

14. The recent trend amongst the litigant is that, representations are sent to the Authorities indiscriminately and writ petitions are filed with a prayer to dispose of the representations. The High Court is passing an order without adjudication of issues to dispose of the representation.

15. Pursuant to such directions, the Authorities are passing orders on merits. Through the said order, the dead cause of actions are restored for the purpose of adjudication or re-adjudication of issues, which were lapsed. Such *modus operandi* of filing writ petitions, if encouraged, would result in miscarriage of justice. The High Court is expected to decide the issues on merits in all circumstances. Issuing a direction to dispose of the representation/appeal, is to be granted only on justifiable grounds. Many writ petitions are filed challenging the order passed pursuant to the directions of the High Court to dispose of the representation and the original



cause for the issues in those cases aroused long years before and therefore, the litigants are successful in re-opening the dead cause of actions, which would cause prejudice to the other parties and the State in general.

16. In the present case, the contract was entered into between the parties in the year 2007 and the works were not completed in entirety by the husband of the writ petitioner and the payment due was settled by the respondents in the year 2016 and the petitioner for the first time filed the present writ petition in the year 2019 and based on the directions, the impugned order was passed in the year 2020.

17. The present writ petition was filed by the petitioner even after the lapse of three years from the date of passing of the impugned order. Therefore, this Court is of the considered opinion that the petitioner has not pursued actions vigilantly. Even otherwise, the disputed facts relating to contractual obligations, cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India. Such an adjudication requires framing of issues and a trial, based on the documents in original and the evidences on record.



18. Though the petitioner states that there is no disputed fact regarding the interest, such an argument cannot be accepted, since the contractual obligation between the parties have not been completed in entirety and the husband of the writ petitioner, admittedly, had not completed the works as per the contract.

19. That being the disputed facts raised by the respondents, the petitioner is at liberty to approach the Competent Civil Court of Law, for the purpose of redressal of her grievances in the manner known to law.

20. With the above liberty, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

23-04-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

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Chepauk,
Chennai-600 005.
- 2.Chief Engineer,
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S.M.SUBRAMANIAM, J.

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