



W.A.No.1678 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.1678 of 2024

M/s.AM Builders,
rep. by its Partner A.Murugan,
No.1, Sakthi Nagar West,
Thindal, Erode,
Tamil Nadu-638 012.

.. Appellant

Vs

The Union of India,
rep. by Chief Engineer,
Military Engineering Service Headquarters,
Chennai Zone,
Island Ground, Anna Salai,
Chennai-600 009.

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 23.4.2024 passed by the learned Single Judge in W.P.No.11074 of 2024.



W.A.No.1678 of 2024

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For the Appellant : Mr.M.Vijayakumar

For the Respondent : Mr.AR.L.Sundaresan
Addl. Solicitor-General
assisted by
Mr.V.Chandrasekar
Central Govt. Standing Counsel

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

Heard Mr.M.Vijayakumar, learned counsel for the appellant and Mr.AR.L.Sundaresan, learned Additional Solicitor-General, assisted by Mr.V.Chandrasekar, learned Central Government Standing Counsel for the respondent.

2. The unsuccessful writ petitioner has filed this appeal against the order dated 23.4.2024 passed by the learned Single Judge in W.P.No.11074 of 2024.

3. Today, when the writ appeal is taken up for hearing,



W.A.No.1678 of 2024

learned counsel for the appellant has filed an affidavit dated 11.9.2024, sworn by the appellant, undertaking to complete the remaining project work within a period of 60 days from the date of extension order passed by the respondent.

4. For ready reference, the affidavit is extracted hereunder:

"1. I humbly submit that as per the direction of this Hon'ble Court rendering during the course of present Writ Appeal dated 10.09.2024, I hereby truly and sincerely undertake as follows:

A) I undertake to complete the remaining project work in "SPECIAL REPAIRS TO J COY CADETS ACCN BLOCK (BLDG NO.308) AT OTA CHENNAI UNDER GE STM" within a period of 60 days in accordance with contract specifications starting from the date of extension order passed under Condition 11 of General Conditions of Contract and until completion I will not claim disbursement of pending payments for the work already completed.

B) I hereby agree that if I fail to complete the remaining project work in "SPECIAL REPAIRS TO J COY CADETS ACCN BLOCK (BLDG NO.308) AT OTA CHENNAI UNDER GE STM" within a period of 60 days



WEB COPY



W.A.No.1678 of 2024

starting from the date of extension order passed under Condition 11 of the General Conditions of Contract I forfeit my right to claim disbursement of pending payments for the work already completed.

2. I humbly submit that this Hon'ble Court may be pleased to issue the following general instructions to ensure the smooth completion of incomplete project work during the 60 days through complete cooperation between the Respondent and the appellant contractor in the following manner:

i) by granting complete access to project site premises 24/7 during the course of 60 days without any exception of any public or other holidays.

ii) To prepare inventory statement regarding the existing inventory, tools and machinery on the site premises at the time of handing over of the site premises.

Iii) Not object the appellant to seek manpower, guidance and support from local contractors to complete remaining project work during 60 days, and

Therefore this Hon'ble Court may be pleased to record the present affidavit and pass suitable orders as this Hon'ble Court may deem fit and proper and thus render justice."



W.A.No.1678 of 2024

WEB COPY

5. Learned Additional Solicitor-General appearing on behalf of the respondent submitted that Para 2 of the affidavit filed by the appellant seeking to grant complete access to the project site premises 24x7 during the course of 60 days to enable the appellant work on all days, including holidays, cannot be acceded to. In support of the said submission, he invited the attention of the Court to Clause 6(B)(e) of the Special Conditions, wherein, it has been stated as under:

"(e) Working on Holidays. The contract shall not carry out any work on gazette holidays, weekly holidays and other nonworking days except when he is specially authorised in writing to do so by the Garrison Engineer. The GE may at his sole discretion declare any day as holiday or non working day without assigning any reasons for such declaration."

6. Learned Additional Solicitor-General further submitted that the respondent reserves its right to claim liquidated damages owing to the non-completion of the contract work within the earlier



W.A.No.1678 of 2024

WEB COPY

stipulated period.

7. In light of Clause 6(B)(e) of the Special Conditions, the authorities concerned shall consider the appellant's request to carry out work on gazette holidays, weekly holidays, and other non-working days, unless the Garrison Engineer declares any day as a holiday or non-working day.

8. Apropos the other terms contained in the affidavit filed by the appellant, no serious objection has been raised by learned Additional Solicitor-General, but for the rights reserved for claiming liquidated damages from the appellant for the delay in execution of the project.

9. On an overall consideration of the rival submissions canvassed and the affidavit filed by the appellant, we dispose of the appeal with the following directions:

- (i) The respondent is directed to extend the time for completing the remaining project work in "SPECIAL REPAIRS TO J COY CADETS ACCN



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W.A.No.1678 of 2024

BLOCK (BLDG NO.308) AT OTA CHENNAI UNDER
GE STM” by a period of 60 days. Such order shall
be passed by the respondent within one week
from the date of receipt of a copy of this
judgment.

(ii) Upon receipt of the extension order, the
appellant shall commence the work and complete
the same within a period of 60 days in
compliance of the order to be passed by the
respondent, as directed herein above.

(iii) If the appellant fails to complete the work within
the extended period of 60 days, the appellant
shall forfeit the entire amount payable to the
appellant.

(iv) The other terms and conditions/tender
conditions entered into between the parties are
binding on both the appellant and the
respondent.

(v) No further extension of time will be granted to



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W.A.No.1678 of 2024

the appellant.

(vi) In case of any violation of the conditions, supra, it is open to the respondent authority to proceed further in accordance with law and as per the terms and conditions of the agreement/tender conditions.

10. The writ appeal is disposed of in terms aforesaid. There shall be no order as to costs. Consequently, C.M.P.Nos.11896 and 11897 of 2024 are closed.

It is made clear that only in the peculiar facts and circumstances of the case, we passed the aforesaid order and this order may not be cited as a precedent in any other case.

(D.K.K., ACJ.) (P.B.B., J.)
11.09.2024

Index : Yes/No
NC : Yes/No
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To
The Chief Engineer,
Union of India,



W.A.No.1678 of 2024

Military Engineering Service Headquarters,
Chennai Zone, Island Ground, Anna Salai,
Chennai-600 009.



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W.A.No.1678 of 2024

THE HON'BLE ACTING CHIEF JUSTICE
AND
P.B.BALAJI, J.

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W.A.No.1678 of 2024

11.09.2024