



W.P(MD)No.6409 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.6409 of 2019

and

W.M.P(MD)No.5125 of 2019

M/s.Koya & Company Construction Limited,
Represented by its Project Manager,
A.Ravikumar.

... Petitioner

Vs.

1.The Chief Engineer,
TWAD Board, Ganesh Nagar,
Near Law College Hostel,
Opp. Mattuthavanai Bus Stand,
Melur Road,
Madurai-625 007.

2.The Executive Engineer,
TWAD Board,
Urban Division,
62/8, Second Floor,
New Road,
Kovilpatti-628 501.

3.The Executive Engineer,
TWAD Board,
Project Division,
Jawahar 3rd Street,
Nagercoil.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings Lr.No.F.Kovilpatti WSIS/JDO/2016, dated 02.03.2019 and quash the same as illegal and arbitrary and pass such further or other orders as this Court.

For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For R-1 : Mr.Porkodi Karnan

For R-2 & R-3 : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.B.Vijayakarthiskeyan

ORDER

The present writ petition has been filed challenging the order passed by the second respondent, dated 02.03.2019, thereby raised demand for the balance amount to a tune of about Rs.16,56,58,286/-.

2. The petitioner is a registered Company. While being so, the respondent floated tender for the Scheme called providing Water Supply Improvement



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Scheme to Kovilpatti Municipality in Tuticorin District including maintenance for a period of 12 months. While being so, one M/s.Saisudhir Infrastructures Limited approached the petitioner with a proposal to enter into a joint venture agreement to participate in the tender floated by the respondents for the execution of the work, if awarded in their favour. Accordingly, they entered into a joint venture agreement on 25.08.2012. The said Saisudhir Infrastructures, who was being the lead partner having 70% share participated in the tender and the work was awarded and entered into an agreement, dated 18.03.2013. Due to non completion of the work as per the agreement conditions, the first respondent terminated the contract by an order, dated 30.09.2014. Further informed that the balance works will be carried out through some other agency at the extra cost involved will be recovered from the original contractor as per clause No.41 of the agreement. The second respondent passed an order by its proceedings, dated 19.05.2016 to the effect that the said work was awarded to the new Company for a total value of Rs.57,44,19,443/- and the extra cost involved due to fixing of new agency was at Rs.18,80,03,059/-. After making disbursed with the amount already deposited and directed to remit the amount to a tune of Rs.16,56,58,286/- being the extra cost. While being so, the second respondent passed the another order, dated 11.10.2017, directed the



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petitioner and its partner to remit the extra cost involved in carrying of the balance work to the tune of Rs.16,56,58,286/-. It was challenged before this Court in W.P(MD)No.12772 of 2018 on the ground that the petitioner was not served with the notice and no opportunity was given before passing an order. It was set aside insofar as the petitioner alone. Aggrieved by the same, the appeal was filed in W.A(MD)No.1627 of 2018 and the same was also dismissed by an order, dated 10.12.2018 with liberty to the respondents to proceed afresh by issuing show cause notice and pass fresh orders. Subsequently, the second respondent had issued show cause notice to the petitioner and call for explanations to the proposed recovery. Thereafter, the petitioner submitted representation. However, the second respondent passed an order, dated 02.03.2019, thereby directed the petitioner and other partner to pay a sum of Rs.16,56,58,286/- which is being the extra cost involved in the work by awarding contract to other contractor.

3. The learned Senior Counsel appearing for the petitioner submitted that a sum of Rs.3,91,91,023/- is payable by the respondents for the completion of work. In fact this Court by an order, dated 21.02.2019 in W.P(MD)Nos.6046 to 6049 of 2018 directed the respondents to disburse the said amount within a



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period of 16 weeks. That apart, a sum of Rs.87,28,416/- is also payable towards completion of work (i.e.,) closed circular system from Srivaikundam Anaicut existing 20 MGD WSS including maintenance of the Scheme for 12 months. He further submitted that after termination of contract, the respondents floated fresh tender on 06.11.2014 and quoted the value for the work as Rs.64,28,70,802/- as per the schedule of rates for the year 2014-2015. The technical bid was opened on 25.03.2015. However, the work order was issued only on 28.01.2016 in favour of M/s.Consolidated Construction Consortium Limited, Chennai for the agreed sum of Rs.75,55,41,061/-. It is excess percentage of 17.53% from the contract value of the petitioner. There was delay on the part of the respondents from issuance of work order. Therefore, the standard of rates of the year 2015-2016 was taken into account and accordingly, the agreement was entered into the New Contract Act to the tune of Rs.75,55,41,061/-, that burden cannot be shifted on the shoulder of the petitioner.

4. On perusal of the counter affidavit filed by the first respondent and on the submissions made by the learned Additional Advocate General appearing for the respondents revealed that one of the petitioner's partner M/s.Saisudhir



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Infrastructures Limited challenged the fresh notification of tender in W.P(MD)No.18823 of 2014 and obtained stay for opening of technical bid of the new tender. The writ petition finally was dismissed on 18.03.2015. Thereafter, the technical bid of new tender was opened on 25.03.2015. Thereafter, it was sent to the Government for approval. If the contract amount is more than 10 Crores, it has to be approved by the Government. Therefore, there was delay and finally the technical bid was approved on 19.10.2015. Immediately on 26.10.2015, the price bid was opened and submitted by the new contract was approved on 22.01.2016 in favour of the new contractor. On 28.01.2016, the work order was issued and on 03.03.2016, the agreement was entered between the respondents and the second respondent and M/s.Consolidated Construction Consortium Limited, Chennai. Therefore, there was delay on the part of the respondents. The delay was occurred only due to the petitioner's another partner. Hence, the second respondent after giving opportunity of hearing to the petitioner passed order.

5. Heard the learned Counsels on either side and perused the materials available on record.



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6. On perusal of records revealed that the petitioner along with his partner was awarded contract on 27.12.2012 for a sum of Rs.57,44,19,443/-. At the time of calling for tender, the second respondent quoted the departmental value as Rs.55,46,24,469/- though the petitioner and its partner offered by a bidder by bidding at Rs.70,05,11,516/-. Finally, agreed value at Rs.57,44,19,443/-. The first value of the department was on 03.07.2012. However, the non completion of the work within the stipulated time, the contract was terminated on 30.09.2014 and on 06.11.2014, the second respondent floated fresh tender to complete the balance work. On 06.11.2014, the department value for the work quoted as Rs.64,28,70,802/- as per the standard of rates of the year 2014-2015 (i.e.,) 6.86% escalation of price every year. It was opened on 25.03.2018 due to interim order passed by this Court in W.P(MD)No.18823 of 2014. After dismissal of the writ petition, the technical bid was opened. However, it was approved only on 19.10.2015 and then opened the price bid on 26.10.2015. Though the new contractor quoted the value to the tune of Rs.82,38,15,835/-, finally the second respondent fixed the value of the work to be done by the new contractor at Rs.75,55,41,061/- as per the standard of rates for the year 2015-2016. Therefore, the delay was on the part of the respondents for a period of one year and as such, the new contract



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work was awarded with 6% escalation to the price as per the 2015-2016 standard of rates. This Court dismissed the writ petition as early as on 18.03.2015, whereas, the tender was approved only on 22.01.2016 at the standard of rates of the year 2015-2016. Therefore, the one year price escalation (i.e.,) 6.86% to be reduced from the agreed value (i.e.,) Rs.75,55,41,061/-. One year escalation value as per the standard of rates is Rs.4,41,00,937/-. Therefore, from the department value of standard of rates of the year 2014-2015, the increase of 6.86% comes as Rs.64,28,70,802/- + Rs.4,41,00,937/- = Rs.68,69,71,739/-. As per the standard of rates of the year 2014-2015 and escalation at 6.86% is the original loss occurred by the respondents. Therefore, after deduction, the excess amount to be paid by the petitioner comes to the tune of Rs.6,85,69,322/-. The amount has been already recovered from the petitioner at Rs.4,63,00,000/-. Now, the balance has to be recovered from the petitioner at Rs.2,22,69,322/-.

7. In view of the above, the order impugned cannot be sustained insofar as fixing the balance cost to be recovered from the petitioner at Rs.16,56,58,286/- alone set aside. Insofar, as calculated above, the petitioner is liable to pay the balance amount of Rs.2,22,69,322/- to the respondents within a



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period of eight (8) weeks from the date of receipt of a copy of this order.

Accordingly, this writ petition stands partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

13.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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TWAD Board, Ganesh Nagar,
Near Law College Hostel,
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2.The Executive Engineer,
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