



W.P.(MD)No.9248 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD)No.9248 of 2018

and

W.M.P.(MD)Nos.8555 to 8557 of 2018 and 13362 of 2023

G.Sahayadhas

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
Tirunelveli,
Tirunelveli District.

3.The Superintending Engineer,
Public Works Department,
Building Construction and Maintenance Circle,
Tirunelveli – 627 002,
Tirunelveli District.

4.The Special Chief Engineer,
Public Works Department,
Buildings Construction and Maintenance Circle,
Tirunelveli – 627002,
Tirunelveli District.



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5.The Executive Engineer,
Public Works Department,
Building Construction and Maintenance Circle,
Tirunelveli – 627 002,
Tirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned Notice issued by the 5th respondent Executive Engineer in Letter No.1 (pothu)/2012/tha3/dated 23.12.2016 (signed on 04.01.2017) and his consequential proceedings in Lr.No.1 (pothu)/tha3/2012 dated 19.07.2017, quash the same and further direct the 5th respondent to sanction and disburse Rs.21,69,503/- and Rs.7,46,266/- (total Rs.29,15,769/-) towards the 1st Project and 2nd Project respectively in the light of Clauses 58.1, 58.2 and 59.1 of the General Conditions of Contract Agreement dated 21.07.2010 and 15.09.2010.

For Petitioner : Mr.RagadeeshKumar
for M/s.S.Amala Irudhaya Mary

For Respondents : Mr.D.Gandhi Raj
Special Government Pleader
for RR1 to 5

ORDER

This writ petition has been filed challenging the impugned notice issued by the fifth respondent dated 23.12.2016 and subsequent proceedings dated 19.07.2017, thereby demanded a sum of Rs.32,68,583/- payable by the petitioner.



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2.The petitioner is the Class-I registered Contractor. While being so, the petitioner has awarded work contract during the year 2010. The first respondent has sanctioned a sum of Rs.24,706.52/- lakhs for providing infrastructure facilities such as class rooms, Laboratory, drinking water, toilet and compound wall, furniture and Science Lab Equipments in 303 Government High and Higher Secondary School.

3.Pursuant to the said order, the tender notification was issued thereby invited an application for the construction to 4 class rooms, 1 Science Lab and a compound wall in Government High School at Mathaganeri in Tirunelveli District. The petitioner submitted his bid and deposited Security Deposit (Earnest Money Deposit/Additional Security Deposit) to the tune of Rs.75,000/-.

4.The petitioner was being a licensed bidder, he was awarded with the said contract for a sum of Rs.36,58,000/-. Accordingly, an agreement was entered between the petitioner and the third respondent. In the mean while, another tender was called for, for the construction of 12 class rooms, 1 Lab providing water supply arrangements and a compound wall in the Government



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Higher Secondary School, Tirunelveli District for the contract of Rs.82,29,000/- under the control of the fourth respondent. For the said contract, the petitioner also submitted a bid to the fourth respondent and he was awarded with the contract. Accordingly, the petitioner has deposited a sum of Rs.1,60,000/- as Security Deposit. After completion of the first contract work, the petitioner was not paid the final installment. That apart, there was variation in the material price.

5. In so far as, the second work order is concerned, after completion of the first phase of the work, the petitioner submitted a representation due to price variation that there may be excess cost for completing the contract work. Therefore, the petitioner submitted a representation for claiming price variation and also sought for payment of the last installment, in so far, the first work order. However, both requests were pending with the third and fourth respondent and were not considered. Hence, the petitioner was constrained to approach this Court in W.P(MD)Nos.9135 and 9136 of 2012 directing the respondents to grant a sum of Rs.20,94,503/- for the work done by the petitioner and also a sum of Rs.7,46,266/- for the work already completed by the petitioner.



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6.This Court by an order dated 06.10.2016 directed the respondents to consider the representation submitted by the petitioner after giving notice to the necessary parties, if any, and dispose of the same within a period of three months from the date of receipt of a copy of this order. After directions issued by this Court, the petitioner was issued with impugned notice dated 23.12.2016 thereby, directed the petitioner to deposit a sum of Rs.32,68,583/- within 15 days, failing which, appropriate action will be taken as against the petitioner to recover the said amount as per condition of the contract and rules. On receipt of the same, the petitioner issued legal notice dated 03.07.2017, thereby called upon the respondent to stop from sending this communication of demand and refer the matter before the Arbitration as per the general condition of the agreement. Thereafter, on 19.07.2017, the petitioner was issued the second impugned order, thereby to claim a sum of Rs.32,68,583/- payable by the petitioner for non-completion of the second work order and by engaging another contract to complete the work.

7.The counter filed by the fifth respondent and the submission made by the learned Special Government Pleader appearing for the respondents reveals that as per agreement, the petitioner is only be entitled to be paid the value



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value mentioned in the bid. As per Clause 60.1, it shall be distinguishable that no payment whatever will be made to the contractor for variations by way of extras, in cases where such variations have been made within the written sanction of the Executive Engineer. Therefore, the representation submitted by the petitioner was not considered. Thereafter, the petitioner was issued notice on various dates such as 07.02.2017, 21.02.2017 and 10.04.2017 by registered post. On receipt of the same, the petitioner failed to appear before the fifth respondent and did not participate in the enquiry.

8.The learned Special Government Pleader appearing for the respondents further submits that as per Clause 58.1, 58.2, 59.1 of the General Conditions of the contract, there was no price adjustment clause in the said agreement. Thereafter, the petitioner failed to complete the said work and as such, another contractor was engaged to complete the second project work, thereby there was loss to the respondents to the tune of Rs.30,93,085/- after adjusting payment to be paid to the petitioner, as far as the first work order to the tune of Rs.6,27,269/-, the petitioner was rightly issued demand to the tune of Rs.32,68,583/-. Therefore, he seeks for dismissal of the writ petition.



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9.It is exempted the order passed by this Court in W.P(MD)Nos.9135 and 9136 2022 dated 06.10.2016, the writ petition was filed for a direction to grant amount for completing the work, in which this Court has passed orders directing the respondents to pass orders on the representation submitted by the petitioner dated 12.03.2012, on merits and in accordance with law after giving notice to the interested parties, if any, within a period of three months from the date of receipt of a copy of this order.

10.On 23.12.2016, there was no whisper about the opportunity given to the petitioner before passing the order. The petitioner was directed to pay a sum of Rs.32,68,583/- within a period 15 days, failing which the action will be taken as per Rules. Subsequently, the petitioner was issued notice, it was not considered and passed orders on 19.07.2017, thereby directed the petitioner to pay a sum of Rs.32,68,583/- after deducting the amount which was paid to the petitioner to the tune of Rs.6,27,269/-.

11.On perusal of the said order also reveals that there was no notice to the petitioner and no opportunity of hearing was given to the petitioner. Therefore, it is clear violation of the principles of natural justice and both the orders can be sustained and liable to be quashed.



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12. That apart, the impugned order do not even whisper and what way the respondent sustained loss to the tune of Rs.38,95,852/-, the fifth respondent is liable to pay a sum of Rs.6,27,269/- for the work already completed by the petitioner. Due to escalation of the prices, the petitioner submitted a representation to consider the variation of price materials and disburse the amount for the work which was already completed by him. However, the said representation was not considered. Therefore, the petitioner was constrained to approach this Court directing the respondent to consider the representation of the petitioner after giving opportunity of hearing by conducting an enquiry. However, it was not done mechanically, the respondent passed impugned order.

13. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

14. The fifth respondent is directed to disburse a sum of Rs.6,27,269/- with interest at the rate of 6% per annum within a period of four weeks from the date of receipt of a copy of this order and in so far the claim as against the



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petitioner is concerned, the fifth respondent is at liberty to conduct fresh enquiry after giving opportunity to make fresh demand. During the enquiry, the petitioner is also at liberty to make his further claim, if any, as against the fifth respondent.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR



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G.K.ILANTHIRAIYAN. J,

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