

W.A. No.3091 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 10.06.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**W.A. No.3091 of 2023 and
C.M.P. Nos.25649 & 25650 of 2023**

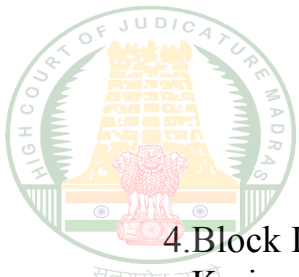
S.M.Constructions
Rep. by its Proprietor
S.M.Selvam
Somanahalli Post
Indoor Via
Nallampalli Taluk
Dharmapuri District - 636 803 .. Appellant

VS

1.The Commissioner
Rural Development and Panchayat Department
Secretariat
Fort St. George
Chennai - 600 009

2.The District Collector
Chairman District Rural Development Agency
Dharmapuri, Dharmapuri District

3.The Additional Collector (Rural Development)/
Project Director
District Rural Development Department
Dharmapuri District



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4. Block Development Officer (BP)
Karimangalam Block
Karimangalam, Dharmapuri District

5. The Executive Engineer
Rural Development
District Rural Development Agency
Dharmapuri District .. Respondents

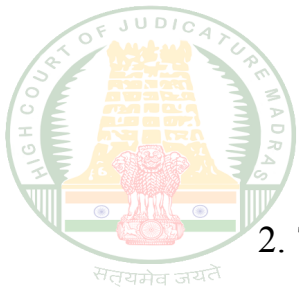
PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act to set aside the order passed by the learned Judge in W.P. No.19772 of 2023 dated 17.10.2023.

For Appellant : Mr.K.Balu

For Respondents : Mr.J.Ravindran,
Addl. Advocate General
assisted by Mr.C.Kathiravan,
Spl. Govt. Pleader for R1 to R5

JUDGMENT
(made by N.SENTHILKUMAR, J.)

Aggrieved by the order of the writ court dated 17.10.2023 passed in W.P. No.19772 of 2023, the present appeal has been filed by the appellant/writ petitioner.



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2. The brief facts of the case of the appellant/writ petitioner is that an e-tender was called for by the respondents herein for construction of a new bridge across Poolapatti river at Ponnathanahalli Road to A.Sapparipatti via Kothadimai Colony Road (R200) HO of Addilam Panchayat, Karimangalam Union Panchayat under NABARD Rural Infrastructure Development Fund, XXVII Scheme (2021-2022). According to the appellant, he being the successful bidder, a work order was issued to him on 16.05.2022. As there was heavy water flow in the river, the appellant could not commence the construction work.

3. The District Collector, Dharmapuri District, namely the second respondent herein, had issued a notice to the appellant/writ petitioner on 02.03.2023 stating that the construction ought to have progressed to the deck level, as eight months period have lapsed. The appellant had given an explanation on 13.05.2022 that he has completed the earth work. According to the appellant, as there was continuous flow of water in the river, he could not commence the construction work. A second notice was issued by the District Collector on 27.04.2023 stating that if the appellant fails to commence the construction work, the work order would be cancelled. The District Collector



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again issued a notice dated 23.05.2023 intimating that a fine of Rs.500/- per

day was imposed on the appellant/writ petitioner from 18.05.2023 onwards.

4. According to the appellant, a representation was given to the District Collector on 29.05.2023 and 01.06.2023 and thereafter, the impugned order was passed on 14.06.2023 that the work order issued in favour of the appellant was cancelled. Challenging the said impugned order, the appellant filed a writ petition and this Hon'ble Court, while dismissing writ petition filed by the appellant herein, took note that the appellant has not stated anything about the agreement, which was entered into between him and the District Collector in the month of November, 2022 and the delay in executing the agreement and the reason for the delay in commencing the construction work. Even in the representation dated 13.04.2023, the appellant has stated that there was inordinate delay in construction, because of continuous flow of water in the river where the bridge was about to be constructed. The writ court, while dismissing the writ petition has further observed that the appellant had not given any explanation in the representations dated 23.05.2023, 29.05.2023 and 01.06.2023 and negatived the claim made by the writ petitioner and denied the agreement entered between the appellant and the second respondent on



15.11.2022.



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5. Aggrieved by the order of the writ court, the present appeal has been filed.

6. The learned counsel appearing for the appellant has brought to the knowledge of this court that vide an order dated 04.07.2023, the writ court had granted an order of *status quo* till 18.07.2023 and in its order dated 04.09.2023, the writ court had observed that the original deed of agreement dated 23.05.2022 was produced and directed to put the same in a sealed over to be kept in the custody of Registrar Judicial.

7. The primary contention of the appellant is that he could not execute the agreement, as there was continuous flow of water in the dam and thereby he could not complete the construction, as quoted in the e-tender dated 01.03.2022. The appellant had contended that the agreement entered into between the appellant and the second respondent was dated 23.05.2022. He drew the attention of this court to Page No.185 of the typed set of papers filed along with the appeal wherein the date was mentioned as '23rd day of May,



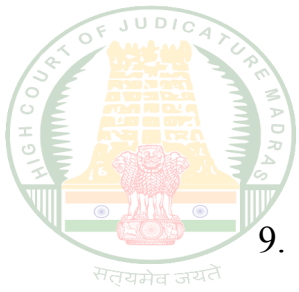
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Two Thousand and Twenty Two, however, in Page No.186, the signature of the

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Collector and the appellant was found whereas the date was not found in it. The appellant had vehemently disputed that Page No.185 is an inserted document and his specific case is that the said page was inserted by the respondents herein.

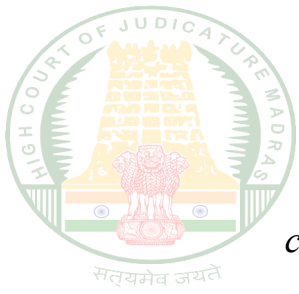
8. Per contra, the learned Additional Advocate General appearing for the respondents contended that the agreement entered into between the appellant and the District Collector on 23.05.2022 contains an arbitration clause in clause 5(i) to Schedule C, in cases of dispute or difference between the parties to the contract either during the progress or after the completion of the works or after determination, abandonment or breach of the contractor as to any other matter or thing arising there under except as to the matters left to the sole discretion of the Executive Engineers under clause 18, 20, 25-3, 27-1, 34, 35 and 37 of the general condition of the contractor as to the withholding by the Executive Engineer or the payment of any bill to which the contractor may claim to be entitled.



9. He further contended that in the additional counter affidavit filed

before the writ court, in paragraph 6, a specific averment was made, which reads as under:

"6.....I respectfully submit that the note file and the work order was signed on 16.05.2022 by the then 2nd respondent Tmt.S.Divyadharshini, I.A.S., former District Collector, Dharmapuri District. As per the tender and work order condition, the successful tenderer (writ petitioner) is bound to submit stamp paper and to sign the contract agreement typed in a stamp paper. Accordingly, contract agreement was prepared on 23.05.2022. One of the pages of the contract agreement under heading of part-c was prepared both in stamp paper and white paper. By virtue of this condition, the writ petitioner being the successful tendered has to sign in all pages of the agreement but he signed only the page of the contract agreement under heading of part-C which was prepared in white paper and deliberately and wantonly left out the same page prepared in stamp paper for the best reasons known to him only. But the contents mentioned in part-c both in stamp paper and white paper are identical and the conditions mentioned in part-c found in white paper were accepted on signing by the writ petitioner. As aforesaid the note file and the work order was signed on 16.05.2022 by the then 2nd respondent Tmt.S.Divyadharshini, I.A.S., former District Collector, Dharmapuri District. Thereafter, the said draft



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contract agreement was prepared on 23.05.2022 and after obtaining the signature of acceptance of the writ petitioner, the above agreement was submitted to the then 2nd respondent for approval. But before such approval, the then 2nd respondent was transferred and the present 2nd respondent assumed her office on 16.06.2022. Thereafter the present 2nd respondent cleared all the pending files and accordingly signed the said contract agreement kept pending from 23.05.2022. Meanwhile the then 3rd respondent was also got transferred. Hence the delay is purely on administrative grounds in approving the said contract agreement got prepared on 23.05.2022. However, the writ petitioner signed all pages of the agreement on 23.05.2022 by accepting the terms and conditions narrated therein and thus the writ petitioner is liable for those terms and conditions beyond doubts."

10. It is not in dispute that there was an agreement between the appellant and the second respondent/District Collector on 23.05.2022 and the appellant herein, vide his representation dated 23.05.2023 addressed to the respondents admitted the work allotment order was issued to him on 13.05.2022 and in the affidavit filed in support of stay petition in the writ appeal he has stated in paragraph 3 that due to continuous water flow in the river, the water in river and settlements have not been scarce and therefore, he could not execute the

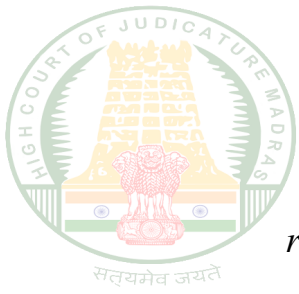


11. At this stage, it is relevant to take note of the Technical Officer's Guide, 2018, in which 'signing of agreement' clause is mentioned, which is extracted hereunder:

Signing of Agreement: *The signing or non-signing of the agreement by the contractor does not affect the validity of the contract, as the contract is concluded by acceptance of tender. In case the successful tenderer fails to execute necessary agreement as prescribed within the period specified then his EMD shall be forfeited and this tender held as Non-Responsive. (Rule 30 of Tender Rule 2000)*

12. In support of his contention, the learned Additional Advocate General has relied on a decision of the Hon'ble Apex Court in ***Jagdish Mandal vs. State of Orissa and others*** reported in ***(2007) 14 SCC 517***, wherein the Hon'ble Supreme Court, in paragraph 22 of the judgment, held as follows:

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial



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review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;



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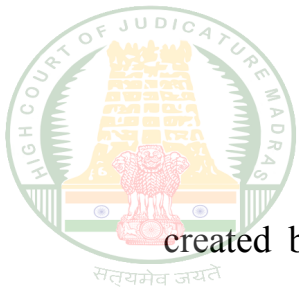
or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

13. In a matter of contract, where a dispute has arisen between the parties and when the contract contains a specific clause for arbitration, then the parties can be advised to approach an Arbitrator by invoking the arbitration clause. The writ court, while dismissing the writ petition, negatived the claim made by the appellant with regard to delay in commencing the project and the reason adduced by him with regard to continuous flow of water and an obstruction



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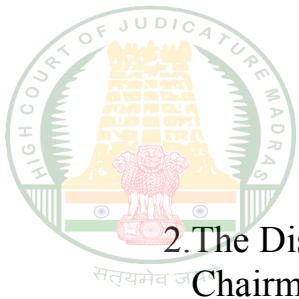
created by a local political person, as they are unsupported by materials to substantiate the claim. Without any supportive document, it is difficult to come to a conclusion based on the affidavit sworn by the appellant herein. It is open to the appellant either to invoke the jurisdiction of arbitral proceedings or to file a civil suit, as the case may be, to redress his grievance, as all the disputed question of facts cannot be agitated and gone into under Article 226 of the Constitution.

14. In view of the same, we find no reason to interfere with the order of the learned single judge dated 17.10.2023 made in W.P. No.19772 of 2023. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
10.06.2025

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes
Asr

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Rural Development and Panchayat Department
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