



W.P.No.38060 of 2024

In the High Court of Judicature at Madras

WEB COPY

Reserved on : 25.7.2025	Delivered on: 29.7.2025
-----------------------------------	-----------------------------------

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.38060 of 2024

M/s.The Indian Hume Pipe Co.
Ltd., rep.by its Authorized
Signatory Mr.S.Arunachalam

...Petitioner

Vs

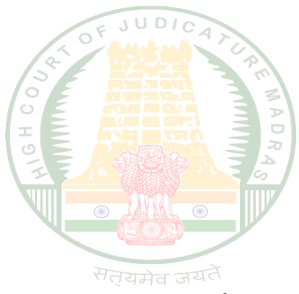
1.The Managing Director, TWAD
Board, No.31, Kamarajar
Salai, Chepauk, Chennai-5.

2.The Chief Engineer, TWAD
Board, No.30, Bharathi Park
Road, Siruvani Nagar,
Coimbatore-43.

3.The Executive Engineer, TWAD
Board, Major Projects Division,
Coimbatore.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to Circular No.1/Audit/A3/HO/2014/dated 14.3.2014 passed by the first respondent, quash the same and consequently



W.P.No.38060 of 2024

WEB COPY

direct the third respondent to disburse the outstanding amount in INR 1,36,07,065/- with interest at the rate of 18% per annum payable to the petitioner.

For Petitioner	: Ms.Krithika Jaganathan for M/s.Lakshmi Kumaran & Sridharan Attorneys
For Respondents	: Mr.S.Silambanan, Senior Counsel for Ms.Y.Kavitha, Standing Counsel

ORDER

This writ petition has been filed challenging the Circular dated 14.3.2014 issued by the first respondent and for a consequential direction to the third respondent to disburse the outstanding amount of Rs.1,36,07,065/- together with interest at the rate of 18% per annum.

2. Heard both.

3. The case of the petitioner is as follows :

(i) On 29.12.2010, the Tamil Nadu Water Supply and Drainage Board (hereinafter called the TWAD Board) issued a tender notification



W.P.No.38060 of 2024

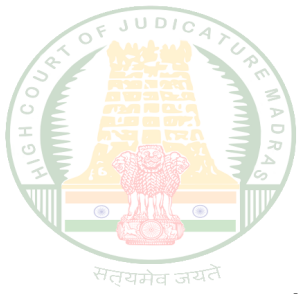
WEB COPY

inviting bids for the work titled **"Providing Water Supply to Palladam Municipality, 23 town panchayats and 965 rural inhabitations in Coimbatore and Tiruppur Districts with Pillur reservoir as the source including paid maintenance of 12 months"**. The petitioner participated in the tender process.

(ii) The bid document issued by the TWAD Board contained Clause 51.2, which dealt with price adjustment. The said clause provided that the price adjustment should be applicable for estimated departmental value of work done, which is abbreviated as (R) in the formula provided therein. During the meeting, the potential bidders had doubts as to whether (R) represented the departmental value of the work done or the actual value of the work done. In the pre-bid meeting held on 12.1.2011, a clarity was sought for.

(iii) Pursuant to various discussions, the TWAD Board issued an amendment slip (the first amendment slip) clarifying that the existing clause namely Clause No.51.2 would be amended as follows :

'The price adjustment shall be applicable for the estimate departmental value of the work done, which is abbreviated as R in the formula below.'



W.P.No.38060 of 2024

WEB COPY

(iv) This amendment did not clarify the concerns raised by the potential bidders completely and hence, further queries were raised by the various potential bidders. Once again, the TWAD Board came up with the second amendment slip on 29.1.2011 wherein it was mentioned as follows :

'The price adjustment shall be calculated based on the value of work done, which is abbreviated - R in the formula below.'

(v) After the above clarification was given, the petitioner participated in the tender process and was declared as the successful bidder. Followed by that, an agreement was entered into on 29.2.2012 between the petitioner and the TWAD Board, which also contained the price escalation clause in line with the second amendment slip.

(vi) In the meantime, the petitioner commenced the work on 26.1.2012 and during the initial period until 31.3.2013, the monthly payments and the price adjustments were done in line with the agreement and prompt payments were made by the respondents. The extension of agreement was approved by the TWAD Board and the petitioner was waiting for the payments to be released for the period from April 2013 onwards in line with the terms of the agreement. All of



W.P.No.38060 of 2024

WEB COPY

a sudden, the second respondent issued a letter dated 02.4.2014 asking the petitioner to consent for the amendment of the price adjustment clause in the agreement. On receipt of the same, the petitioner wrote a letter dated 07.4.2014 objecting to the proposal to amend the particular clause in the agreement by pointing out the fact that 75% of the project was already completed and requested the remaining work to be completed as per the agreement.

(vii) Later, the petitioner came to understand that the impugned circular dated 14.3.2014 has been issued by the first respondent asking respondents 2 and 3 not to calculate the price adjustment as per the value of the work done and instead, to go by the departmental estimated cost of the work. As a result, the differential amount was withheld from 01.4.2013 onwards. Several representations were made by the petitioner in this regard.

(viii) Subsequently, it came to light that this issue was flagged by the audit party and as a result, respondents 2 and 3 started going beyond the terms of the agreement while calculating the price adjustment. Thus, deductions were made from the bills towards price adjustment amounts. The petitioner completed their obligation on 01.1.2017 as per the agreement and the work completion certificate



W.P.No.38060 of 2024

WEB COPY

was issued by the third respondent on 08.3.2017. However, an amount of Rs.60,64,561/- was withheld by the TWAD Board, which constrained the petitioner to file W.P.No.2049 of 2018 before this Court challenging the circular dated 14.3.2014, which is impugned in this writ petition and for a consequential direction to the respondents to disburse the outstanding amount of Rs.60,64,561/- together with interest at the rate of 18% per annum.

(ix) During the pendency of the said writ petition, a final bill was prepared and the petitioner was informed that a sum of Rs.75,42,504/- was deductible for price adjustment prior to 31.3.2013. This was done without giving notice to the petitioner. At that time, the parties wanted to settle the dispute amicably. Hence, the said writ petition was disposed of on 23.3.2023 granting liberty to the petitioner to challenge the decision with regard to price negotiation that would be taken by the TWAD Board. Based on that, the present writ petition has been filed before this Court.

4. The second respondent filed a counter affidavit for himself and also on behalf of respondents 1 and 3 wherein the following stand has been taken :

6/27



W.P.No.38060 of 2024

WEB COPY

The parties were governed by G.O.Ms.No.101 dated 10.6.2009, which was adopted by the TWAD Board through proceedings dated 12.8.2009. Therefore, the terms of agreement, which run against the said Government Order as adopted by the TWAD Board, could not be enforced. The second respondent justified the adjustment of the excess amount already paid by recovering it from the latter bill and thereby, a total sum of Rs.75,42,504/- was recovered from the petitioner. They questioned the maintainability of this writ petition since any dispute touching upon the terms of the agreement could be agitated only before the Arbitral Tribunal as per Clause 67 of the agreement dated 29.2.2012. Ultimately, they sought for dismissal of this writ petition.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

6. When this writ petition came up for hearing on 19.6.2025, this Court passed the following order :



WEB COPY



W.P.No.38060 of 2024

"Heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the TWAD Board.

2. On careful consideration submission made by the learned counsel for the petitioner it is seen that the TWAD Board issued a tender notice inviting bids for the work on 29.12.2010. After the pre-bid meeting, the price adjustment clause was clarified and Clause 51.2 was amended to clarify the price adjustment. Ultimately, the petitioner was the successful bidder and they entered into an agreement with the TWAD Board on 29.02.2012.

3. The work was completed in the year 2017. There was a delay in settling the amount and as a result, several representations were made by the petitioner. Ultimately, out of the total of Rs.6,16,30,933/- only a sum of Rs.4,63,95,396/- was paid to the petitioner. The balance amount was not paid and the petitioner was informed that it was pursuant to a Board Circular dated 14.03.2014 that such a decision was taken by the TWAD Board. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The 2nd respondent has filed counter affidavit. The 2nd respondent has taken a stand that insofar as the price adjustment clause is concerned, it is covered by earlier Government orders of the years 2008 and 2009 and based on



WEB COPY



W.P.No.38060 of 2024

an erroneous clarification issued, the agreement was concluded. Therefore, if the entire amount is paid as claimed by the petitioner, it will result in loss to the exchequer. That apart, an audit objection was also raised in this regard by the accountant General audit team. The respondents have therefore sought for the dismissal of the writ petition.

5. The short issue that arises for consideration in the present writ petition is as to whether the respondents can wriggle away from the terms of the contract where they have accepted to the price adjustment, by citing some earlier Government Orders and by placing reliance upon the impugned circular dated 14.03.2014. The other issue that arises for consideration is as to whether the State and its instrumentalities, being one of the party to the contract and had agreed to the terms and conditions, can be permitted to go against the terms and conditions and whether they are not bound by the principles of the Contract Act, as is applicable to any two private individuals or entities in normal commercial transactions.

6. The learned Standing Counsel for the respondents seeks for some time to make his submissions in this regard.

7. Post this writ petition under the caption 'part heard cases' on 30.06.2025."



W.P.No.38060 of 2024

WEB COPY

7. The case was once again posted for hearing on 21.7.2025, on which date, this Court passed the following order :

"When the matter was taken up for hearing today, learned counsel for petitioner brought to the notice of this Court the order passed by the Division Bench in OSA Nos.296 and 316 of 2019 dated 22.02.2024 and specific reliance was placed upon paragraph Nos.9 and 13 of the judgment.

2. As was pointed out by this Court in the earlier order, the only issue is as to whether the Board can wriggle out of the contract by placing reliance upon G.O.(Ms) No.101 dated 10.06.1999 and the Board's circular dated 14.03.2014. Unless and otherwise the Board is able to satisfy this Court that the terms of the contract is unenforceable under the Contract Act, the Government order and the circular cannot be put against the petitioner. Hence, learned counsel on both sides shall confine their arguments only insofar as this issue is concerned.

Post this writ petition under the same caption finally on 24.07.2025."

8. The issues that arise for consideration in this writ petition are as follows :



WEB COPY



W.P.No.38060 of 2024

(a) Whether the TWAD Board can disregard the terms of agreement in so far as the price adjustment is concerned by relying upon (i) G.O.Ms.No.60 dated 14.3.2008, which was adopted by it through the proceedings dated 22.8.2008 and (ii) G.O.Ms.No.101 dated 10.6.2009, which was adopted by it through the proceedings dated 12.8.2009? and

(b) Whether the agreement satisfies the requirement of Section 10 read with Section 23 of the Indian Contract Act, 1872?

9. The learned Senior Counsel appearing on behalf of the respondents relied upon the Full Bench judgment led by the Hon'ble Chief Justice of the Allahabad High Court in the case of **Abdul Hameed Vs Mohd.Ishaq [reported in 1974 SCC OnLine Allahabad 111]** wherein the relevant portions are extracted as hereunder :

"11. Coming to the Contract Act Sec. 10 thereof provides that "all agreements are contracts



WEB COPY



W.P.No.38060 of 2024

if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.” Consequently, agreements which are not for a lawful consideration and with the lawful object, or which are expressly declared to be void, are not contract, that is an agreement enforceable under the law. There being no provision in the Act declaring private agreements of tenancy to be void the later part of Sec. 10 is inapplicable. Sec. 23 of the Contract Act, however, lays down which considerations and objects of an agreement are lawful and which are not. The material part of Sec. 23 runs as below:—

‘The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent;—

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.’

12. The expression ‘law’ has not been defined in the Contract Act, nor in the U.P. General Clauses Act, 1904, but in the Central General



WEB COPY



W.P.No.38060 of 2024

Clauses Act, 1897, 'Indian Law' is defined in Sec. 3(29) as below:—

" 'Indian Law' shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made such Act;"

13. This definition is applicable to all the Central Acts and Regulations made after the commencement of the General Clauses Act. The Contract Act was enacted in 1872 before the commencement of the General Clauses Act, 1897. Therefore, this definition is not directly applicable to the Contract Act, but there appears to be no reason why the principles contained in the above definition be not made applicable to even the earlier enactments. 'Law' must, therefore, include not only an Act and Ordinance but also Regulations, rule, order bylaw or other instrument which has the force of law. Similar inference can be drawn from the provisions of the Constitution also. For the purposes of Article 13 of the Constitution the term 'law' includes any Ordinance, order, by law, rule, regulation, notification, custom or usage



WEB COPY



W.P.No.38060 of 2024

having in the territory of India the force of law. In Art. 366(110) the expression 'existing law' has been defined for the purpose of the Constitution, to mean any law, Ordinance, order, by law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation. By virtue of Art. 367(1), the General Clauses Act, 1897, is, subject to such adaptations and modifications that may be made therein under Art. 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

14. On the application of the principles contained in the above definition contained in the General Clauses Act, 1897 and the Constitution of India it can safely be laid down that the term 'law' includes an order by a competent authority having the force of law. Consequently, where any agreement is forbidden by an order of the competent authority having the force of law, it shall be an agreement forbidden by law as contemplated by Sec. 23 of the Contract Act. This shall be irrespective of whether the general or special order of the District Magistrate under Sec. 7(2) is or is not an administrative order. It is an order passed under Sec. 7(2) of the Act which has



WEB COPY



W.P.No.38060 of 2024

the force of law. Such an order has also the sanction of the law because the illegal act is punishable under Sec. 8 of the Act. Further, as already indicated above, any private agreement in contravention of the general or special order under Sec. 7(2) of the Act is of such a nature that, if permitted, it would defeat the provisions of the Act.

15. One of the recognized forms of subordinate legislation is by issue of a general order by an authority to which such power has been delegated under the enactment. For example, Sec. 3 of the Essential Commodities Act, 1955, delegates authority to the Central Government to legislate on matters mentioned therein by issue of general orders. The Central Government can further delegate this power to the State Government or any authority or officer subordinate to the State Government. Similarly, the Defence of India Act conferred powers on the Central Government and the State Government to legislate on several matters by issue of general orders. The statutory orders validly issued by the authorities empowered to do so have been held to be 'law' within the meaning of Sec. 23 of the Act and any agreement made in violation of such order has been to be void and illegal. See Sm. Mukul Dutta Gupta v. Indian Airlines Corporation². Similarly,



WEB COPY



W.P.No.38060 of 2024

in Debi Prasad v. Rup Ram³, the agreement of sub-letting of the licence made punishable as an offence under the Excise Act, was held to be contrary to law within the meaning of Sec. 23 of the Contract Act and the claim to recover the amount due under such an agreement, unenforceable in a court of law. It may be mentioned that in this case there was no provision in the Excise Act prohibiting the sub-letting of the licence; the Excise Act simply made the violation of any condition of a licence granted under the Act a punishable offence. However, one of the conditions of the licence was to prohibit sub-letting the benefits of the licence. A similar view was expressed in Thithi Pakurudasu v. Bheemudu⁴."

10. The learned Senior Counsel appearing on behalf of the respondents further relied upon the judgment of the Hon'ble Apex Court in the case of ***G.T.Girish Vs. Y.Subba Raju (dead) by legal representatives [reported in 2022 (12) SCC 321]*** wherein the relevant portions are extracted as hereunder :

"99. The very first head under which an agreement becomes unlawful is, when the consideration or object of agreement is forbidden by law. In regard to the same, we may notice the



WEB COPY



W.P.No.38060 of 2024

view of a Bench of three learned Judges in Gherulal Parakh v. Mahadeodas Maiya [Gherulal Parakh v. Mahadeodas Maiya, AIR 1959 SC 781] . Therein, quoting from Pollock and Mulla from their work Contract Act, this Court has stated as follows : (AIR p. 786, para 8)

"8. ... 'act or undertaking is equally forbidden by law whether it violates a prohibitory enactment of the legislature or a principle of unwritten law. But in India, where the criminal law is codified, acts forbidden by law seem practically to consist of acts punishable under the Penal Code and of acts prohibited by special legislation, or by regulations or orders made under authority derived from the legislature'."

(emphasis supplied)

100. In regard to the commentary by the very same author, under the second head of "illegal object or consideration" in Section 23 of the Contract Act viz. if the consideration or object is of such a nature that if permitted, it would defeat the provisions of any law, it is that, this Court took the view that law for the purpose of Section 23 would be, law made by the legislature. Quite apart from the fact that what is involved in the said case was only a letter, the judgment of this Court in Gherulal Parakh [Gherulal Parakh v. Mahadeodas Maiya, AIR 1959 SC 781] and the Commentary from the very



WEB COPY



W.P.No.38060 of 2024

same author, was not noticed by this Court. Therefore, it becomes all the more reason as to why we need not refer the matter to a larger Bench. We may also notice that "law", for the purposes of clauses (1) and (2) cannot be different. It is very clear that Regulations or Orders made under the authority derived from the legislature referred to by this Court, are species of subordinate legislation. Statutory rules would also, therefore, clearly be law."

11. The learned Senior Counsel appearing on behalf of the respondents ultimately submitted that the agreement entered into between the parties is forbidden by law in so far as the price adjustment is concerned and the word '**law**' will include within its fold '**the relied upon Government Orders, which were adopted by the Board**'.

12. On carefully going through the materials placed before this Court, it is seen from G.O.Ms.No.60 dated 14.3.2008 and G.O.Ms.No. 101 dated 10.6.2009 that in so far as the price adjustment is concerned, it should be calculated only on the departmental estimated



WEB COPY

cost of the work done. These two Government Orders have been adopted by the TWAD Board by issuing the consequential proceedings. In the pre-bid meeting that took place on 12.1.2011, a query was raised on the calculation towards the price adjustment. Pursuant to that, the first amendment slip was issued wherein it was explained as follows :

S.No	Clause	Existing	Read as
10	51.2	<i>Formulae for price adjustment</i> <i>The price adjustment shall be applicable for the estimate departmental value of work done, which is abbreviated - R in the formula below</i>	<i>51.2 Formulae for price adjustment</i> <i>The price adjustment shall be applicable for the estimate departmental value of work done, which is abbreviated - R in the formula below. (The provisions of G.O.Ms.No. 227 MAWS (MA3) Department dated 23.11.2009 will be followed.</i>

13. The above explanation did not provide clarity and therefore, the second amendment slip was issued to the bid document wherein it has been stated as follows :



WEB COPY

S.No	Clause	Existing	Read as
	51.2	<i>Formulae for price adjustment</i> <i>The price adjustment shall be applicable for the estimate departmental value of work done, which is abbreviated - R in the formula below</i>	<i>51.2 Formulae for price adjustment</i> <i>The price adjustment shall be calculated based on the value of work done, which is abbreviated as R in the formula.</i>

14. In the second amendment slip, the TWAD Board gave a clarity that the price adjustment would be calculated based on the value of work done. Thus, from the position of calculating the price adjustment only on the departmental estimate cost of the work, it was clarified that it would be calculated based on the value of work done. This clarification was acted upon by the parties and the petitioner became the successful bidder and therefore, the parties entered into the agreement dated 29.2.2012.

15. The consensus *ad idem* between the parties gets clearly reflected in the agreement and Clause 51.2 reads as follows :



WEB COPY



W.P.No.38060 of 2024

"The price adjustment shall be calculated based on the value of work done, which is abbreviated as 'R' in the formula."

16. The above clause is in line with the clarification that was given in the second amendment slip.

17. The consensus *ad idem* between the parties continued in the same spree up till the bills that were cleared upto 31.3.2013. Thereafter, some audit objections have been raised, which resulted in the TWAD Board from reneging its stand taken in the agreement and it started relying upon the earlier Government Orders, which were adopted by it. As a consequence, the TWAD Board started deducting the amounts from the subsequent bills on the ground that excess payments were made towards price adjustment upto 31.3.2013.

18. In the case in hand, both the parties were aware about the calculation of the price adjustment under the Government Orders, which provided for the departmental estimated cost of the work. This clause became the subject matter of discussion during the pre-bid meeting and a clarification was given by issuing the second amendment slip to the bid document. This has later translated itself



W.P.No.38060 of 2024

WEB COPY

into a clause in the agreement. Both the parties understood the meaning of the amendment, as per which, the calculation is going to be done for the price adjustment based on the value of work done.

19. G.O.Ms.No.60 dated 14.3.2008 and G.O.Ms.No.101 dated 10.6.2009 were specifically issued by the Government and they have the force of law. When such Government Orders specifically state that the price adjustment should be calculated only on the departmental estimated cost of work, the clarification ought not to have been issued in the pre-bid meeting by virtually amending it as calculating the price adjustment based on the value of the work done. The TWAD Board could not have given such a clarification considering the fact that they had already adopted both the Government Orders through the Board's proceedings dated 22.8.2008 and 12.8.2009 respectively.

20. In fact, it was once again reiterated by the first respondent through the communication dated 20.1.2011 made to all the Regional Chief Engineers of the TWAD Board stating that necessary amendments to the queries raised by the bidders should be issued only based on the existing provisions in the respective bid document and



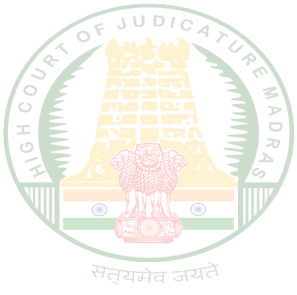
W.P.No.38060 of 2024

WEB COPY

not merely on the clarification raised by the bidder. Even in the bid document, the formula for the price adjustment was mentioned only as estimated departmental value of the work done, which is abbreviated as R by way of a formula.

21. Section 10 of the Contract Act provides that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Section 23 of the said Act lays down as to what agreements are lawful and it states that an agreement, which is forbidden by law, will become unlawful. In every agreement where the object or consideration is unlawful, it becomes void.

22. The Hon'ble Apex Court, in the decision in **G.T.Girish**, made it clear that law will include the regulations or orders made under the authority derived as per law and it will be a species of a subordinate legislation.

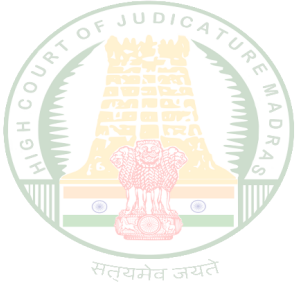


W.P.No.38060 of 2024

WEB COPY

23. In the instant case, as observed earlier, the TWAD Board was bound by the two Government Orders, which specifically provided for the manner, in which, the price adjustment must be calculated. This is more so since it was adopted by the TWAD Board by their proceedings. Under such circumstances, there cannot be an agreement between the parties in total disregard to the 'law' that governed the calculation of the price adjustment.

24. In other words, when the said Government Orders, the proceedings of the TWAD Board and the bid document provided that the price adjustment should be calculated only on the departmental estimated cost of the work, a clarification need not be given by the TWAD Board later to the effect that the price adjustment would be calculated based on the value of work done. Such a clarification that has been incorporated in the agreement must be considered as forbidden by law under Section 23 of the said Act. If that is so, that clause becomes void since the object of that particular clause in the agreement is unlawful.



W.P.No.38060 of 2024

WEB COPY

25. In the light of the above discussions, this Court holds that the TWAD Board, by adhering to the said Government Orders, which were adopted vide separate proceedings of the Board and which were mentioned in the bid document, is only following the letter and spirit of law and hence, can disregard the terms of the agreement pertaining to the calculation of the price adjustment in terms of Section 10 read with Section 23 of the Contract Act. Both the issues are answered accordingly.

26. In the result, the writ petition stands dismissed. No costs.

29.7.2025

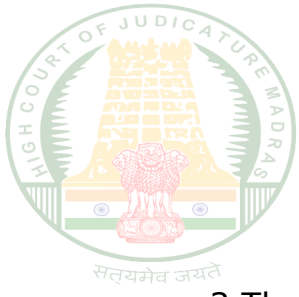
Index : Yes
Neutral Citation : Yes

To

1.The Managing Director, TWAD
Board, No.31, Kamarajar
Salai, Chepauk, Chennai-5.

2.The Chief Engineer, TWAD
Board, No.30, Bharathi Park
Road, Siruvani Nagar,
Coimbatore-43.

25/27



W.P.No.38060 of 2024

WEB COPY

3. The Executive Engineer, TWAD
Board, Major Projects Division,
Coimbatore.

RS



WEB COPY



W.P.No.38060 of 2024

N.ANAND VENKATESH,J

RS

W.P.No.38060 of 2024

29.7.2025