



W.A.Nos.336 & 341 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.Nos.336 & 341 of 2024

Subaya Constructions Co. Ltd,
Rep by its Director Mrs.S.Meenakshi,
No.21, Soundarapandian Salai,
Ashok Nagar, Chennai – 600 083. ... Petitioner in both Appeals

Vs.

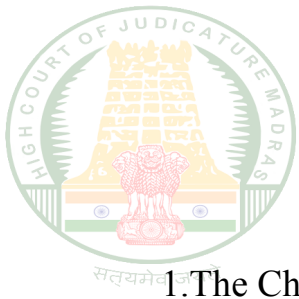
1.The Chief Engineer,
TWAD Board (Tamil Nadu Water and Drainage Board),
30, Bharathi Park Road,
Siruvani Nagar, Coimbatore – 43.

2.The Executive Engineer,
TWAD Board, (Tamil Nadu Water and Drainage Board),
RWS Division, No.5, Arignar Anna Street,
Bharathi Nagar, Ranipet – 632 403.

3.The Managing Director,
TWAD Board, (Tamil Nadu Water and Drainage Board),
Chepauk, Chennai.

4.The State of Tamil Nadu,
rep by its Chief Secretary to Government,
Fort St.George, Chennai – 600 009.

... Respondents in W.A.No.336 of 2024



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Sewerage Division,
Pollachi.

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... Respondents in W.A.No.341 of 2024

Common Prayer: Writ Appeals have been instituted under Clause 15 of the Letter Patent, against the common judgment and order passed by this Court dated 03.11.2023 made in W.P.Nos.11212 and 11213 of 2023.

(for both the Appeals)

For Petitioner : Mr.V.Raghavachari, Senior Counsel
for Mr.P.J.Rishikesh

For Respondents : Mrs.S.Mekhala,
Standing Counsel for TWAD (for R1-3)
Mr.T.Chandrasekaran,
Special Government Pleader (for R4)



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COMMON JUDGMENT

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The intra court appeals on hand have been instituted to assail the order dated 03.11.2023 passed in W.P.Nos.11212 and 11213 of 2023.

2. The Writ Petitioner is the appellant before this Court. The Writ Petitions have been instituted under Article 226 to issue a Writ of Mandamus, directing the respondents to form a committee of experts to finalise the percentage of increase/decrease of price of materials and labour wages in accordance with the prevailing market rates every quarter for the purpose of the price adjustment and consequently direct the second respondent to accordingly make payments to the petitioner.

3. The issues raised by the appellant before this Writ Court are that,

(a) The contract which the petitioner had entered into with the respondents, provides for price variation in materials during the term of the contract, for which specific provisions are made in Clause 49.1. In this connection, Clause 49.2 prescribes the formula for price adjustment.



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(b) The pricing must be done quarterly in terms of clause 49.1(ix). But so far as this State is concerned, more particularly that of the respondent Board is concerned, there is no Committee constituted for fixing of prices every quarterly as contemplated by the contract.

(c) The failure to fix rates at which bills are required to be prepared by the contractors, leads to a situation, where the rates at which the bills are prepared by the contractors, and the rates which the department concerned offers to make payments vary. Ultimately they land up in litigations, which necessarily involves a certain cost, both for the contractors and also for the Government.

4. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the appellant would mainly contend that the Writ Court accepted the grounds raised by the appellant. However, held that the exercise cannot be done with retrospective effect, which resulted in filing of the present Writ Appeals.

5. In Para No.10 of the final order impugned, the learned Single Judge made clear that any Committee that would be constituted eventually may



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not carry out the exercise retrospectively as regards contracts, which have already been fully worked, or which are pending either before arbitrators, or before the Court.

6. In Para No.11, the Writ Court directed the Chief Secretary to Government, to either constitute or to ensure the constitution of an appropriate Committee of experts for fixing the rates of materials every quarterly to commence from 01.01.2024.

7. Further findings are made that the Government may consider Andhra Pradesh and Telangana model of fixing the rates every month, and bring in a greater accuracy.

8. Mrs.S.Mekhala, learned Standing Counsel for the TWAD Board would oppose by stating that the terms of contract provide pricing index. Therefore, the claim of the appellant deserves no merit consideration. Price adjustment clause provides details regarding the pricing and other details and thus, the very claim set out by the Writ Appellant deserve to be rejected.



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Mr.Chandrasekharan, learned Special Government Pleader would submit that the Writ Petitions are not maintainable, in view of the fact that they relate to contractual disputes.

10. Considered the arguments made between the parties to the lis on hand.

11. The very relief sought for in the Writ Petitions seeking a direction to constitute a committee to decide certain contractual issues cannot be entertained by the Writ Court in exercise of the powers of Judicial Review under Article 226 of the Constitution of India. Disputes relating to contract or issues touching upon the terms and conditions of an agreement cannot be adjudicated in a Writ Proceedings. All such disputes ought to be adjudicated before the competent forum.

12. Learned Senior counsel for the appellant would submit that arbitration clause is available in the contract. That being so, disputes are to be referred for arbitration, and the High Court in exercise of the power of Judicial Review cannot direct the Chief Secretary to Government of Tamil Nadu to



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constitute a committee with experts for fixing the rates of materials every quarterly or otherwise. Such a direction would result in unnecessary interference by the Writ Court in contractual manner. Merely based on an affidavit and the copy of the agreement, the Writ Court cannot form an opinion that a committee is to be constituted for the purpose of fixing the rate of materials or otherwise. All these issues are within the realm of the agreement and to be resolved in the manner contemplated either under the contract or by approaching the Civil Court of law. Conversion of Civil disputes into Constitutional issues relating to rights at no circumstances be encouraged by the High Court. The issuance of Writs under Article 226 of the Constitution of India is to ensure the rights ensured under the Constitution of India are preserved.

13. In the present case, the very issue raised before the Writ Court is that the appellant entered into an agreement with the respondents, which provides price variation in materials during the term of the contract, with respect to Clause 49.1 and Clause 49.2 of the agreement. He insisted that the pricing must be done quarterly in terms of clause 49.1(ix). The very ground in the Writ Petition is based on terms of contract. Therefore, this Court do not find any reason to consider the grounds raised in the present Writ Appeals.



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Therefore, the Writ Appeals are dismissed. Consequently, the connected

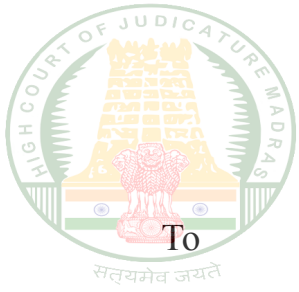
WEB **C** Miscellaneous Petitions, if any, are closed. No costs.

[S.M.S., J.] [K.R.S., J.]
17.02.2025

Index: Yes/No

Speaking/Non-speaking order

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