



W.A.(MD)No.1277 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**W.A.(MD)No.1277 of 2022
and
C.M.P.(MD)No.9879 of 2022**

1.The Project Director,
Tsunami Project Implementation Unit,
Rural Development and Panchayat Raj Department,
4 and 4a Clive Battery Office Complex,
Rajaji Salai, Chennai – 600 032.

2.The District Collector/ Chairman,
Tsunami District Implementation Unit,
Tanjore, Tanjore District.

... Appellants

Vs.

S.Shanmugasundaram

... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal and set aside the order dated 28.11.2016 in W.P.(MD).No.18556 of 2014 on the file of this Court.



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For Appellants : Mr.R.Baskaran,
Addl. Advocate General,
Assisted by Mr.K.Balasubramani,
Spl. Government Pleader.

For Respondent : Mr.Isaac Mohanlal, Senior Counsel
For M/s.Isaac Chambers.

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.The writ petitioner was awarded the contract of constructing 76 houses in tsunami vulnerable areas of coastal habitation. The agreement was entered into on 08.09.2010. The contract ought to have been completed on or before 08.12.2011. The contractor applied for extension of time on as many as five occasions. The reasons assigned by the contractor were found acceptable and extension was also duly granted. All that the contractor wanted was cost escalation. The contractor's request was rejected on the ground that while granting extension, it was specifically mentioned that cost escalation will not be awarded. Contending that such a stand runs counter to the terms of the agreement,



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the writ petitioner filed W.P.(MD)No.18556 of 2014. The learned Single Judge vide order dated 28.11.2016 quashed the order of the District Collector, Tanjore and allowed the writ petition in the following terms:-

“23.In the above circumstances, since the question involved in the present writ petition is as to whether the delay in executing the work is attributable to the petitioner or not, from the reading of the orders of extension granted by the second respondent shows that only after accepting the reasons for the delay given by the petitioner which is beyond his control, the second respondent granted extension and hence, it does not require any interpretation of contract and for that purpose, the petitioner need not approach the Adjudicator.”

Questioning the same, this writ appeal has been filed.

3.After hearing the learned Additional Advocate General assisted by the learned Special Government Pleader for the appellant at length, we are satisfied that there is no merit in the writ appeal. The learned senior counsel for the respondent / writ petitioner drew our attention to clause 47 of the agreement. It reads as follows:-



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“47. Price Adjustment

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47.1 Contract price shall be adjusted for increase or decrease in rates and price of labour, material, fuels and lubricants in accordance with the following principles and procedures and as per formula given in the contract data:

(a) The price adjustment shall apply for the work done from the start date given in the contract date upto end of the initial intended completion date or extensions granted by the Engineer and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the contractor.

....

Escalation is a normal incident arising out of gap of time in this inflationary age in performing any contract. To ascertain whether the contractor is eligible to be awarded cost escalation, we have to look into the terms expressly agreed between the parties. A bare reading of the price adjustment clause in the agreement indicates that price adjustment would apply for the work done from the start date upto end of the initial intended completion date or extensions granted by the engineer provided that the delays are not attributable to the contractor. We are therefore satisfied that the extensions granted to the contractor should also be taken into account.



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4. The learned Single has appreciated the reasons for the delay in completion of the contract. This was also duly appreciated by the District Collector before granting extensions to the Contractor. We also independently went through the proceedings before the District Collector. The reasons cited included shortage of labour, construction materials, continuous power cut due to erratic weather conditions etc. After recording that the reasons cited by the contractor were justifiable and were beyond his control and granting extension, the District Collector cannot take a contra stand now and act in derogation of clause 47 of the contract. Thus we are of the view that the contractor is entitled to price adjustment/escalation since the extension of time is not attributable to a default by the contractor. The Hon'ble Supreme Court in the decision reported in **AIR 1989 SC 1034 (P.M Paul vs Union of India)** held that if the contract work was not completed within the stipulated time, then the contractor has got a right to ask for extension of time and that he could claim difference in price even in the absence of a price escalation clause provided the delay is not attributable to his conduct. The Court thereby refused to interfere with the award of the Arbitrator granting 20% of the escalation price. In the present case, we



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are only enforcing clause 47 of the agreement which expressly provides for price adjustment if the delay is not attributable to the Contractor.

5. The learned Single Judge has rightly approached the issue and interference with the said order is not warranted. The writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (M.J.R. J.)
10.03.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

1.The Project Director,
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