

W.P(MD)No.30300 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.30300 of 2023

and

W.M.P(MD)No.26105 of 2023

MJD Construction and Engineering
Contractors (P) Limited,
Represented by its Managing Director,
Janaka Jebangelin,
5/112-B, Main Road,
Kannumamoodu,
Palugal Village,
Kanniyakumari District.

... Petitioner

Vs.

- 1.The Chief Engineer,
National Highways,
Chennai – 600 005.
- 2.The Superintending Engineer,
National Highways,
Tirunelveli.
- 3.The Authority's Engineer and
Divisional Engineer,
National Highways,
Nagercoil,
Kanniyakumari District.



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4. The Assistant Engineer,
National Highways,
Kanniyakumari.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned completion certificate dated 14.07.2022 issued by the third respondent and quash the same as illegal and consequently directing the third respondent to issue work completion certificate with respective work completed dated i.e., 09.11.2020 and 27.02.2022.

For Petitioner : Mr.N.Dilip Kumar
for M/s.C.Bharathi

For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

This writ petition has been filed to quash the consolidated completion certificate dated 14.07.2022 issued by the third respondent and consequently directing the third respondent to issue work completion certificate with respective work completed dated i.e., 09.11.2020 and 27.02.2022.

2. The claim of the petitioner is that under the Annual Plan 2018-19, the work of strengthening in Km 599/0-633/0 in selected



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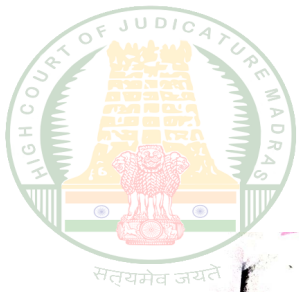
stretches of NH-47 including the widening of existing two lane at Km 625/0 – 626/2 into double Lane with paved shoulders of NH47 in the State of Tamil Nadu on Engineering, Procurement & Construction on EPC mode was awarded to the petitioner as per agreement dated 11.11.2019 and the appointment date was fixed on 20.11.2019. As per the agreement between the petitioner as well as the third respondent, the petitioner company commenced work and Bituminous Concrete (Wearing coat) work were completed for the reaches Km 607/0 – 610/100, Km 623/0 – 626/187, Km 630/0 – 630/546 and Km 631/660 – 632/520 of HN4 on 29.10.2020. The work of balance stretches from Km 610/100 – 620/0 and Km 631/0 – 639/0 of NH47 was stopped as per the Letter No.AP 883 / 20-18-2019 / A1 / dated 10.08.2020 due to laying of pipeline work by Divisional Engineer, National Highways, Nagercoil. After completion of the TWAD Board works, the petitioner resumed the road work on 16.09.2021 and completed the balance works in all respects on 03.03.2022 and a consolidated completion certificate was issued on 14.07.2022. Challenging the same, this writ petition is filed.

3. The plight of the petitioner as submitted by the learned counsel appearing for the petitioner is that the entire work was done in two



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phases and that the first phase of work was over on 20.09.2020. The petitioner company is bound to maintain the road for a period of five years from the date of completion in terms of agreement entered into between the petitioner company and the third respondent. The second phase of work was completed on 03.03.2022 and in terms of the said agreement, the petitioner is entitled to maintain both the stretch of roads in the first phase of work for a period of five years from 30.10.2020 and the second phase of work commencing from 04.03.2022. Since the consolidated completion certificate was issued only on 14.07.2022, the petitioner is in compulsion to maintain the entire stretch till 2027 which would be at his disadvantage causing him heavy loss. As per EPC mode, the maintenance period is only 5 years. The petitioner completed the first phase of work as early as on 29.10.2020 and the delay in completing the second phase of work could be attributed only to the third respondent. Only on the direction by Letter No.AP 883/2018-19/AI, dated 10.08.2020, the petitioner was in a compulsion to stall the work of the first phase and wait till the TWAD board work was completed, as directed by the third respondent. For clarity, the same is extracted as follows:



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NATIONAL HIGHWAYS

To

M/s MJD Construction & Engineering
Contractors[P]Ltd,
Parasalai road, Kannumamoodu & P.O
Kanniyakumari District - 629 170

23

Thiru.C. Jagan Mohan,B.E.,
Divisional Engineer,
National Highways,
Nagercoil.

Letter.No.: AP 883/2018-2019/A1/Dated 10.08.2020

Sir,

Sub: Tirunelveli (NH) Circle - Nagercoil (NH) Division - Annual Plan 2018-19 - Strengthening in Km.599/0-633/0 in selected stretches of NH 47 including widening of existing two lane at Km.625/0-626/2 into double lane with paved shoulders of NH 47 (Job No: NH47/(NEW NH-66)-TN-2018-19-883) - Works being executed by Tamil Nadu Water & Drainage Board, in the work site of NH 47 road - Reg.

Ref: Executive Engineer, TWAD Board, Planning Division, Nagercoil
Lr. 1878/F/Eraniel (NH) JDO/ Dt: 12.05.2020

Under Annual Plan 2018-19, the work of Strengthening in Km.599/0-633/0 in selected stretches of NH 47 including widening of existing two lane at Km.625/0-626/2 into double lane with paved shoulders of NH 47 have been awarded to the contractor M/s MJD Construction & Engineering Contractors (P) Ltd, as per Agreement No.: 08/2019-20/ dated 11.11.2019. Work have been commenced by the contractor during December 2019. Upto the end of March 2020 DBM work have been completed at Km 607/0 - 612/0.

As per the Executive Engineer, TWAD Board, Planning Division, Nagercoil letter cited, it has been informed by them that under the instructions of District Collector, Nagercoil, Laying of water pipe line on NH 47 from Km. 610/0 - 630/0 and from Km 631/100 - 639/0 are under execution. Due to the execution of laying water pipe line on NH 47 by TWAD Board, the DBM work executed by the contractor on NH 47 from Km. 610/0 - 612/0 have been damaged to a width of nearly 1.00m from BT margin. It has been requested to the Executive Engineer, TWAD Board, Planning Division, Nagercoil to rectify the damages caused by the TWAD Board in letter dated 30.05.2020. Accordingly the work of laying water pipe line on NH 47 road and rectifying the damaged portion are under execution by the TWAD Board Authorities.

The contractor is requested to do the work after completion of the TWAD Board work in the above mentioned reaches.


10.8.2020
Divisional Engineer,
National Highways,
Nagercoil.

- Copy submitted to the Chief Engineer, National Highways, Chennai.
- Copy submitted to the Regional Officer/Chief Engineer, MORTH, Chennai.
- Copy submitted to the Superintending Engineer, National Highways, Thirunelveli.
- Copy to the District Collector, Kanniyakumari at Nagercoil.
- Copy to Assistant Divisional Engineer(NH) Kanniyakumari and Thuckalay.



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Since the petitioner was not able to complete the second phase that is, the entire work in a single strength, the reason which is attributed only to the third respondent, the petitioner cannot be compelled to maintain the entire stretch till 2027 and hence, the petitioner is before me.

4. Mr.S.Kameswaran, learned Government Advocate based on his counter affidavit submitted that, as per the agreement entered into between the petitioner as well as the third respondent, the entire work was completed only on 27.02.2022. The work was completed physically only on 03.03.2022 but the same would be considered to be completed only after getting all the test results successfully. He further insisted that in terms of contract condition Article 14.1 (i) maintenance obligations of the contractor would be to maintain the Project Highway for a period of five years corresponding to the defect liability period, commencing from the date of completion certificate (Maintenance Period).

5. Heard the learned counsel on either side and carefully perused the entire materials available on record.



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6. The learned counsel appearing for the petitioner forcefully argued that the test results would be taken by the respondents as and when the various works of the road were completed. No doubt in the instant case, the petitioner was compelled to stop his work in the midway only at the instance of the letter of the Divisional Engineer, Nagercoil dated 10.08.2020 for the purpose of completing TWAD board work in the same stretch of road. Hence, it is needless to state that by the activity of the third respondent the work which was undertaken by the petitioner as a single stretch was automatically converted into one of two stretches that to be completed in two phases. It can be understood from the mode of operation of the third respondent that they would have taken the test results work completed in the first phase on 29.10.2020 when the petitioner completed the same at the first instance. If they had not done that the said road would not have been dedicated for public use as conducted by the learned counsel for the petitioner. Having put the same for public use, I can positively assume that the third respondent had completed the test results for the said stretch as early as on 29.10.2020.



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Hence, the third respondent ought to have issued him with work completion certificate for the first phase of work at least by the month of October 2020. As far as the second phase of work is concerned, even according to the counter affidavit of the third respondent, the same was completed on 03.03.2022. There was no quarrel for the petitioner for awarding the said completion certificate even after the lapse of four months from 03.03.2022 and 14.07.2022 for the work completed in the second phase.

7. In view of the same, the impugned completion certificate dated 14.07.2022 is hereby quashed and the third respondent is directed to issue two completion certificates. One for the first phase of work on the basis of the tests results taken by the third respondent as early as during October 2020 facilitating him to maintain road work from 30.10.2020 for a period of five years. The impugned completion certificate set aside is only with respect to the first phase of work and this Court hereby direct to issue completion certificate only for the first phase of work.



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8. This writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

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L.VICTORIA GOWRI, J.

MGA

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