



W.P(MD)No.30301 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.30301 of 2023

and

W.M.P(MD)No.26106 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., 30.06.2020 and 06.01.2022.

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., 30.06.2020 and 06.01.2022.

2. The claim of the petitioner is that under the Annual Plan 2017-18, the work of strengthening in Km 0/380 - 22/6 of NH-47B in the



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State of Tamil Nadu on Engineering, Procurement & Construction on EPC mode was awarded to the petitioner as per agreement dated 13.02.2020 and the appointment date was fixed on 02.03.2020. 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 0/380-1/0 and Km 4/0-22/6 of NH47B on 25.06.2020. The work of balance stretches from Km 1/0 – 4/0 of NH47B was stopped as per the Letter No.AP 858 / 2017-2018 / 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 26.04.2022 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 phases and that the first phase of work was over on 25.06.2020. The petitioner company is bound to maintain the road for a period of five



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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 26.04.2022 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 26.06.2020 and the second phase of work commencing from 26.12.2021. 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 25.06.2020 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 858/2017-18/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

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

To
M/s MJD Construction & Engineering
Contractors(P)Ltd,
Parasalai road, Kannamunroodu & P.O
Kanniyakumari District - 629 170

Letter.No.: AP 858/2017-2018/A1/Dated 10.08.2020

Sir,

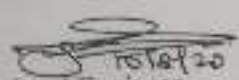
Sub: Tirunelveli (NH) Circle - Nagercoil (NH) Division - Annual Plan 2017-2018 - Strengthening Existing Carriageway from Km 0/380 - 22/600 of NH 47B in the State of TamilNadu (Job No. NH-47B-TN-2017-18-858) Works being under execution by Tamil Nadu Water & Drainage Board, in the work site of NH 47B road - Reg.

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

Under Annual Plan 2017-18, the work of Strengthening Existing Carriageway from Km 0/380 - 22/600 of NH 47B have been awarded to the contractor, M/s, MJD Construction & Engineering Contractors (P) Ltd, as per Agreement dated 13.02.2020

The TWAD Board, planning have proposed for laying of water pipe line on NH 47B road also. The reaches not required for laying of water pipe line (i.e.) at Km 0/380 - 1/0 and Km. 4/2 - 22/6 of NH 47B. The strengthening of road works have been completed. In the balance reaches laying of water pipe line at Km. 1/0 - 4/2 is under execution. The damaged portion of NH 47B road is also being rectified by TWAD Board. On NH 47B the reaches at Km. 1/100 - 1/700 on right side (600m on Vettoorimadam side) and at Km. 3/600 - 4/200 (Vadasery MGR Statue to Ozhuginasery - 600m) the laying of Under Ground Drainage pipe have been proposed and work not yet commenced.

The contractor is requested to do the work after completion of the TWAD Board/ Underground Drainage board work in the above mentioned reaches in NH 47 B.


10.8.20
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, Tirunelveli.
- Copy to the District Collector, Kanniyakumari at Nagercoil.
- Copy to Assistant Divisional Engineer (NH) Kanniyakumari



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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 25.06.2020 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 26.04.2022. There was no quarrel for the petitioner for awarding the said completion certificate even after the lapse of four months from 26.04.2022 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 26.06.2020 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

To

- 1.The Chief Engineer,
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L.VICTORIA GOWRI, J.

MGA

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