

**The Chief Engineer, (A/C) Vs M/s.Subaya Constructions Co Ltd,**

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**SooperKanoon Citation :** [sooperkanoon.com/1869892](https://sooperkanoon.com/1869892)

**Court :** Chennai

**Decided On :** Aug-20-2025

**Judge :** Honourable Mrs Justice J. Nisha Banu, Honourable Mr. Justice M. Jothiraman

**Appeal No. :** WA/885/2025

**Appellant :** The Chief Engineer, (A/C)

**Respondent :** M/s.Subaya Constructions Co Ltd,

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01-08-2025 DELIVERED ON : -08-2025

CORAM

THE HONOURABLE MRS JUSTICE J. NISHA BANU AND THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN and CMP.No.7506 of 2025 1.The Chief Engineer, (A/C) TWAD Board No. 30, Bharathi Park Road, Siruvani Nagar, Coimbatore 641 043 2.The Superintending Engineer TWAD Board Coimbatore 3.The Executive Engineer TWAD Board Sewerage Division Pollachi ..Appellant(s) /Respondents Vs

M/s.Subaya Constructions Co Ltd, Rep. by its Director Mrs.S.Meenakshi, No.21, Soundarapandian Street, Ashok Nagar, Chennai-600 083.  
..Respondent(s) Page 1/22 PRAYER:Writ Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 16.10.2024 passed in W.P.No.2673 of 2023. For Appellant(s): Mr. S.Silambannan, Sr. counsel for Mrs.Y. Kavitha. For Respondent(s): Mr. Muralikumaran, Senior counsel for Mr. B.Natarajan.

## JUDGMENT

J.Nisha Banu J. The Respondents in the Writ Petition in W.P.No.2673/2023, aggrieved by the Order dated 16.10.2024 are on Appeal before this Court.

2. The Writ Petition was filed by the Respondent/Contractor to release

the withheld amount and other pending Bills as per contract with interest at the rate of 24% from the date of passing the respective running account bills, within a period stipulated. The Writ Court by Order dated 16.10.2024 observing that the Appellant/TWAD Board has to prepare the supplementary proposal and proceed further in the manner known to law, held that the Writ Petitioner/Contractor is entitled for the amount which it must be allowed to receive, after execution of work in the contract which has to be quantified by Page 2/22

the authorities within a period of 3 months.

3. The Appellants assailed the Order of the Writ Court contending that

the Writ Petition involves disputed questions of facts and issues and as per decision of the Supreme Court in the case of Noble Resources [(2006) 10 SCC 236] and in the case of Bharat Coking Coal Limited [(2020) 16 SCC 759] and the Division Bench Judgement of the Allahabad High Court in the case of M/s. Bio Tech Systems [(2020) SCC OnLine All 1361] the Writ Petition is not maintainable.

## CONTENTIONS

### 4. The Learned Senior Counsel Mr.S.Silamban contended that the Writ

Proceedings amount to re-litigation and is barred by the principles of Res Judicata, pointing out that the Contractor submitted a representation dated 04.08.2016 seeking a balance payment of Rs. 47,63,662/-, which included amounts due not only against the supplementary bills for additional work but also for the amounts due with respect to the works done as against the Original Contract.

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### 5. This was followed by a Writ Petition filed by the Contractor in

W.P.No.36007/2016 seeking for a direction directing the TWAD Board to consider and pass orders on the Contractor's representation dated 04.08.2016 by the Dispute Redressal Committee, which was allowed with a direction to dispose of the Appeal filed by the Contractor within a period of 6 weeks. In pursuant to the said direction, the Dispute Redressal Committee by proceedings dated 06.04.2017, did not accept the claim of the Contractor. That pursuant to the Order passed in the above Writ Petition, a communication dated 08.12.2017 was made to the Contractor for a consent letter.

### 6. The Contractor instead of complying with the same by giving a

consent letter, filed the WP in WP.No.16018/2018 challenging the minutes of the Dispute Redressal Committee dated 06.04.2017. The said Writ Petition was dismissed by Order dated 07.07.2022 granting liberty to the Contractor to work out a remedy before concerned District Court as per the terms of the agreement.

### 7. The Contractor instead filing a suit before the District Court has Page 4/22

approached the Dispute Redressal Committee which by minutes dated 25.02.2022, held that the rates as per the current schedule of rates (i.e., rate as per the TWAD SOR 2013-14) without any tender premium shall be adopted.

8. While the said Writ Petition in WP. No. 16018/2018 was pending, the

Contractor filed another Writ Petition in WP. No .20805/2018 seeking a direction directing the TWAD Board to pay the Tender agreed final pending bill amount of Rs. 3,92,01,666/-. The said Writ Petition in WP. No agitate the issue in W.P. No. 2673/2023. In the meantime TWAD Board issued another letter 12.02.2018 seeking for a consent letter from the Contractor for entering into a supplementary agreement.

9. The Learned Senior Counsel Mr.S.Silamban further contended that

the calculation sheet furnished is during the course of argument which is disputed now. In the present case, the question of payment would arise, only if the contractor signs the supplementary agreement. The supplementary proposal submitted, is negatived by the Dispute Redressal Committee and has instructed to adopt the correct schedule of rate without any tender premium.

Page 5/22 Without the approval of the competent authority, the Executive Engineer has issued Site Order and the Contractor has commenced the excavation work.

10. The Managing Director who is the competent authority has rejected

the proposal vide Order dated 06.09.2016, which was not challenged by the Contractor. That the dispute has attained a finality and therefore the only remedy available for the Contractor is to approach the Civil Court as per the terms of the contract. The final bill can be released only after clearance of all supplementary agreements. In this regard, he relied upon the judgement of the Supreme Court in the case of ONGC Ltd., ((2003) 5 SCC 705].

11. He further contended that the parties are bound by the terms of the contract and as per clause 67, the contractor has to approach the Dispute Redressal Committee. That as per the circular 02.01.2018 which is not challenged by the contractor, the final payment can be made by the TWAD Board only after preparation and approval of the supplementary proposals for additional items.

12. Learned Senior counsel further pointing out the letter dated Page 6/22

18.11.2024 of the TWAD Board addressed to the Contractor contended that vide the said communication, the TWAD Board has informed the contractor that the eligible final payment which is Rs. 2,69,523,724.85/ and the same will be released only after concluding the supplementary agreement based on respondent's consent letter consenting the schedule of rates without tender premium, for which the respondent should enter into the supplemental agreement agreeing to the supplementary work at Rs.24,50,359.46/-. The calculation sheet is not supported by any bills / invoice and the Learned Senior Counsel for the Appellants summed up his argument in brief that;

i. The Writ Petition not maintainable in a contract dispute. ii. Settled issue cannot be re-agitated by filing fresh writ petition which amounts to abuse of process. iii. The Hon'ble High Court already directed Respondent-Contractor to go before DRC and then before Civil Court, if aggrieved. The present Writ Petition for the same issue (when facts are inter-linked) would amount to Res judicata. iv. The Respondent Contractor's claim of undisputed amount "is disputed" and calculation sheet filed by the Respondent is not supported by

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any bill/invoice. An undisputed amount should be definite and should be accepted by the TWAD Board. v. The final payment can be settled only if supplementary agreement is entered into between parties which is a pre-

condition/rider as per the Circular dated 02.01.2018. vi. It was also made clear by the TWAD Board to the Respondent that the said amount will be released after concluding the supplemental agreement based on Respondent's consent letter in respect of the Schedule of Rates 2013- 14 without tender premium. vii. The order of the Managing Director, TWAD Board and the DRC have not been challenged by the Respondent and same reached finality. viii. Alternate remedy is available to the Respondent Contractor by way of filing a civil suit before the appropriate civil court. ix. What cannot be done directly cannot be done indirectly.

13. Per contra, the Learned Senior Counsel Mr.Muralikumaran

appearing for the Respondent/ Contractor contended that the jurisdiction of this Court under Article 226 cannot be ousted only on the basis that the dispute pertains to contractual arena, as held by the Supreme Court in the case Page 8/22 of Unitech Ltd., [(2021) 16 SCC 35].

14. Placing reliance on the decisions of the Supreme Court, in the cases

of Army Welfare Education Society New Delhi [(2024) SCC OnLine SC 1683] and MP. Power Management Company Ltd Ltd. Jabalpur [(2023) 2 SCC 703], he contended that the Writ Petition is maintainable for recovery of admitted monetary dues particularly when there is no subsisting disputes. By pointing out para 14 of the Apex Court in case of Popatrao Vyankatrao Patil [(2020) 19 SCC 241) he contended that the state should act as a model litigant. That the Supreme Court has time and again held that the government and public authorities should not rely upon technical pleas for defeating the legitimate claims of the citizens, citing the Supreme Court decision in the case of Madras Port Trust [(1979) 4 SCC 176] and the Full Bench decision of the High Court of Punjab and Haryana in the case of Bhag Singh [(1985) 3 SCC 737].

15. The Learned Senior Counsel for Respondent submitted that the TWAD board is trying to arm twist the contractor to enter into an agreement for the additional

work, for a lesser amount than what was agreed. The TWAD Page 9/22

Board cannot coerce the contractor to enter into an agreement for the additional work, for a lesser amount after the work was completed. The contract that was awarded to the Contractor by contract dated 15.04.2013, in pursuant to the Work Order dated 27.03.2013, was duly completed on 30.06.2016. The trial run on 31.12.2016, the maintenance period on 31.12.2017, and the defect liability period on 30.06.2018 was also over. Admittedly, even as per the tabular column filed by the Appellant TWAD Board before the Writ Court as additional Typed Set of Papers I in page No. 84, with reference to the internal documents submitted by TWAD Board of the subject contract in Page Nos. 67 to 83 of the said additional typed set, the final bill outstanding is Rs. 2,21,50,006/- and the 5% retention amount is Rs1,75,52,595/- which comes to Rs.3,97,02,601/-. This is an admitted amount even according to the Appellants due and liable to be paid to the contractor for

### **the work executed and completed by the Contractor as per the work Order**

dated 27.03.2013 and Written Contract/Award dated 15.04.2013.

16. As far as the Additional work is concerned which does not form part of the original contract dated 15.04.2013, the rates were accepted by the contractor as it is evident from the communication of the Contractor dated Page 10/22

26.06.2014 which was also referred to by the Writ Court in the impugned Order. Accepting the said rate, the contractor has completed the additional work and the Appellant-TWAD Board has also released 75% of the said Amount, amounting to Rs. 1,52,29,171/- and the remaining sum to be paid is of Rs. 50,76,390.33/- out of the total contractual amount of Rs. 2,03,05,561.3/- .

17. The internal communications of the Executive Engineer dated

30.06.2014, 09.07.2014 and 28.08.2014, the communications of the Superintending Engineer dated 06.08.2014, 14.07.2015, 27.07.2015, the communications of the Chief Engineer dated 21.08.2014, 02.09.2015 are all evidences of the concluded contract for the additional work which stands executed by the Contractor. The derivation of rates which was accepted and executed by the contractor cannot now be disputed by the TWAD Board after getting the work done.

18. The contention of the TWAD that the Executive Engineer has

erroneously fixed the rates as per clause (i) of the Board proceedings No. 27 dated 05.02.2022, deserves no merit, as the Executive Engineer vide his communication dated 02.09.2015 had stated categorically that since the rates

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for additional items of work were derived from the similar items of work that were already available in the accepted agreement. Moreover as is it evident that the Appellants have selectively filed the internal communications, since the enclosures in the communication dated 02.09.2015 of the Chief Engineer addressed to the Managing Director of the TWAD Board was deliberately omitted to be brought on record, adverse inference has to be drawn. The rates for the Additional Work were fixed and were accorded by 53 site Orders which were approved by all the necessary authorities including the Project Director, Assistant Engineer, Executive Engineer and Superintendent Engineer. Citing the judgement of the Supreme Court in the case of Union of India [(2022) 2 SCC 25], the Learned Senior Counsel contended that the formalisation of the agreement after the completion of the work is a mere formality and pales in significance at this juncture. The facts and the circumstances unequivocally establishes the process consummated, the offer and acceptance, achieving a consensus ad idem. The Appellants are legally estopped from refusing to make payment for the additional work, even in the absence of a formal agreement.

19. With regard to the contention of the Appellants that the present Page 12/22

proceedings amount to re-litigation, he submitted that the minutes of the meeting dated 06.04.2017 of the Dispute Redressal Committee with reference to the communication of the Contractor dated 04.08.2017 and the consequential communication of the Executive Engineer dated 08.12.2017 and the letter of the Executive Engineer dated 12.12.2018 and the Order of the Writ Court in WP. No. 16018/2018 and the subsequent proceedings of the Dispute Redressal Committee dated 25.02.2022 all relate to the additional work and not to the outstanding dues of the work Order dated 27.03.2013 and the written contract/Award dated 15.04.2014.

20. The Writ Petition in W.P. No.20508/2018 only relates to the

outstanding payment of the contract dated 15.04.2014 and where there is no dispute, the said Writ Petition was allowed to be withdrawn to agitate the said issue in WP. No. 2673/2023 and therefore, there is no re-litigation.

## **CONCLUSION**

21. The Law is no more res integra on the issue as to whether Article

226 can be invoked against the State, in contractual matter for recovery of undisputed amount. Therefore, we do not find any merit in the contention of the Appellants that Writ Petition is not maintainable in contractual matters for Page 13/22 recovery of undisputed amounts.

22. In the present case admittedly, there are two contracts and execution

**of work by the Contractor for the TWAD Board. The 1st one is by Work Order**

dated 27.03.2013 followed by an award/written contract dated 15.04.2014. There is no dispute with respect to this work which was

completed by the contractor on 30.06.2016, the trial run was completed on 31.12.2016, the maintenance period was completed on 31.12.2017 and the defect liability was completed on 30.06.2018, as was also held by the Writ Court.

23. As admitted by the Appellants in the Tabular Column filed by the

Appellants before the Writ Court is as under:- UDUMALPET BALANCE AMOUNT TO BE RELEASED S.No Description Amount as per TWAD Board Amount BALANCE TO already BE RECOVERED received

1. Additional items (DMR) 2447262.00 15229171.00 -12781909.00

2. Final Bill payment 22150006.00

3. Retention amount 17552595.00

15229171.00 26920692.00 The Appellants are still retaining the final bill payment of Rs.2,21,50,006/- and 5% retention amount of Rs. 1,75,52,595/-. There is no justification for the Page 14/22 retention of this amount after satisfactory completion of the contract. The contention of the Appellants that this amount will be released only if the contractor enters into a contract for supplementary/additional work is an arbitrary one. In contractual matters the State cannot act in tyrannical way.

24. As far as the supplementary work is concerned, whether the rates

fixed by the executive engineer is in violation of its board proceedings in No. 27 dated 05.02.2022 or not, though is not a matter of disputed fact, this Court does not want to go into the said issue. However, the contention of the Appellants that it has released 75% of the total value of the supplementary additional work of Rs. 1,52,29,171/ and the value/amount fixed for the supplementary/additional work was in violation of the board proceedings No. 27 dated 05.02.2022 and only after deducting this amount in the total outstanding amount payable to the Contractor for the contract dated 15.04.2014, that too on condition, the

Contractor enters into a written contract for the additional work agreeing for the revised value, is an act of high handedness.

25. This Court is of the view that such a contention of the Appellants Page 15/22

cannot be sustained, in the light of the fact that no reasoning was adduced as to how and under what circumstances, the sum of Rs. 1,52,29,171/- was released, for the additional work and if it was fixed improperly and released why no action including that of recovery, was taken against the concerned officials who were responsible for the same. Moreover, the said amount of Rs.1,52,29,171/- relates to a different contract and not covered under the work

**order dated 27.03.2013 and the related contract dated 15.04.2014.  
If there is a**

dispute with regard to the said amount of Rs. 1,52,29,171/-, which relates to additional work, it is for the Appellants to initiate action for the recovery of the same in the manner known to law either before the civil court or before any other forum, by establishing that it was in excess to what was agreed upon and accepted.

26. This Court does not want to go into the issue as to whether there was a concluded oral contract or not, with respect to the supplementary/additional work.

27. The contention of the Appellants that as per clause 67 of the contract, the Respondent -Contractor has to only go before the Dispute Page 16/22

Redressal Committee cannot be accepted as; i. Clause 67 mandating, the dispute if any is to be referred and adjudicated by the Dispute Redressal Committee is available only in the contract dated 15.04.2014 and in condition No. 6 of the work order dated 27.03.2013. But there is no dispute in/with respect to the said contract either in relation to the fixation of the amount or the outstanding amount due and payable by the

Appellants;

ii. With regard to the supplementary work, there is no written contract even according to the TWAD board or even any work order containing such a clause.

iii. Even according to the Appellants, as per the tabular column filed by it, after deducting the said amount of Rs. 1,52,29,171/-, with respect to the additional supplementary work, still the Appellant-TWAD Board is liable to pay Rs. 2,69,20,692/ which it is withholding unduly with a view to force the contractor to enter into a written agreement for the supplementary/additional work for lesser value. This is completely unfair.

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28. As rightly pointed out by the Learned Senior Counsel for the

Respondent except the Writ Petition in No. 20805/2018, which was withdrawn to agitate the said issue in the WP. No. 2673/2023, the minutes of the meeting dated 06.04.2017 of the Dispute Redressal Committee (with reference to the communication of the Contractor dated 04.08.2017) and the consequential communication of the Executive Engineer dated 08.12.2017 and the letter of the Executive Engineer dated 12.12.2018, the Order of the Writ Court in WP. No. 16018/2018 and the subsequent proceedings of the Dispute Redressal Committee dated 25.02.2022 all relate to the additional work and not to the outstanding dues of the work Order dated 27.03.2013 and the written contract/Award dated 15.04.2014.

29. Therefore, we hold that the Respondent is entitled to the undisputed

sum of Rs. 3,97,62,601/- being the final bill amount and 5% retention amount of the Work Order dated 27.03.2013 and the Contract dated 15.04.2014. The Appellants are directed to release the same forthwith the said amount along with the bank rate of interest applicable from time to time till the said amount Page 18/22 is paid by the Appellants.

30. The respondent is at liberty to work out their remedy, as advised, in manner known to law. Accordingly the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed. (J.NISHA BANU J.) (M.JOTHIRAMAN J.) 20-08-2025 nvsri

To 1.The Chief Engineer, (A/C) TWAD Board No. 30, Bharathi Park Road, Siruvani Nagar, Coimbatore 641 043 2.The Superintending Engineer TWAD Board Coimbatore 3.The Executive Engineer TWAD Board Sewerage Division Pollachi  
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**J. NISHA BANU, J.**

AND

**M.JOTHIRAMAN, J.**

The matter is listed today under the caption for being spoken to.

2. It is submitted by the learned Senior counsel appearing for the

respondent that there is little bit of ambiguity in para number 29 result portion of the order dated 20.08.2025. It is stated that the direction to the appellants to release the undisputed final bill amount along with the bank rate of interest applicable from time to time till the said amount is paid by the appellants, is concerned, rate of interest applicable from time to time from the date of entitlement till the said amount is paid by the appellants, is to be added.

3. The learned Senior counsel appearing for the appellant was also heard on the above submissions.

4. We agree with the submission of the learned Senior counsel appearing for the respondent. Accordingly, para 29 shall be corrected by inserting the words from the date of entitlement as shown below:- Page 20/22

The Appellants are directed to release the said amount along with the bank rate of interest applicable from time to time from the date of entitlement till the said amount is paid by the Appellants.

5. Registry is directed to issue corrected order to the parties forthwith. [ J. NISHA BANU, J.] [M.JOTHIRAMAN, J.] 24.09.2025 nvsri Page 21/22

**J. NISHA BANU, J.**

AND

**M.JOTHIRAMAN, J.**

24.09.2025 Page 22/22

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