

**(1996) 01 MAD CK 0055**

**In the Madras High Court**

**Case No :** W.A. No"s. 929 and 930 of 1995, and W.P. No"s. 12563 and 12564 of 1995

Tamil Nadu State Construction Corporation Ltd.

APPELLANT

Vs

J. Banu and etc.

RESPONDENT

**Date of Decision :** 10-01-1996

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** AIR 1996 Mad 466

**Hon'ble Judges :** K.A. Swami, C.J.;Kanakaraj, J

**Bench :** Division Bench

**Advocate :** A.L. Somayaji, For M/s. Aiyar and Dolia, S.M. Longanathan, for the Appellant; V. Ayyadurai and R. Muthukumaraswamy, Govt. Pleader, for the Respondent

## Judgement

K. A. Swami C. J.

1. Both the writ appeals are preferred against the common order dt. 14-8-1995 passed by the learned single Judge in W. Ps. 8466 and 8467 of

1995, as the learned single Judge has issued a direction to the respondent in the Writ Petitions, viz., Tamil Nadu State Construction Corporation

Limited (herein after referred to as "the Corporation") to pass orders as early as possible so that it could avoid further delay in construction work

entrusted to the writ petitioners.

2. In the writ petitions, the petitioners sought for quashing the orders dt. 30-3-1995 passed by the Corporation rejecting the request made by the

writ petitioners for extension of time to complete the work entrusted to them by the Corporation which work was entrusted to it by the State

Government under G.O.Ms. No. 410 P.W.D. dt. 11-3-1993 and G.O.Ms. No. 411

P.W.D. dt. 11-3-1993. Learned single Judge has not only

quashed the orders of the Corporation but has also issued direction to it to reconsider the request of the writ petitioners for extension of time.

Hence, the Corporation has come up in appeal.

3. In the meanwhile, the State Government, which had entrusted the work of construction of Syphon cum Regulator across the Coovam river for

the link canal leading to Chembarambakkam Tank at L.S. 1481 OM, has terminated the same by order in G.O.Ms. No. 694 dt. 23-8-1995. A

copy of that order has also been produced before us and the same is taken on record. Pursuant to the termination of the contract, the Corporation

has in turn terminated the contract given to M/s. Riswana Constructions, 8, Second Street, Perambur High Road, Madras and to one N. K. Jinna,

8, Second Street, Perambur High Road, Madras-12, by communication dt. 26-8-1995 in Ref. No. 1355-C/TO-93 and in Ref. No. 1355-

D/TO/92 dt. 6-9-1995 respectively. Therefore, both of them have filed W.P. Nos. 12563 and 12564 of 1995 respectively challenging the

aforesaid terminations of the contract by the Corporation.

4. It is not in dispute that the respondents in W.As. 929 and 930 of 1995 and the petitioners in W.P. Nos. 12563 and 12564 of 1995 are sub-

contractors of the Corporation for doing a part of the construction work entrusted to it by the Government under G.O.Ms. No. 410 P.W.D. dt.

11-3-1993 and G.O.Ms. No. 411 P.W.D. dt. 11-3-1993 for construction of syphon cum regulator, as referred to above. The Corporation is not

aggrieved by the order terminating the contract given to them under the aforesaid G.O.Ms. Nos. 410 and 411 P.W.D. dt. 11-3-1993. Further, the

termination of the said contract has also not been, and could not have been challenged by the respondents in the writ appeals and also the

petitioner in the writ petitions, because there was no privity of contract between them and the State Government. Once the main contract itself

stands terminated and pursuant to that the main contractor has terminated the sub-contracts, it is not possible to issue any direction to the

Corporation to extend the time for completion of the work. At any rate, they claim any right against the State Government or against the

Corporation for extension of time to complete the work. Apart from this, if there is any other claim, other than this it would be open to them to

agitate the same in accordance with law in the Court of law. Similarly it is open to the appellant Corporation to agitate its rights, if any, against the State Government as well as against the sub-contractors. Whatever it may be, there could not have been any direction in cases like this to the appellant Corporation to consider the request of the sub-contractors for extension of time, though the appellant Corporation may be a "State" within the meaning of Art. 12 of the Constitution of India. By reason of that, relief under Art. 226 of the Constitution of India cannot be granted against the Corporation for the enforcement of the terms of the contract or for the relief against the termination of the contract. Such relief, if any, would be only by way of regular suit for damages and not by way of a petition under Art. 226 of the Constitution of India. At any rate, for the purpose of these cases, it is sufficient to observe that, having regard to the fact that main contract itself has been terminated with which the contractor, viz., the appellant Corporation is not aggrieved, the sub-contractors have no right to agitate the matter in a petition under Art. 226 of the Constitution of India.

5. Accordingly, the writ appeals are allowed and the common order dt. 14-8-1995 passed by the learned single Judge in W.P. Nos. 8466 and

8467 of 1995 is set aside and the writ petitions are dismissed. W.P. Nos. 12563 and 12564 of 1995 are also dismissed subject to the

observations contained in this order. There will be no order as to costs.

6. Order accordingly.