



## **ABSTRACT**

Water Resources Department – Arbitration for the disputes which arose out of and in connection with Contract Agreement for rehabilitation of Kondams, feeder channels, tanks in surplus course of Kaveripakkam Tank under Palar Anicut System in Arakonam Taluk of Vellore District (now Ranipet District) and Rehabilitation of East Main Canal and its structures from LS 6.25 to 51.96 Km under Poiney Anicut in Walajah Taluk of Vellore District (now Ranipet District) – CRP Nos. 2936 and 2937 of 2021 filed by M/s. Prakash Constructions before the Hon'ble High Court of Madras – Final Judgement delivered on 04.02.2022 – Settlement of Arbitration Award of Rs.24.00 Crore - Sanction accorded - Orders issued.

### **Water Resources (S1) Department**

**G.O (2D) No.38**

**Dated 06.06.2022**

சுபகிருது, வைகாசி 23

திருவள்ளூர் ஆண்டு 2053

Read :

1. From the Proprietor, Ms.Prakash Constructions, Malleswaram, Bangalore, Representation, dated. 21.03.2016.
2. Government Letter No. 6802/T1/2016-4, Public Works Department, dated: 07.12.2018.
3. From the Chief Engineer, Water Resources Department, Chennai Region, Chennai, Letter No.OT1/AE3/ Prakash Dispute, dated. 20.01.2020.
4. From the Chief Engineer, Water Resources Department, Chennai Region, Chennai, Letter No.OT1/AE3/ Prakash Dispute, dated. 12.02.2020.
5. Order of the Hon'ble High Court of Madras dated. 04.02.2022 in CRP Nos. 2936 and 2937 of 2021.
6. From the Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai, Letter No. DB/HDO/ Spl.Gr.DO / F-21710 / 2020, dated. 18.03.2022.

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### **ORDER:**

In the reference first read above, the contractor, i.e., M/s. Prakash Constructions, Bangalore has stated that 2 Works in Vellore District were entrusted to his company and due to certain disputes and differences which arose during execution of the works, Awards were made by the Arbitrator in his favour. He has requested payment of the Arbitration amount at the earliest.

2. Regarding the request of M/s. Prakash Constructions, the Chief Engineer, Water Resources Department, Chennai Region, Chennai, in the letter 3<sup>rd</sup> read above, has stated as follows:-

- i. M/s. Prakash Constructions, Bangalore was awarded the Works of Rehabilitation of Kondam Feeder Channels Tanks in the Surplus Course of Kaveripakkam Tank under Palar Anicut System in Arakkonam Taluk of Vellore District vide Agreement No.81/PBC/97-98 for a value of Rs.94.97 lakh and (2) Rehabilitation of the East Main Canal and its Structures from LS 6.25 to 51.96 km under Poiney Anicut in Walajah Taluk of Vellore District vide Agreement No.1 PBC/98-99 for a value of Rs.106.36 lakh. The period of completion as set out in the Lumpsum Contract was 12 months for both works including the monsoon period.
- ii. The Contractor had sought several extensions of time attributing various reasons which were acceded to and both Works were completed with settlement of final bills. The Contractor made various claims including idling charges for the materials and labour and delay in final payment in both the Works which were referred to an Adjudicator appointed in terms of the contract. The Adjudicator denied the claim of the Company. Aggrieved by the order of Adjudicator, the Contractor suomotu appointed one Sole Arbitrator.
- iii. The Sole Arbitrator in both the Arbitration Cases passed Awards favouring the Contractor on 26.06.2009 against which the Department filed Original Petitions before the District Court, Vellore, which were taken on file of the Principal District Judge, Vellore as O.P.Nos. 1/2014 and 2/2014 to condone the delay which was ordered on 01.09.2014.
- iv. The Contractor preferred Civil Revision Petitions before the Hon'ble High Court vide C.R.P.(PD).Nos. 36 and 37 of 2015. The Hon'ble High Court vide Common Order dated 19.02.2016 allowed the Civil Revision Petitions filed by the Contractor and set aside the O.P. Nos.1 and 2 of 2014 of the District Court, Vellore.
- v. In the meanwhile, the Civil Revision Petitions filed by the Department in C.R.P.Nos. 4044 of 2014 & 4036 of 2014 before the Hon'ble Court against the E.P.Nos.27 &28/2011 filed by the Contractor were dismissed by the Hon'ble High Court on 21.02.2017 for the only reason that the then Special Government Pleader was not ready to argue the case.
- vi. Necessary Restoration Petitions were filed before the Hon'ble High Court, which were numbered as Civil Miscellaneous Petition (CMP) Nos.8072 & 8073/2018.
- vii. Review Petitions filed by the Department were also numbered as C.M.P.No.10364 & 10365 of 2016 in R.A.SR.Nos. 26268 & 42187/2016 of the Hon'ble High Court.

viii. The Arbitration Award to both works, if payable to the company for these two works would be (1) Rs.2.89 crore and (2) Rs.1.42 crore, while the contracted value for these Works itself is much less than the amount awarded by the Sole Arbitrator, who did not take into account the conditions of Agreement stipulated explicitly while the Adjudicator admitted the fact that the claim of the Contractor was against the conditions. Adding interest component as per the Awards as on 14.03.2017, the Government has to pay (1) Rs.12.93 crore and (2) Rs.8.70 crore for the above two Works respectively.

3. In the Government letter 2<sup>nd</sup> read above, the Government sought the opinion of the Learned Advocate General and the Advocate General had instructed "to take suitable action for having the Restoration Petitions (CMP Nos. 8072 & 8073 of 2018) listed before the Hon'ble High Court, Madras and adjournment may be obtained in the Hon'ble II Additional District and Sessions Court (Fast Track Court) Ranipet, Vellore District, until the final outcome of pending cases. Also, fresh petitions may be filed before the Hon'ble High Court, Madras in the aforesaid petition, praying for stay of the proceedings of the Hon'ble II Additional District and Sessions Court (Fast Track Court) Ranipet, Vellore District".

4. Following the Learned Advocate General's opinion, along with Learned Special Government Pleader (CS), the CRP Nos.4036/2014 & 4044/2014 (CMP Nos. 8072 & 8073 of 2018) were proceeded in Hon'ble High Court, Madras.

5. The Hon'ble High Court in its judgement dated: 28.01.2019, dismissed the Civil Revision Petition (NPD)Nos. 4036 & 4044 of 2014 and respective Restoration CMP Nos. 8072 & 8073 of 2018 petitions filed by the Department to set aside the order of "Attachment of Government property following the E.Ps. filed in E.P.Nos.27 and 28 of 2011 before the Additional District and Sessions Judge, Ranipet, Vellore by M/s. Prakash Constructions, Bangalore"

6. The Special Government Pleader (CS), High Court of Madras had given his opinion that, "It is a fit case for appeal both in law and on facts in the Hon'ble Supreme Court" by way of an Appeal as expeditiously as possible.

7. As per opinion of the Learned Special Government Pleader, Appeals were filed before the Supreme Court of India in Special Leave Appeal Nos.17508 and 17509/2019 against the Order dated 28.01.2019 in CRP (NPD) Nos.4036 and 4044 of 2018 and CMP Nos.8072 and 8073 of 2018. The Supreme Court of India in its Order dated 05.08.2019 in Special Leave Appeal Petition (C) Nos.17508 - 17569/2019 had passed the following order :-

"Looking into the facts of this case, we are not inclined to interfere with the impugned order passed by the High Court of Judicature at

Madras on merits. However, leave is granted with respect to the limited legal issue of whether objections available to a judgment debtor under the Code of Civil Procedure during the execution of a decree are available to an individual in execution proceedings pertaining to an arbitral award. It is clarified that the respondent is at liberty to proceed with the execution proceedings, unaffected by the grant of leave."

8. The Additional District and Sessions Court (Fast Track Court) Ranipet, after hearing and written argument filed by the both side Counsels, announced judgement on 10.01.2020 as "In the result the objection raised by the respondents about the jurisdiction of arbitral tribunal and about the validity of arbitral award dated 26.06.2009 is not entertained in this EPs by this Court as per orders passed by the Hon'ble High Court, Madras in CRP (NPD) Nos. 4036 / 2014 and 4044 / 2014 dated 28.01.2019 and as per Hon'ble Supreme Court of India in Special Leave Petition (Civil) Nos. 17508 /2019 and 17509 / 2019 dated 05.08.2019. The attachment already effected in respect of item Nos. 1 and 2 is made absolute Attachment item Nos. 3 and 4 by 12.02.2020".

9. The Engineer in Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai had stated that M/s. Prakash Construction Company may move for the attachment proceedings as decreed in E.P No. 27/2011 and E.P No. 28/2011 by the Hon'ble Additional District and Sessions Court, Ranipet, dated 10.01.2020. He also stated that as per the Court order, a sum of (i) Rs.15.11 crore and (ii) Rs.9.86 crore has to be paid to the contractor for the above cases in respect of Arbitration Awards. Hence, he has requested the Government to issue necessary direction in order to avoid the attachment of the Government properties against E.P cases filed by M/s. Prakash Construction company, Bangalore.

10. In the letter 4<sup>th</sup> read above, the Chief Engineer, Water Resources Department, Chennai Region, Chennai has stated that based on the judgement received on 10.01.2020, the opinion of the Special Government Pleader, Madras High Court was sought for on 11.01.2020. The Special Government Pleader suggested that the Government should prefer petition for stay of the attachment orders dated 10.01.2020 passed by the Hon'ble II Additional District and Sessions Court, Ranipet in E.P. Nos. 27 and 28 of 2011 immediately before the Hon'ble Supreme Court.

11. The Chief Engineer, Water Resources Department, Chennai Region has also stated that the Superintending Engineer, Water Resources Department, Pennaiyar Basin Circle, Tiruvannamalai has stated that if the Hon'ble Court finds no reason for plea of the department and the buildings of the Water Resources Department are attached, it may cause embarrassment to Government and may be flashed in the media and press. Also, adding interest component as per the Award as on 12.02.2020, the Government have to pay (i) Rs.15.89 crore and

(ii) Rs.10.37 crore for the above two works and he has requested for necessary financial sanction from the Government to prevent the attachment of the Government property as per order dated 10.01.2020 passed by the Hon'ble II Additional District and Sessions Court, Ranipet in E.P. Nos. 27 and 28 of 2011 filed by M/s. Prakash Construction Company.

12. In the letter sixth read above, the Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai has stated that the Civil Revision Petition Nos. 2936 & 2937 /2021 were admitted by the Hon'ble High Court on 23.12.2021. The Civil Revision Petition Nos. 2936 and 2937 of 2021 filed by M/s.Prakash Constructions came up before the Hon'ble High Court for further hearing and the High Court of Madras in its Order fifth read above have passed the following order :-

.... 7. Therefore, these Civil Revision Petitions are disposed of with a direction to the Government to pay a sum of Rs.24,00,00,000/- in full quit of the awards that are subject matter of the execution proceedings within a period of three months from today. No costs. If the amount is not paid within the three months, the executing Court is directed to number the execution petition without raising any question on maintainability and proceed with the same strictly in accordance with law. Any lenience shown by the Court, because the respondent is the Government would be viewed very seriously by this Court."

The Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai has requested to accord financial sanction to a tune of Rs.24.00 crore for the above 2 Works as per the Court direction on 04.02.2002, so as to prevent attachment of Government Property.

13. The Government after examining the proposal of the Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai for sanction of Rs.24.00 crore towards settlement of Arbitration Award have accorded to accept it. Accordingly, sanction is accorded for Rs.24.00 crore (Rupees Twenty four crore only) towards settlement of Arbitration Award to M/s.Prakash Constructions, Bangalore, for the Work of (i) Rehabilitation of Kondam, Feeder Channels, Tanks in the Surplus Course of Kaveripakkam Tank under Palar Anicut System in Arakonam Taluk of Vellore District and (ii) Rehabilitation of East Main Canal and its structures from LS 6.25 km to 51.96 km under Poiney Anicut in Walajah Taluk of Vellore District, as per Orders passed by the Hon'ble High Court of Madras, Chennai, dated.04.02.2022 in CRP Nos. 2936 and 2937 of 2021.

14. The expenditure sanctioned in para 13 above shall be debited to the following new head of account:-

4700 - Capital Outlay on Major Irrigation 03 - Palar Basin -  
800 - Other Expenditure - State's Expenditure - CA Canals -  
416 Major Works - 01 Major Works

(IFHRMS DPC 4700 - 03 - 800 - CA - 41601)

15. Necessary additional funds of Rs.24,00,00,000/- will be provided in Revised Estimate / Final Modified Appropriation 2022 - 2023. However, this expenditure shall be brought to the notice of legislature by way of Specific Inclusion in the Supplementary Estimate 2022 - 2023. Pending provision of such funds, the Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai is authorized to incur the expenditure sanctioned in para-13 above. The Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai is directed to include the above item of expenditure while sending the budget proposal for Revised Estimate / Final Modified Appropriation 2022 - 2023 and also send necessary draft Explanatory note for inclusion of the expenditure in the Supplementary Estimate 2022 - 2023 to Finance (PW-II / BG-I) Department without fail at an appropriate time.

16. This order issues with the concurrence of Finance 6 Department vide its U.O. No.25464/PW-II/2022, dated.31.05.2022 and Additional Sanction Ledger No.285 (Two hundred and eighty five).

**(BY ORDER OF THE GOVERNOR)**

**SANDEEP SAXENA,  
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.**

To

The Engineer-in-Chief and Chief Engineer (General), Water Resources Department, Chennai-5.

The Chief Engineer, Water Resources Department, Chennai Region, Chennai-5.

The District Collectors, Vellore/ Ranipet.

The District Treasury Officers, Vellore/ Ranipet.

The Pay and Accounts Officer (East), Chennai-8.

The Principal Accountant General (A&E), Chennai-18.

The Principal Accountant General, (Economic and Revenue Sector Audit), Chennai-18.

The Resident Audit Officer, Secretariat, Chennai-9.

Copy to

The Secretary-II to the Hon'ble Chief Minister, Secretariat, Chennai-9.

The Special Personal Assistant to Hon'ble Minister (Water Resources), Secretariat, Chennai-9.

The Finance (P.W.II / B.G.I / B.G.II / W&M-I) Department, Secretariat, Chennai-9.

The Water Resources (OP-II / ISpl.I) Department, Secretariat, Chennai-9.

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**// Forwarded by Order //**

*J. Manikand*  
06/06/2022  
**Section Officer**  
*6/6/2022*