



*W.P.(MD) No.21535 of 2016*

**WEB COPY** BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 05.12.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.P.(MD) No.21535 of 2016  
and  
W.M.P.(MD) No.15391 of 2016**

P.Sheik Dawood

... Petitioner

/vs./

- 1.State of Tamil Nadu,  
rep by its Principal,  
Secretary, Public Works Department,  
Fort St. George,  
Chennai 600 009.
- 2.The Principal Secretary to Government of Tamil Nadu,  
Highways and Minor Ports Department,  
Fort St. George,  
Chennai 600 009.
- 3.The Director General,  
Highways Department,  
HRS Complex, Guindy,  
Chennai 600 032.
- 4.The Chief Engineer (General),  
Highways Department,

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HRS Complex, Guindy,  
Chennai 600 032.

5.The Superintendent of Engineer (H)/C&M,  
Highways Department,  
C&M Circle,  
P.B.No.149, Tirunelveli 627 001.

6.The Divisional Engineer, (C&M),  
Highways Department,  
322A, Railways Feeder Road,  
Thenkasi.

7.The Divisional Engineer (C&M),  
Highways Department,  
Tuticorin Ettyapuram Road,  
Polpettai,  
Tuticorin -2.

8.The Senior Deputy Accountant General,  
(Economic Sector-I),  
Office of the Principal Accountant General,  
(Economic Sector – I)  
Chennai 600 018.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring that G.O.Ms.No.101, Public Works (G. 2) Department, dated 10.06.09 issued by the first respondent herein, has become invalid, out dated and expired in so far as petitioner's concerned.

For Petitioner : Mr.S.Hameed Ismail  
For R1 to R7 : Mr.R.Suresh Kumar  
Additional Government Pleader  
For R8 : Mr.P.Gunasekaran



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### **ORDER**

The writ petition has been filed seeking declaration that the Government Order in G.O.Ms.No.101, Public Works (G.2) Department, dated 10.06.09 issued by the first respondent herein is invalid, out dated and expired in so far as petitioner is concerned.

2. The learned counsel appearing for the petitioner would submit that the Government had issued G.O.Ms.No.101, Public Works (G2) Department, dated 10.06.2009 evolving a new policy of Price Adjustment Mechanism in respect of construction works by amending the earlier Government Order in G.O.Ms.No.60, Public Works (G2) Department, dated 14.03.2008.

3. He would contend that the above Price Adjustment Mechanism was to be put on trial and reviewed after one year from the date of implementation. He would further submit that there has been no review of the said mechanism and therefore, the said mechanism envisaged under G.O.Ms.No.101, Public Works (G2) Department, dated 10.06.2009 cannot be extended in perpetuity without a review being made by the Government.

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4. To support his contention that there has been no review or any extension of the said Government Order, he had placed reliance upon the RTI information that had been given to the petitioner by the Public Information Officer/Deputy Chief Engineer (Buildings), Public Works Department, Chennai.

5. He would submit that the information provided would reveal that the aforesaid Government Order has neither been extended specifically nor withdrawn. However, the same is being followed without modification. When that be so, without review or extension, the said Government Order should not be continued to be followed and therefore, he would pray this Court to declare the said Government Order as being invalid, outdated and expired atleast insofar as the petitioner is concerned.

6. Countering his arguments, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 would submit that it is a policy decision taken by the Government and had been followed consistently. Therefore, he would submit that it is an implied understanding that



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the policy had been extended. He would further submit that the petitioner having entered into an agreement on the said policy mechanism cannot insist that the said Government Order to be declared as invalid and expired.

7. He would further contend that the Government Order does not envisage that it will be only put on trial for one year and it is a wrong notion that has been conceived by the petitioner. Hence, he would seek this Court not to interfere with the Government Order, which had been followed.

8. The primordial contention of the petitioner is on the basis of Clause (5), particularly the term “the above Price Adjustment Mechanism can be put on trial and reviewed after one year from the date of implementation”. The Government by G.O.Ms.No.60, Public Works (G2) Department, dated 14.03.2008 had evolved a Price Adjustment Mechanism, which had been followed in the issuance of the Government Order in G.O.Ms.No.101, Public Works (G2) Department, dated 10.06.2009, While the Government took a policy decision to amend the Government Order in G.O.Ms.NO.60, by framing a new policy had also consciously taken a decision that the said Price Adjustment Mechanism will be



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only on trial for a period of one year and further course of action will be taken based upon the review after one year.

9. Even though a detailed counter affidavit has been filed by the respondents, I do not find any averment indicating that the Government after the period of one year of its implementation had reviewed the said Price Adjustment Mechanism for continuing to follow the very same Price Adjustment Mechanism that was evolved under G.O.Ms.No.101. This is also substantiated by the reply given to the petitioner under the RTI Act which reads as follows:

*“1. Technical opinion/remarks/modifications to G.O.(ms) No.101 PW (G2) Department, dt. 10.06.2009 were requested by*

*(1) Chairman and Managing Director, Tamil Nadu Water Supply & Drainage Board, Chennai-5. (vide D.O.Lr.No.F.Price Adjustment/JDO/COM/2009 dt.14.08.2009 addressed to Secretary to Government, MA & WS Department)*

*(2) Principal Secretary/Managing Director, CMWSSB Chennai -2 (vide lr.No.CMWSSB/CNT/Price Adjustment/2011-12 dt. 06.04.2012)*



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2. *The recommendation by the Secretary to Government, MA & WS Department is awaited on the TWAD Board request. And the remarks on the CMWSSB reference, is under active study in this office.*

3. *The trial period of 1 year specified in G.O. dt. 10.06.2009 has not been neither extended specifically nor withdrawn. Hence, the G.O. is now being followed without any modification.”*

10. In view of the categorical terms of the Government Order extracted supra and the reply given by the Public Information Officer under the RTI Act, I am of the view that the Government Order cannot be pressed into service beyond the period of one year of its implementation. In such view of the matter, I have no hesitation in declaring the said Government Order to be in-operative after a period of one year, as no review had been made by the Government of the Price Adjustment Mechanism evolved under G.O.Ms.No.101, Public Works (G2) Department, dated 10.06.2009.

11. In fine, the Writ Petition stands allowed and the Government Order in G.O.101 is declared to be ineffective after the period of one year from the date of



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implementation of the said Government Order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No  
Internet : Yes / No  
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**K.KUMARESH BABU, J.**

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