



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A(MD)No.1022 of 2016

and

C.M.P(MD)Nos.6221 and 6222 of 2016

S.Muthumari

...Appellant/Petitioner

Vs.

1.The General Manager,
Southern Railway,
Park Town,
Chennai.

2.The Divisional Railway Manager,
Southern Railway,
Madurai - 625 016.

3.The Divisional Railway Manager (Works),
Southern Railway,
Madurai - 625 016.

4.The Divisional Engineer (South),
Southern Railway,
Madurai - 625 016.

...Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 12.04.2016 passed in W.P(MD)No.21732 of 2015.

Prayer in WP(MD). 21732/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire proceedings of the 4th respondents in his proceedings No. U/W.149/MDU/333/2015 dated 23.09.2015 and No. U/W.149/MDU/333/2015 dated 25.09.2015 and quash the same and permit the petitioner to complete construction works as per the Letter of Acceptance dated 27.5.2015 and Agreement for work dated 3.8.2015 executed by the 4th respondent by extending the time of completion of the work as stipulated by this Honble Court.

For Appellant

: S.Muthumari

Party-in-person

For Respondents

: Mr.S.Manohar

JUDGMENT

(Judgment of the Court was delivered by
NOOTY.RAMAMOHANA RAO.J.)

This appeal is preferred by the writ petitioner calling in question the correctness of the judgment and order dated 12.04.2016 passed in the writ petition instituted by him.

2. The writ petitioner/appellant is the contractor in whose favour a civil work was awarded by the respondent-Southern Railway, acting through its Divisional Railway Manager (Works), Southern Railway, Madurai - the third respondent herein. The fourth respondent has passed the impugned order on 25.09.2015, rescinding the contract awarded to the writ petitioner. The essential reason assigned for taking recourse to such an action was that in spite of serving the 48 hours notice on 23.09.2015, the contractor has not commenced the work.

3. It is not in dispute that on 16.09.2015, the fourth respondent has drawn a notice bringing out that the work in question was awarded to the writ petitioner on 26.02.2016, which required the work to be commenced immediately and completed within its currency of period, but, it is asserted that the contractor has not commenced the work and as a consequence, he has not shown any progress. Therefore, the said notice was drawn in accordance with clause 62 of Standard General Conditions of Contract, providing him seven days duration for showing adequate progress of the work. Admittedly, the said seven days notice drawn on 16.09.2015, by the fourth respondent has been despatched by registered post on the same day to the writ petitioner at his address at 5/599, Railway Station Road, Tiruchuli - 626 129. That registered letter has been received by the Post Office at Tiruchuli on 19.09.2015, as is evident from page 44 of the paper book filed in this appeal. The relevant portion of clause 62 of the Standard General Conditions of Contract, reads as under:

"Then and in any of the said Clause, the Engineer on behalf of the Railway may serve the Contractor with a notice (Proforma at Annexure-IX) in writing to that effect and if the Contractor does not within seven days after the delivery to him of such notice proceed to make good his default in so far as the same is capable of being made good and carry on the work or comply with such directions as aforesaid of the entire satisfaction of the Engineer, the Railway shall be entitled after giving 48 hours' notice (Proforma at Annexure-X) in writing under the hand of the Engineer to rescind the contract as a whole or in part or parts (as may be specified in such notice) and after expiry of 48 hours' notice, a final termination notice (Proforma at Annexure-Y) should be issued and adopt either or both of the following courses:"

(emphasis is played now)



4. From a reading of the above, it is clear that the Southern Railway shall be entitled to take action against the contractor if he does not, within seven days after the delivery to him of such notice, proceed to make good his default. Therefore, further notice of 48 hours, could have been drawn only after the contractor fails to make good the deficiency pointed out within seven days period, provided from the date of delivery of the notice to him. Whereas in the instant case, the fourth respondent has drawn 48 hours notice through his proceedings dated 23.09.2015. In doing so, the fourth respondent has calculated seven days straight away from 16.09.2015, the date on which he has drawn the proceedings, but not from the date of delivery of the said notice to the contractor. Because 48 hours notice, dated 23.09.2015, has been tendered, the impugned order of rescinding the award of contract has been passed on 25.09.2015. Thus, it is clear that the process initiated by the fourth respondent is not in accordance with the stipulation contained in the Standard General Conditions of Contract, particularly, clause 62, as referred to above. Seven days period would only expire on 25.09.2015 as the said seven days period has to be reckoned not from 16.09.2015, but only from 19.09.2015, the date on which, the said notice of seven days is delivered to the contractor. For this error of the fourth respondent, which has vitiated the 48 hours notice drawn by him on 23.09.2015 and also the impugned order passed on 25.09.2015, we set aside the notice of 48 hours drawn by the fourth respondent on 23.09.2015 and the impugned order passed by him on 25.09.2015 and remand the matter back for consideration afresh to the respondents. We will leave it open to the respondents to act in furtherance of the notice drawn by them on 16.09.2015 only in the event, the writ petitioner/contractor has not shown any progress of work after measuring the work undertaken by him in his presence.

5. Accordingly, this writ appeal stands allowed to the extent indicated above. No costs. Consequently, the Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
1.The General Manager,
Southern Railway,
Park Town,
Chennai.



2.The Divisional Railway Manager,
Southern Railway,
Madurai - 625 016.

3.The Divisional Railway Manager (Works),
Southern Railway,
Madurai - 625 016.

4.The Divisional Engineer (South),
Southern Railway,
Madurai - 625 016.

+1cc to M/s.P.Pethu Rajesh, Advocate in SR.34317

+1cc to M/s.S.Manohar, Advocate in SR.34597

W.A(MD) No.1022 of 2016

and

C.M.P(MD) Nos.6221 and 6222 of 2016

30.06.2016

rsb

PBK/NGM-MP 13/07/2016 ::4P-7C::