IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.16000 of 2019
and W.M.P.No.15768 of 2019

M/s.Altair Power Private Limited,
rep.by its Director ... Petitioner

Versus

1. The Managing Director,
   Tamil Nadu Generation and
   Distribution Corporation Ltd.,
   10th Floor, NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

2. The Chief Engineer,
   Tamil Nadu Generation and
   Distribution Corporation Ltd.,
   4th Floor, NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

3. The Chief Manager,
   State Bank of India,
   Wazirpur Branch,
   Wazirpur Industrial area,
   Delhi-110 052. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorari to call for the records relating the cancellation and short closure of the contract order by the 2nd respondent vide Lr.No.CE/MM/SE/MMI/EES/AEEE2/F.RC No.37 dated 24.06.2016 / D.228/19 dated 24.05.2019 and quash the same.

For Petitioner : Mr.Gowthaman
for M/s.Ayana Legal

For R1 & R2 : Mr.S.K.Rameshwar
Standing counsel

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O R D E R

Heard the learned counsel for the petitioner and the learned Standing counsel for the respondents 1 and 2.

2. The petitioner herein, who is running a Small Scale Industries has entered into a contract with the respondent for the supply of 300 KM of cable. The grievance of the petitioner herein is that after entering the contract for the supply of 300 KM of cable, they have supplied cable around 212.829 KM. Despite supplying more than 2/3rd of the contract requirements, the respondent herein, which is supposed to pay for the material supplied within reasonable time, did not adhere to the terms of the contract. Contrarily, passed the impugned order dated 24.05.2019, alleging that there is a short fall of supply, therefore the contract is closed and the petitioner is liable to pay a sum of Rs.71,38,617/- towards short closure of the above rate contract order within 15 days from the date of the letter. The petitioner was also intimated that the bank guarantee furnished by the petitioner for a sum of Rs.48,01,320/- will also be invoked and adjusted towards penalty.

3. The contention of the petitioner that this impugned order is per se, illegal, ultra virus and contrary to the terms of contract. The case of the petitioner is that he has supplied the goods to the respondent immediately after the conclusion of the contract and the supply was in full satisfaction of the respondent as per the schedule. While so, the respondent herein who is supposed to pay for the goods supplied as per the terms of the contract mentioned in clause 5, failed to pay the money within the reasonable time and in fact the first payment came from the respondent only after 252 days of the supply. This made the petitioner company to face severe financial constrain. Despite that, the petitioner continued to supply the cable to the best of its ability with the available finance. While so, due to introduction of GST regime on 01.07.2017 the petitioner faced further difficulty in supply. Therefore, the petitioner company made request to the respondent to regularize the delivery period and he will complete the full supply within four months period and also agreed to supply the goods on the same rate, despite change in the tax structure. However, without considering the request, the respondent has passed the impugned order.

4.In the counter filed by the respondent, it is submitted that the supply for the contract should have commenced from July 2016 and completed before 23.05.2017. The rate of goods supposed to be on the firm rate of Rs.2,65,000/- per KM; 12% excise duty; 2% CST and proportionate freight and insurance charge and all inclusive price of the contract was fixed at Rs.3,20,087.50/-.

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The petitioner has not completed the contract before 23.05.2017 and therefore, as per the terms of the contract, the respondent is entitled to invoke the bank guarantee and levy penalty for short supply and proceed to recover the damages. Supply of power cable is very crucial and necessary for maintaining the distribution of power supply to the end-consumers. The short supply and delay supply of material had caused inconvenience to complete the project and the last consignment supplied by the petitioner for 10.175 KM was of very poor quality. Hence, it was rejected. The petitioner herein has taken back the poor quality cables on 06.06.2019. The writ petition is filed on untenable grounds having to cause loss to the TANGEDCO. The petitioner has come before this Court seeking relief contrary to the terms of contract and against the public interest. Hence, the status quo granted by this Court earlier should be vacated and the writ petition is liable to be dismissed.

5. Today, when the matter is taken up for hearing, the learned counsel for the petitioner has furnished the statement of bills raised by the petitioner's company and the payment made by the respondent. From the statement, it is very obvious that the petitioner herein has started supplying cable as per the terms of contract from 20.08.2016. After supplying cable for nearly 30 KM, the first payment from the respondent was received by the petitioner on 30.04.2017, with delay of 252 days. Despite the delay in payment, the petitioner continued to supply cables on regular intervals. However none of the payment for the respondent was made within the reasonable time. The shortest time taken by the respondent for payment is 112 days. As of today the last payment for the cable supplied by the petitioner except the cable for 10.175 KM which is under dispute, the amount towards the supply was made after delay of 139 days. Clause 5 of the contract reads as below:-

> "(a)For the materials delivered within the contractual delivery period.
>
> 100% of the All inclusive price(including Central Sales Tax) of the materials supplied in each consignment will be paid in Central Payment, Chennai-2, within a reasonable time on receipt of materials in good condition at site against the bills passed by the Superintending Engineer/Materials Management-I based on the following after deducting recoveries if any.
>
> 1)The copy of the SRB sent by the respective consignee Circle/Stores.
>
> 2)Receipt of the Contractors bills in quadruplicate.
>
> 3)Central Excise invoice in proof for having paid the Excise Duty and
>
> 4)All other terms and conditions such as approval of test Certificates, etc as satisfied.

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(b) For the materials delivered beyond the contractual delivery period.

100% of the all inclusive price of the materials (including Central Sales Tax) after deduction of LD for each consignment and other recoveries if any, will be paid within a reasonable time on receipt of materials with accessories in good condition at site and submission of bills with required documents.

5.2.Payment will not be made for cable damaged during transit. All defective cable shall be replaced by supplier free of cost."

6. From the facts of the case, it appears that the respondent herein has not paid for the goods supplied neither within the contractual delivery period. If the petitioner deliver material beyond the contractual delivery period the respondents are not liable to pay interest. The respondent taking advantage of the said clause had unreasonable delayed payment. The payment made by the respondent as per the detail furnished by the petitioner clearly shows that for the contract runs for the period of 11 months starting from July 2016 to May 2017, 2016 to 2017 payments have been made with the delay of not less than three months. This can not be considered as the payment within reasonable time.

7. Be that as it may, when the payment for supply being substantially delayed, the respondent herein ought to have taken a considered view to re-schedule the supply period and pass appropriate orders on the representation given by the petitioner seeking four months time to complete the contract. The respondent has miserably failed to exercise the power and consider the request, contrarily passed the impugned order expressing their intention to invoke the bank guarantee and also to levy penalty for short supply. The said order is on the face arbitrary and illegal without considering the fault of the delay payment committed by the respondent. It appears the respondent wants to take advantage of their own fault and penalize the petitioner.

8. Therefore, the impugned order of the second respondent dated 24.05.2019 is quashed. The parties are at liberty to workout their remedy as per the terms of contract, if the representation of the petitioner for extension is not considered.

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9. In the result, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Managing Director,
   Tamil Nadu Generation and Distribution
   Corporation Ltd.,(TANGEDCO),
   10th Floor, NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

2. The Chief Engineer,
   Tamil Nadu Generation and Distribution
   Corporation Ltd.,(TANGEDCO),
   4th Floor, NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

3. The Chief Engineer,
   State Bank of India,
   Wazirpur Branch,
   Wazirpur Industrial Area,
   Delhi - 110 052

+2 ccs to M/s.Ayana Legal, Advocate, S.R.No.52570

+1 cc to M/s.S.K.Raameshhuwar, Advocate, S.R.No.51883

W.P.No.16000 of 2019

CP(CO)
SSM(01/08/2019).

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