

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.22419 of 2019

Emmess Control (P) Ltd.,
Rep.by its Authorized Signatory
having its Registered office at
No.71, Usman Road
1st Floor, T.Nagar, Chennai 17.
...Petitioner

Vs

1.The Chief Engineer/Transmission,
TANTRANSCO,
6th Floor, NPKRR Maligai,
144, Anna Salai, Chennai-600 002.

2.The Superintending Engineer/TR-II,
TANTRANSCO,
6th Floor, NPKRR Maligai,
144, Anna Salai, Chennai-600 002.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to extend the Delivery Schedule in consonance with Commercial Clause 9.1 of the Purchase Order dated 04.12.2018.

For petitioner : Mr.S.Mukunth
M/s. Sarvabhuman Associates

For Respondents : Mr.Abdul Saleem
Standing counsel

ORDER

The prayer in the writ petition is to issue a Writ of Mandamus directing the respondents to extend the Delivery Schedule in consonance with Commercial Clause 9.1 of the Purchase Order dated 04.12.2018.

2. The learned Standing counsel for the respondents brought to the attention of this Court that the petitioner sought for amend the Commercial Clause 9.1 of the Purchase Order and the same was rejected by the 1st respondent vide communication dated 10.05.2019 and further representation given by the petitioner was also considered and rejected vide communication dated 22.05.2019, for the very same relief. The petitioner has approached this Court without challenging the said communication. The request of the petitioner herein in the said Writ of Mandamus has already been considered and rejected on merits by a speaking order dated 10.05.2019 and further representation has also considered and rejected vide communication dated 22.05.2019 and therefore, Writ of Mandamus not maintainable.

3. Considering the submissions made by the learned counsel for the petitioner as well as the learned Standing counsel for the respondents, the petitioner herein seeks indulgence of this Court to alter the agreement Clause, which is not within the scope of this Court jurisdiction. Further, even to issue a Mandamus, the demand made by the petitioner herein has already been considered by the respondents herein and rejected. The reason for rejection has also been stated in the communication dated 10.05.2019.

4. In the light of the order passed by the 1st respondent dated 10.05.2019 and reiterated subsequently by communication dated 22.05.2019, mandamus to consider the very same request is not sustainable. The order of the 1st respondent dated 10.05.2019 after considering the representation and the default committed by the petitioner herein, the 1st respondent order reads as below:

"5. In view of the above it is informed that your request for amendment of indent for 60 days from date of accepting your request is not feasible of compliance as there is no delay on TANTRANSCO end as already informed vide this office lrs.Dt.(5),(7) & (12). It is also informed that all these delays could have been avoided if you, being a regular supplier complied PO Technical. Clause 15.1 & 15.2 correctly and furnished drawings in complete shape at the first instance.

Hence, it is requested to furnish the type test report for Determination of Errors test on all ratios immediately as per specification before offering inspection of 1st lot of equipment, without affecting delivery schedule and without any additional charges to TANTRANSCO as per Technical Clause:17.0. Type test of subject POTR for scrutiny and also offer inspection

immediately as the above equipment is required urgently."

5. In such circumstances, the prayer in this writ petition to extend the delivery schedule amounts to after the terms of contract, which has already been considered and rejected. Hence, the writ petition is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rpl
To

1.The Chief Engineer/Transmission,
TANTRANSCO,
6th Floor, NPKRR Maligai,
144, Anna Salai, Chennai-600 002.

2.The Superintending Engineer/TR-II,
TANTRANSCO,
6th Floor, NPKRR Maligai,
144, Anna Salai, Chennai-600 002.

+1 CC to M/s. Sarvabhuman Associates sr 65582

Writ Petition No.22419 of 2019

PM(CO)
SP(04/09/2019)

WEB COPY