

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.10.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.23943 of 2019
and
W.M.P.No.23792 of 2019

P.Meeraza

...

Petitioner

Versus

1. The Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002
Represented by its
Chief Engineer (Civil Designs)
 2. The Superintending Engineer (Civil Designs & Hydro Projects),
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.
 3. The Superintending Engineer / Civil,
Tuticorin Thermal Power Station,
Tuticorin - 628 004.
- Respondents

PRAYER:-Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent made in Lr.No.SE/Civil/TTPS/DB/EA/F.Audit/D.221/2018/2018 dated 25.01.2018 and quash the same and further direct the respondent to pay the retained amount of Rs.95,12,567/- with interest from 27.03.2018.

For Petitioner ..

Mr.B.Kumar,
Senior Counsel
For Mr.T.Sudhanraj

For Respondents..

Mr.S.K.Rameshwar,
Standing Counsel

O R D E R

The petitioner herein has filed this Writ Petition seeking Certiorarified Mandamus, calling for the records of the 3rd respondent made in Lr.No.SE/Civil/TTPS/DB/EA/F.Audit/D. 221/2018/2018 dated 25.01.2018 and quash the same and further direct the respondent to pay the retained amount of Rs.95,12,567/- with interest from 27.03.2018.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The short point involved in this Writ Petition is that the petitioner being the successful bidder for the work of "Sand blasting and Epoxy based protective coating to the steel structural members of Boiler and Mill plant area in Unit IV & V at Tuticorin Thermal Power Station" has completed the contracts to the satisfaction of the respondent.

4. However, the respondent has not returned the Earnest Money Deposit of Rs.9,26,000/-, the Security Deposit cum Performance Guarantee Rs.47,56,700/- and the Bank Guarantee for Rs.38,30,700/- altogether a sum of Rs.95,12,567/- which is payable to the petitioner after satisfactory completion of the contract. Hence, the petitioner has filed this Writ Petition.

5. The respondent has filed counter affidavit stating that the petitioner while executing the works contract has used the diesel operated air compressor, instead of electrically operated air compressor. Hence, Audit has objected the payment to the petitioner. So, a sum of Rs.95,12,567/- has been retained. It is also stated that the respondent has wrote to the Audit Department to drop the objection and awaiting positive reply. So that the amount can be paid to the petitioner. Once the Audit Department drops the objection, the amount will be paid.

6. The learned Senior counsel for the petitioner would submit that there is no violation of any terms of the contract and the petitioner has utilized electrically operated air compressor only pursuant to the terms of the contract which specifically permits the contractor to utilize the water and power supply by the TANGEDCO. The respondents are also aware of the said fact and that is why, they have sought for the withdrawal of the audit objection. But even after lapse of more than one year, there is no positive response from the Audit Department.

7. The relevant clause in the contract is as follows:-

3.34.0 WATER SUPPLY AND POWER SUPPLY

Water and Power required will be issued by TANGEDCO.

3.34.1:- The electricity charges will be collected as per appropriate L.T commercial tariff notified by the Hon'ble Tamil Nadu Electricity Regulatory Commission from time to time and Water charges shall be collected at the rate of Rs.60/- per 1000 litres at present and will be revised time to time.

a) for any shed provided for site office/stores or any other purpose by the contractor.

b) for any shed allotted on rental basis as fixed by TANGEDCO from time to time the above purpose.

8. The stand of the respondents as stated in the counter affidavit does not carry any justification for retaining the money payable to the petitioner.

9. In the counter, it is stated that "a letter No.SE/CIVIL/TTPSDB/EA/F.AUDIT/D.221/2018 DT.25.01.2018 issued to the contractor for recovery of Rs.1,11,44,567/- based on the TANGEDCO Board audit remarks to recover the inadmissible payment from the contractor towards the difference in cost of utilizing electrically operated air compressor instead of diesel operated air compressor. But no recovery has been made till date."

" The respondents in response to Audit Point, written a detailed letter explaining the rationale behind the use of electrically operated compressor at site instead of diesel operated compressor by comparing the hire charges and has requested the competent authority for dropping the audit point so as to enable release of the retained amount of Rs.95,12,567/- "

"The petitioner was duly informed about the reason for withholding the money and the steps taken by the respondent to clear the audit objection. The petitioner was requested to extend the validity of Bank Guarantee in lieu of security deposit vide letters dated 30.06.2018 & 25.03.2019 and the petitioner after satisfying himself about the contractual obligations has extended the bank guarantee upto 31.03.2019 and subsequently upto 30.09.2019."

"While so, the petitioner has rushed to the Court instead of waiting for the respondents to get clear the audit objection and make the payment."

10. On reading the counter affidavit and the tender clause, this Court finds that the Audit objection for using electrical operated air compressor instead of diesel operator air compressor has no basis. For the said reason withholding a sum of Rs.95,12,567/-for more than one year is unjust.

11. Therefore, this Writ Petition is allowed. The respondents are hereby directed to expedite their proposal send to the Audit Department to drop the Audit objection and re-pay the due payable to the petitioner within a period of twelve weeks from today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

- 1.The Chief Engineer(Civil Designs)
The Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002
Represented by its
Chief Engineer (Civil Designs)
2. The Superintending Engineer (Civil Designs & Hydro Projects),
TANGEDCO,
No.144, Anna Salai,
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3. The Superintending Engineer / Civil,
Tuticorin Thermal Power Station,
Tuticorin - 628 004.

+lcc to Mr.S.K.Rameshwar, Advocate SR.88612
+lcc to Mr.T.Sudhanraj, Advocate SR.88457

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BR(CO)
CB(28/11/2019)