



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD)No.10782 of 2019

and

W.M.P(MD) .No.8229 of 2019

M/s.Shree Ganesh EPC Pvt.Ltd
7/1B2, Main Road,
Near Muppandal Devi Temple,
Aralvolmozhi-629301.
Rep., by its Director,
Mr.S.Ramanathan

...Petitioner

-Vs-

Indian Rare Earths Limited,
(A Government Undertaking)
rep., by its HEAD-MK,
Manavalakurichi-629 252.
Kanyakumari District, Tamil Nadu

...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondent herein to pay a sum of Rs.79,83,404/- (Rupees Seventy Nine Lakhs Eighty Three Thousand Four Hundred and Four only) to the petitioner herein with interest at the rate of 12% per annum.

For Petitioner : Mr.Karthick Ranganathan
For Respondent : Mr.C.Muthusaravanan
for M/s.S.Ramasubramaniam
Associates

ORDER

Heard Mr.Karthick Ranganathan, learned counsel appearing for the petitioner and Mr.C.Muthusaravanan, learned counsel appearing for the respondent.

2.In this writ petition, a prayer has been sought for by way of a mandamus, to direct the respondent to pay a sum of Rs.79,83,404/- (Rupees Seventy Nine Lakhs Eighty Three Thousand Four Hundred and Four only). This amount, according to the petitioner, to be payable by the respondent to the petitioner, as during the course of the contract, he has been terminated, therefore, as a compensation for the work done already by the petitioner/contractor, he wants this money to be paid by the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The dispute arises between the parties cannot be resolved by this Court under Article 226 of the Constitution of India, because



the factual matrix has to be decided only through the appropriate proceedings.

4. In this context, sub-clause 11.2 of Clause 11 of the General Conditions of Contract under the heading "Settlement of dispute" dated 07.03.2016 may be usefully extracted:-

"11.2. All disputes of differences whatsoever arising between the parties out of or relating construction, meaning and operation or effect of this contract or the breach thereof shall be settled an Arbitrator to be appointed by the Chairman & Managing Director of Indian Rare Earths Limited and the Arbitrator has to give a speaking award with reasons for his decision and the same shall be final and binding on both parties. "

5. In view of the aforesaid Clause, there is an arbitration Clause, under which, a sole arbitrator to be appointed by the Chairman-cum-Managing Director of the respondent company, can resolve the issue between the parties arising out of the contract and it is the settled legal position that when there is an arbitration Clause, the parties can be resorted only to approach the Arbitrator to settle the issue between them. In this regard, even approaching the civil Court is barred under Section 8 of the Arbitration and Conciliation Act, 1996. When that being so, this Court exercising power under Article 226 of the Constitution of India, cannot go into the factual matrix of the dispute arises between the parties and therefore, the parties can be relegated to approach the Arbitrator by invoking Sub-Clause 11.2 of Clause 11 of the General Conditions of Contract between the parties.

6. In that view of the matter, this Writ Petition cannot be entertained. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to Mr.KARTHICK RANGANATHAN, Advocate SR-72615.

+1 CC to Mr.S.RAMA SUBRAMANIAM & ASSOCIATE, Advocate SR-72958.

**Order made in
W.P. (MD) No.10782 of 2019**