

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.2506 of 2020

VGN INFRA INDIA PRIVATE LTD

Represented by its Authorized Signatory

Mr.A.Rangappan

No.15, Wallace Garden, 2nd Street,

Nungambakkam, Chennai - 600 006.

..Petitioner

.vs.

1. The Superintending Engineer,
Civil/Thermal Projects,
TANGEDCO, No.144, Anna Salai,
Chennai - 600 002.

2. The Chief Engineer (Projects),
TANGEDCO, 5th Floor, Western Wing,
NPKRR Maligai, No.144, Anna Salai,
Chennai - 600 002.

3. The Deputy Chief Internal Audit Officer,
Board Office, Audit Branch,
North Chennai Thermal Power Station II,
Athipattu, Chennai - 600 120.

.Respondents

[R3 Impleaded as per order dated 18.02.2020 made in WMP.No.4270 of 2020 in W.P.No.2506 of 2020 by PDAJ]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to refund the retention amount of Rs.70,14,114/- collected from the petitioner on each bill at the rate of 5% on the total contract value by accepting the indemnity bond from the petitioner as per the representation of the petitioner dated 01.06.2019 sent to the respondents.

For Petitioner : Mr.C.Seethapathy &
Mr.Gautam S. Raman

For Respondents: Mr.N.Damodaran (R 1 & R2)
Standing Counsel

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the respondents to refund the retention amount of a sum of Rs.70,14,114/- which was collected from the petitioner.

2.The case of the petitioner is that they are engaged in the business of developing property in and around Chennai. The 2nd respondent had invited tenders in the year 2012, for construction of two blocks for permanent quarters for Officers and staffs of TANGEDCO. The petitioner was declared as the highest bidder. The tender was awarded in favour of the petitioner and the petitioner completed the construction work as per the specification.

3.As per the agreement, the respondents have collected a sum of Rs.74,16,400/- as security deposit being 5% of the contract value towards the satisfactory performance of the contract. As per the agreement, this security deposit should be refunded after the expiry of 12 months from the date of completion of the work and issuance of completion certificate by TANGEDCO. This amount was refunded after the completion of the work.

4.The further case of the petitioner is that as per the agreement, respondents were allowed to withhold the amount equal to 5% of the value of work on each bill towards retention amount as an additional security deposit. This retention amount was not repaid back to the petitioner even after completion of the work and even after the expiry of the maintenance period.

5.The petitioner made a representation for the refund of the retention amount. In the meantime, the Chief Engineer of TANGEDCO by proceedings dated 25.10.2018, passed an order to the effect that liquidated damages for the delay in the completion of the work is levied against the petitioner which works out to a sum of Rs.16,35,064/-. According to the petitioner, even if this amount is given credit, the TANGEDCO is due and payable to the petitioner the retention amount of a sum of Rs.70,14,114/-. Since this amount was not refunded, the present writ petition has been filed seeking for appropriate directions.

6.Mr.Gautam S. Raman, learned Counsel appearing on behalf of the petitioner submitted that the Chief Engineer of TANGEDCO while passing the order dated 25.10.2018, has taken into consideration the delay in the completion of the work and has also levied the liquidated damages against the petitioner and the petitioner has agreed to give credit to this amount. Apart from this liquidated damages, there is no other amount due

and payable on the side of the petitioner and therefore the respondents will have to refund the balance retention amount to the petitioner and it cannot be retained on any grounds.

7.The learned Senior Counsel further submitted that the amount is retained by the respondents on the ground that there is an audit objection raised by the 3rd respondent. The learned Senior Counsel brought to the notice of this Court, the letter of the said Chief Engineer dated 17.08.2019, wherein, it was informed to the petitioner that the objection raised by the audit party is contested by TANGEDCO and a detailed reply has also been given requesting for dropping the audit points. The learned Senior Counsel therefore submitted that even after this communication was made as early as on August 2019, till date, the balance retention amount has not been refunded to the petitioner. The learned Senior Counsel therefore submitted that the amount cannot be endlessly retained and more particularly considering the present situation.

8.Per contra, Mr.N.Damodaran, learned Standing Counsel appearing on behalf of the respondents 1 and 2 submitted that the retention amount was not paid to the petitioner only due to the audit objection raised by the audit party. The learned Standing Counsel further submitted that a detailed reply has already been given and the audit party has been requested to drop the audit points. Since the respondents 1 and 2 did not get any response, they are not in a position to proceed further to refund the amount to the petitioner.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.This Court does not find any dispute with regard to the facts of this case. Almost all the contentions raised by the petitioner is borne out by records. It is seen that the petitioner has completed the project and a completion certificate has also been issued by TANGEDCO. In order to substantiate the same, it is seen that the security deposit of a sum of Rs.74,16,400/- was refunded to the petitioner by TANGEDCO. Therefore, there is no doubt that the project has been completed in all respects by the petitioner.

11.The Chief Engineer viz; the 2nd respondent by his letter dated 25.10.2018, has levied liquidated damages to the tune of Rs.16,35,064/- on the ground of delay in completion of the work. The petitioner does not contest this levy that was made by the 2nd respondent and the petitioner is willing to give credit for the liquidated damages levied by the 2nd respondent. According to the petitioner, even if this amount is given credit, the respondents will have to refund a sum of

Rs.70,14,114/- . This amount was withheld as per the agreement which is equal to 5% of the value of the work towards each bill and it is called as retention amount. There is no dispute with regard to the fact that this amount has to be refunded to the petitioner. The only reason why the refund is kept pending is because of some audit objection raised by the 3rd respondent. It is seen from the letter dated 17.08.2019, that the 2nd respondent himself informs the petitioner that the audit objection is contested and already a detailed reply has been given requesting for dropping the audit points. In the considered view of this Court, the amount that is due and payable to the petitioner cannot be kept pending endlessly on the basis of some audit objections raised by the 3rd respondent. In fact this audit objection has not been admitted by TANGEDCO. The matter has been kept in cold storage for nearly one year and the petitioner left with no other option has approached this Court seeking for the refund of the retention amount.

12.This Court is of the considered view that the petitioner is entitled for the refund of the retention amount and it cannot be kept pending on the basis of some audit objection. In fact, the delay in completion of the project has resulted in levy of liquidated damages and the petitioner has also agreed for the said levy. Therefore, the amount of a sum of Rs.16,35,064/- must be given credit and the balance retention amount will have to be refunded to the petitioner. The retention amount cannot be retained any more by the respondents 1 and 2.

13.The 1st and 2nd respondents are directed to refund the retention amount collected from the petitioner as per the representation made by the petitioner on 01.06.2019. The respondents are at liberty to take an indemnity bond from the petitioner and the petitioner themselves have made such an offer in their representation dated 01.06.2019. This process shall be completed within a period of eight weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the respondents 1 and 2 along with a copy of this order.

In the result, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar

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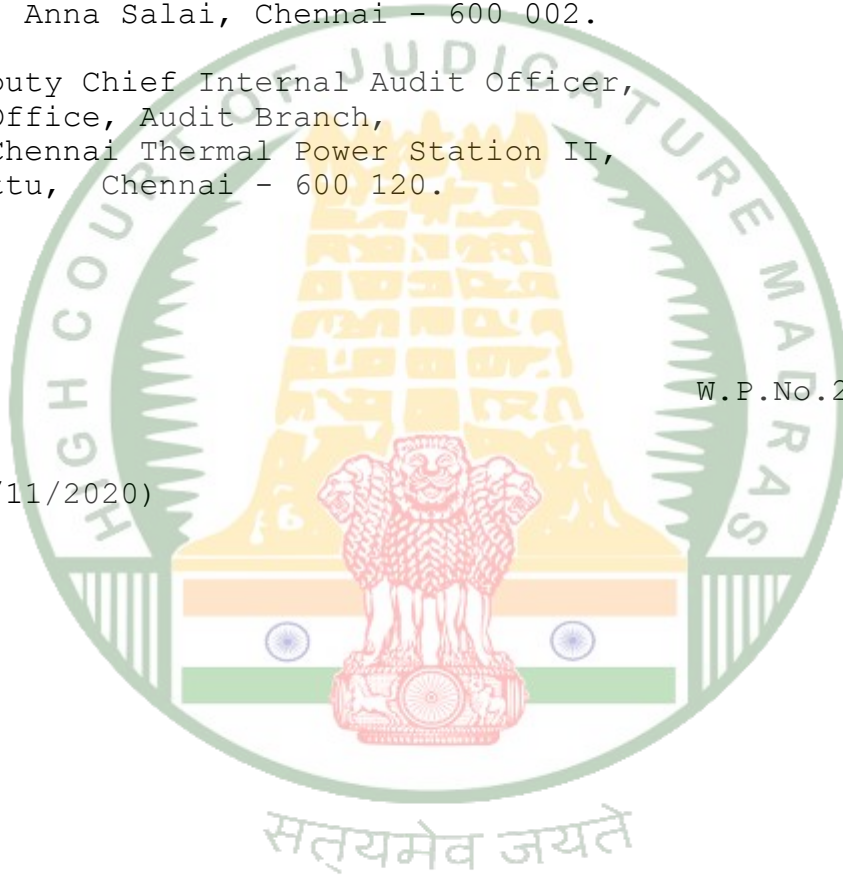
Sub Assistant Registrar

To

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No.144, Anna Salai, Chennai - 600 002.
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North Chennai Thermal Power Station II,
Athipattu, Chennai - 600 120.

W.P.No.2506 of 2020

mr (co)
rr ii (04/11/2020)



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