

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.4670 of 2019

M/s.URC Construction (P) Ltd.,
Rep. by its Managing Director - C.Devarajan
No.119, Power House Road
Erode 638001
Tamil Nadu

...Petitioner
Vs.

1.The Union of India Rep. by its Secretary
Ministry of Human Resources and Development
Department of Higher Education
Technical Section-1
Sastri Bhawan
New Delhi 110 001

2.The Director
National Institute of Technology
Thuvakudi
Trichy 620 015

3.The Special Director General (SR)
CPWD
Rajaji Bhawan
Chennai 600 090

4.The Executive Engineer
Central Public Works Department
Trichy Central Division
NIT Campus
Thuvakudi
Trichy 620015
Respondents

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Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents herein to pay the entire award amount under the Arbitration Award dated 20.09.2017 which came to be corrected by the Arbitrator on 30.10.2017 to the petitioner, pursuant to the

acceptance of the same in proceedings of the 4th respondent in File No.23/(27) (9) TCD/2018/808 dated 28.11.2018.

For Petitioner : Mr.V.P.Sengottuvel
For Respondents : Mr.M.P.Jaisha, CGSC for R1

Mr.G.Rajagopalan, ASGI
Asst. by Mr.K.Srinivasamurthy
CGSC for R2

Mr.N.Rajan, SCGSC for R3 & R4

O R D E R

M/s.URC Construction (P) Ltd., represented by its Managing Director - C.Devarajan has filed the present writ petition in the nature of Mandamus, seeking a direction, directing the respondents to pay the entire award amount under the Arbitration Award dated 20.09.2017, which was corrected by the Arbitrator on 30.10.2017.

2.The writ petitioner, claims to be pioneer Engineering Contractors / Infrastructure Developers in South India. They were established in the year 1956. The Central Public Works Department on 05.10.2009 had issued a Notice inviting Tender for "Item Rate Composite Tenders on behalf of the President of India from Contractors for the work of construction of 01 No. Boys Hostel with 334 Students (Block-X), 200 PG Students Hostel, Faculty Block for Computer Application, Mathematics and English Department, PG Lecture Hall Complex and 'A' Type School Building at National Institute of Technology, Trichy including, S.H. Building Portion including internal water supply Sanitary installations, drainage and internal Electrical installations with an estimated cost of Rs.27,96,02,017/-.

3.The petitioner submitted their tender on 20.10.2009 with the 4th respondent viz., the Executive Engineer, Central Public Works Department, Trichy Central Division, NIT Campus, Thuvakudi, Trichy. The work was to be executed for and on behalf of the National Institute of Technology, viz., the 2nd respondent herein. Negotiations were conducted between the petitioner and the 4th respondent and the final tender was accepted on 25.01.2010 and an agreement was entered into on 08.02.2020 for the construction of (1) PG Lecture Hall Complex, (2) 01 No. of Boys Hostel (Block-X) 334 students capacity, (3) 200 Nos. PG Students Hostel, (4) Type - 'A' Kendriya Vidyalaya school building, (5) Faculty Block for NIT at Trichy. SH:

Building portion including internal water supply, Sanitary installations, drainage and internal Electrical installations for a contract value of Rs.32,61,62,035/-.

4.The petitioner commenced the construction work on 08.02.2010. However, the work could not be carried out by the petitioner due to delay in issuing initial drawings and land clearance. The Central Public Works Department also faced some problems. There was also escalation on costs. These factors led to invoking the Arbitration Clause which was in the Agreement entered into between the parties.

5.Finally on 20.09.2017, an Arbitration award was passed and it was subsequently corrected by the learned Arbitrator on 30.10.2017. By the said award, the Central Public Works Department was directed to pay a total sum of Rs.6,40,25,700/- to the petitioner herein. Till date viz. 04.02.2020 not even a single paise has been paid. Neither the Central Public Works Department has come forward to pay the amount nor the National Institute of Technology had paid any amount to Central Public Works Department to honour the award. It has been a cat and mouse game between the National Institute of Technology and Central Public Works Department. This is regrettable. It is for this reason, even though, Arbitration Act, there is a specific provision, Section 36 to enforce the award, the petitioner had taken recourse to file a petition under Article 226 of the Constitution of India, seeking their valuable remedy granted under the Arbitration award which was sought to be defeated by the internecine quarrels between the Central Public Works Department and National Institute of Technology.

6.The writ petition has been pending for quite sometime and it had been heard on several occasions by my learned predecessor also. Today, the arguments were advanced.

7.Heard Mr.V.P.Sengottuvel, learned counsel for the petitioner, Mr.G.Rajagopalan, the learned Additional Solicitor General for the National Institute of Technology and Mr.N.Rajan, Senior Central Government Standing Counsel for the Central Public Works Department.

8.Professor Mini Shaji Thomas, Director, National Institute of Technology, Mr.P.K.Singh, Special Director General, Project Region, Chennai, Central Public Works Department and Mr.J.Ganesh Ram, Executive Engineer, Trichy Central Division, Trichy, Central Public Works Department are all also present.

9. After hearing parties at some length, I hold that it would only be prudent to dispose the writ petition on the following terms;

(i) National Institute of Technology, shall pay / deposit to Central Public Works Department, now represented in this proceedings by the 4th respondent, the Executive Engineer, Central Public Works Department, Trichy Central Division, NIT Campus, Thuvakudi, Trichy, 75% of the award amount, which amount shall be mutually crystalized by the officials of National Institute of Technology and officials of Central Public Works Department and this amount shall be paid by National Institute of Technology by depositing the same in the Bank account of Central Public Works Department on or before 06.03.2020. It is specifically represented by the learned Additional Solicitor General, that the deposit of 75% must be without prejudice to the right of the National Institute of Technology, to lay a later claim / claims / further claims as against the Central Public Works Department in appropriate proceedings more particularly either by inviting Central Public Works Department to arbitrate the matter or institute a civil suit or invoke any other alternate dispute resolution method.

(ii) On deposit of such 75%, within a period of 7 working days, from the date of such deposit, the Central Public Works Department more particularly, the 4th respondent, the Executive Engineer, Central Public Works Department, Trichy shall pay the said amount to the account of the petitioner viz. M/s.URC Construction (P) Ltd.,

(iii) The petitioner viz. M/s.URC Construction (P) Ltd, shall receive the amount without prejudice to lay further claims / entire award amount including any interest compound or under any head of claim / head of account either through negotiation or in proceedings under Section 36 of the Arbitration & Conciliation Act, 1996 or through any other appropriate proceedings.

10. It is, however, hoped that the Central Government Agencies, particularly, the National Institute of Technology and Central Public Works Department would at the earliest honour the award amount which has already been passed.

11.With the above directions, the writ petition is itself disposed of. No costs. Consequently, the connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary
The Union of India
Ministry of Human Resources and Development
Department of Higher Education
Technical Section-1
Sastri Bhawan, New Delhi 110 001

2.The Director
National Institute of Technology
Thuvakudi, Trichy 620 015

3.The Special Director General (SR)
CPWD, Rajaji Bhawan
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4.The Executive Engineer
Central Public Works Department
Trichy Central Division
NIT Campus, Thuvakudi
Trichy 620015

+1cc to Mr.N.Rajan SCGSC Advocate sr8798
+2ccs to Mr.V.P.Sengottuvel Advocate sr8712
+1cc to Mr.K.Srinivasamurthy SPC sr8800
+1cc to Mr.M.P.Jaisha CGSC sr8920

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