

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD
W.A.No.4192 of 2019

- 1 THE MANAGING DIRECTOR
TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
10TH FLOOR, NPKRR MAALIGAI
144, ANNA SALAI
CHENNAI - 600 002.
- 2 THE CHIEF ENGINEER
TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
4TH FLOOR NPKRR MAALIGAI
144, ANNA SALAI
CHENNAI - 600 002. Appellants
- Vs.
- 1 ALTAIR POWER PRIVATE LIMITED
REP. BY ITS DIRECTOR
No.71, RAJASTHANI UDYOG NAGAR
GT KARNAL ROAD
DELHI - 110 033.
- 2 THE CHIEF MANAGER
STATE BANK OF INDIA
WAZIRPUR BRANCH
WAZIRPUR INDUSTRIAL AREA
DELHI - 110 052. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 24.6.2019 passed by the learned Single Judge in W.P.No.16000 of 2019.

Prayer in WP.No.16000 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorari to call for the records relating the cancellation and short closure of the contract order by the 2nd respondent vide Lr.No.CE/MM/SE/MMI/EES/AEEE2/F.RC No.37 dated 24.06.2016 /D.228/19 dated 24.05.2019 and quash the same.

For Appellants : Mr.D.Krishna Pradeep
for Mr.N.Damodaran
For Respondents : Mr.S.Santhan
for 1st respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.D.Krishna Pradeep, holding brief of Mr.N.Damodaran, learned counsel for the appellant/Corporation and Mr.S.Santhan, learned counsel for the first respondent.

2. In a contract for supply of 300 kms of Cable, the first respondent/writ petitioner, claiming himself to be running a Small Scale Industry, entered into a contract with the appellants, but on account of delayed payments, they could supply 212.829 kms of Cable, as recorded in the impugned judgment. The contract period was eleven months. The first respondent/writ petitioner had furnished a bank guarantee as against the said award of contract, which provided for invoking of the bank guarantee in the event of any default.

3. The impugned order dated 24.5.2019 was passed on the ground that the first respondent/writ petitioner did not abide by the terms of the contract and there was a shortfall of supply, as a result whereof, the first respondent/writ petitioner was called upon to make certain payments good on account of the premature closure of the contract and he was also intimated that the bank guarantee shall also be invoked, to be adjusted towards penalty.

4. A challenge was raised to the said order and the writ petition has been allowed recording a finding on the basis of the pleadings between the parties that there was a delay in payment and the same was also described to be unreasonable. After recording this finding, the learned Single Judge further went on to direct that the appellants should consider rescheduling the supply period to enable the first respondent/writ petitioner to complete the contract and, therefore, after quashing of the order dated 24.5.2019, the representation in this regard was directed to be decided.

5. Learned counsel for the appellants contends that once the default was established and the order had been passed, the first respondent/writ petitioner was bound by the terms of the contract and, therefore, the order dated 24.5.2019 did not require any interference. It is also urged that since the first

respondent/writ petitioner did not respond to the notice that was sent to him, and rather he was demanding an upward revision in the rates, and such a request being not permissible, there was no option for the appellants but to terminate the contract and invoke the bank guarantee.

6. The aforesaid contentions of the appellants may be correct and as a matter of fact, a writ petition challenging the invoking of a bank guarantee is ordinarily not maintainable as held by the Apex Court in Gujarat Maritime Board v. Larsen and Toubro Infrastructure Development Projects Ltd., reported in (2016) 10 SCC 46.

7. Apart from this, this was a dispute of delayed payment of a Small Scale Industry which can be governed by the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, provided the industry falls within the definition of the said Act. In our opinion, the learned Single Judge did not examine either of these two aspects of law and has proceeded to allow the writ petition, but, at the same time, we find that while allowing the writ petition, the learned Single Judge has called upon the appellants to consider and decide the representation.

8. Learned counsel for the appellants submits that no decision has been taken on the representation, whereas learned counsel for the first respondent/writ petitioner submits that the payments which have been delayed, had been demonstrated before the learned Single Judge and he has also furnished a chart to that effect today.

9. We also find from the terms of the contract that the appellants have also included Clause 27.0 excluding the scope of any arbitration or conciliation. This contract was entered on 24.6.2016 long after the promulgation of the 2006 Act, referred to herein above. The authority shall also consider while deciding the representation, if it has not been decided already, about the applicability of the said Act and the consequences thereof.

10. The grievance of the first respondent/writ petitioner of non payment, therefore, cannot be left unaddressed, but the first respondent/writ petitioner, in our opinion, has to approach the appropriate forum either under the 2006 Act or otherwise to establish the allegation of delay on the part of the appellants.

11. In the above circumstances, even though we do not agree with the approach of the learned Single Judge in proceeding to entertain the writ petition for the reasons stated above, we are not interfering with the exercise of discretion, as the appellants have been given the liberty to dispose of the representation in accordance with law.

12. The appeal, therefore, stands disposed of with the aforesaid observations calling upon the appellants to pass appropriate orders on the representation of the first respondent/writ petitioner, as directed by the learned Single Judge within the time specified therein. No costs. Consequently, C.M.P.No.26097 of 2019 is closed.

Sd/-

Assistant Registrar(C.S.III)

/True Copy/

Sub Assistant Registrar

To

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+1 cc to M/s.N.Damodaran, Advocate Sr.No. 13522

+1 cc to M/s.S.Santhan, Advocate Sr.No. 14027

AKM/03.03.2020/4P- 5C /

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