



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.9047 of 2020

and

W.M.P. (MD) Nos.8266, 8268 and 8270 of 2020

K.V.Anilkumar

... Petitioner

Vs.

1.The Hindustan Petroleum Corporation Limited,
Registered Office 17, Jamshedji Tata Road,
Mumbai - 400 020.

Represented by its Managing Director.

2.The General Manager,
Hindustan Petroleum Corporation Limited,
Engineering and Projects Department
Headquarters Office,
Grasham Assurance Building 2nd Floor,
Sir PM Road, Post Box No.198,
Fort, Mumbai - 400 001.

3.The Chief Manager (Project)
Hindustan Petroleum Corporation Limited
Engineering and Projects Department
Madurai New IRD No. 167-172
SIDCO Industrial Estate,
South Face, Kappalur, Madurai - 625 008.

4.The General Manager (Projects)
Hindustan Petroleum Corporation Limited
Grasham Assurance Building
2nd Floor, Sir P M Road,
Post Box No.198, Fort,
Mumbai - 400 001.

5.The Deputy General Manager
Procurement (CPO)
Hindustan Petroleum Corporation Limited
A- 903/1001, Marathon, Futurex,
N.M.Joshi Marg, Lower Parel,
Lower Parel East, Mumbai 400 013.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records leading to the communication No.HPCL/E & P/MDU/KVA/03, dated 22.07..2020 issued by the fourth respondent and quash the same and direct the respondents to permit the petitioner to complete the balance work in a reasonable time in accordance with the letter of acceptance dated 01.02.2019.

For Petitioner : Mr.R.NisterHakeem
For Respondents : Mr.Sridhar

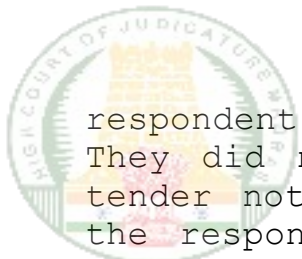
O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel for the respondent/Hindustan Petroleum Corporation limited.

2.The petitioner is a contractor engaged in civil constructions. The petitioner was awarded the contract of carrying out earthwork in railway siding at Madurai. The letter of acceptance dated 01.02.2019 was issued to the petitioner and the petitioner undertook to carry out the works. As per the contract, the petitioner will carry out the contract on or before 30th November 2019. The case of the petitioner is that he could not carry out the contractual obligations, because the respondents have failed to obtain the requisite permission from the railway authorities. The petitioner would claim that the railway authorities prevented him from continuing his work and that therefore, the petitioner called upon the respondents to obtain permission so that he can resume his work.

3.The petitioner states that he applied to the respondents for extension of time. Time was granted till 24.03.2020. In the meanwhile, the petitioner states that he had tried his level best to carry out the work. Due to certain reasons, he could not do so. He sought further extension of time and time was extended till 24.07.2020. The petitioner was confident of completing the work but, Covid-19 Pandemic intervened and that disrupted the entire schedule. The core grievance of the petitioner is that even though the contract was still substing, the respondents chose to issue tender notification for the remaining works and it was issued on 07.07.2020. The petitioner states that the respondents had earlier issued show cause notice on 11.06.2020 and that the petitioner submitted his reply on 18.06.2020.

4.The petitioner expected that the respondents would accept his explanation and drop further proceedings. In any event, if the petitioner's explanation was found to be unsatisfactory, the



respondent should have formally passed an order to that effect. They did not do so. Instead they have chosen to issue a fresh tender notification on 07.07.2020. The petitioner was requesting the respondents to give him a final extension of time till 30th November 2020. In stead of complying with the petitioner's request, the impugned order dated 22.07.2020 came to be passed terminating the contract itself. Questioning the same, this Writ Petition came to be filed.

5.Learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. His primary grievance is that the respondents being a statutory corporation, and a 'state' within the meaning of Article 12 of the Constitution of India, its action should conform to the standard of reasonableness. In this case, according to the petitioner, the respondents have been most unreasonable. The respondents made him to carry out the works, even without obtaining permission from the railway authorities. They have not been honouring the bills of the petitioner.

6.In view of the non cooperative attitude of the officials, the petitioner had suffered immensely. The petitioner's counsel repeatedly harped on the fact that the attitude of the respondents would be evident by the issuance of the tender notification on 07.07.2020 even during the subsistence of the contract. The petitioner's counsel, therefore, wanted this Court to quash the impugned order of termination and allow the writ petition.

7.Per contra, the respondents have filed a detailed counter-affidavit along with a typed set of papers. The learned standing counsel for the respondent took me through materials enclosed in the typed set of papers. He called upon me to dismiss the writ petition as not maintainable.

8.I carefully considered the rival contentions and went through the materials on record.

9.I posed a specific question to the learned Standing Counsel as to what made the corporation to issue a tender notification on 07.07.2020, in respect of the subject matter of the contract when their contractual arrangement with the petitioner was still in force.

10.The learned standing counsel appearing for the respondent submitted that even on the date of passing of the impugned order, that is 22.07.2020, the writ petitioner had completed less than 30% of the works. Thus a substantially large portion of the contractual work still remains to be performed. Even according to the writ petitioner, extension of time had been



granted only till 24.07.2020. By 24.07.2020, it was simply impossible for the petitioner to have completed the balance works. Since this is a high profile and high value contract, being directly monitored by the Ministry, the respondent corporation could not afford to remain quiet and wait for the expiry of the extended period. Since the ground reality was obvious, there was no point in waiting till 24.07.2020 and thereafter, issued the tender notification.

11.He pointed out that the respondents have not acted in a hurried manner. The letter of acceptance is dated 01.02.2019. The original period of contract was to expire in November 2019. It was extended once up to 24.03.2020. It was extended for the second time up to 24.07.2020. Even within the second extended period also, there was no prospect of the petitioner completing the contractual works. Hence the corporation was left with no other option but to go ahead with the notification on 07.07.2020. In fact on 11.06.2020, a show cause notice was issued and the reply given by the petitioner on 18.06.2020 was found to be unsatisfactory.

12.I am satisfied that on the ground of issuance of the tender notification on 07.07.2020, the impugned order cannot be set aside.

13.The petitioner has raised a query that the respondents even without getting the requisite permission from the concerned authorities directed him to commence the works. The learned Standing Counsel refuted the said assertion. The petitioner's counsel would also claim that since the bills were not honoured, the petitioner could not mobilize. This contention is again refuted by the learned standing counsel. Thus the dispute between the parties is mired in factual controversies.

14. Therefore, I am of the view that it is not possible for this Court to adjudicate the dispute in writ jurisdiction. That apart as rightly pointed by the learned standing counsel for the respondent, the agreement between the parties provides for resolving the dispute through arbitration. It is true that the arbitration clause in the agreement cannot oust the jurisdiction of the writ Court under Article 226 of the Constitution of India. But this Court ought to have a sense of self restraint, when this is essentially a case of breach of contract.

15. If the petitioner is of the view that his contract was illegally or unfairly or unreasonably terminated, his remedy lies in filing civil suit for claiming damages. If not, the arbitration remedy is also there. The petitioner can workout all his rights within the four corners of the arbitration clause. Of course my



attention is drawn to the fact that the arbitration will be conducted by the sole arbitrator to be appointed by the appointing authority. The validity of this clause may be open to grave doubt.

16. But then this need not bother or detain me. Suffice it to note that the intention of the parties was to resolve the issue through arbitration. Leaving open the petitioner's rights, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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SR(CO)

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