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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-09-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP NOS.16184 OF 2015
AND 16185 OF 2015

1. M/s.Surya Coach Builders Private Limited (Unit-II),
Represented herein by its Managing Director,
26/14, Abshot Layout,
Sankey Road,
High Grounds,
Bangalore - 560 052.

..Petitioner in WP.No. 16184 of 2015

2. M/s.Surya Coach Builders Private Limited,
Represented by its Managing Director,
26/14, Abshot Layout,
Sankey Road, High Grounds,
Bangalore - 560 052.

..Petitioner in WP.No. 16185 of 2015

VS.

1. Southern Railway,
Represented by its
Deputy Chief Engineer/Stores,
Office of the Chief Administrative Officer,
Construction,
Egmore,
Chennai - 600 008.

2. Assistant Executive Engineer/Cn/St/Ms,
Southern Railway,
Office of the Chief Administrative Officer,
Construction Branch,
Egmore,
Chennai - 600 008.



3. Chief Administrative Officer,
Southern Railway,
Construction Branch,
Egmore,
Chennai - 600 008.

..Respondents

Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Certiorari, calling for the records relating to Order No.W.503/CN/TF/OT/2011-12/333, dated 15.07.2014 passed by the first respondent and quash the same.

For Petitioner : Ms.Pooja
for M/s.Giridhar and Sai.

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railway.

COMMON ORDER

The termination of contract between the petitioner and the respondent-Railway, is under challenge in these writ petitions.

2. The petitioner-Company is registered under the Indian Companies Act, 1956. It carries on the business of manufacturing of, inter alia, elastic rail clips and its plant is located at Andhra Pradesh. It has been manufacturing and supplying elastic rail clips to Indian Railways since 1993 and also dealing with Southern Railways.

3. Pursuant to the tender notice for manufacturing and supplying elastic rail clips (ERC) MK3 to RDSO, as per the specification contained, the petitioner-Company submitted their application.

4. The petitioner-Company was a successful bidder and the contract was awarded in favour of the petitioner. The petitioner sought for the relaxation of conditions imposed for manufacturing of elastic rail clips.



5. The learned Standing Counsel for the respondents states that the delivery period was extended from six months to twelve months as per the request of the petitioner-Company and the second condition was also relaxed subsequently, which is regarding the procurement of railway material from the open market.

6. When both the conditions were relaxed, still the petitioner has not complied with the terms and conditions of the contract. The impugned order states that the petitioner had committed a breach of contractual obligation and failed to supply the elastic rail clips as per the contract.

7. This Court is of the considered opinion that the dispute between the petitioner and the respondent-Railway are relating to the terms and conditions of the contract and the nature of transactions are to be ascertained by conducting an adjudication with reference to the documents and the evidences. Such an adjudication cannot be done in the writ proceedings under Article 226 of the Constitution of India.

8. With reference to the dispute, there is an Arbitration Clause. As per clause 2900(a) of the Arbitration, "in the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the Arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as Arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract".



9. In view of the facts and circumstances, the parties to the lis on hand has to invoke the Arbitration Clause and initiate all necessary steps for resolving the dispute.

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10. With the above observations, the writ petitions stand disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

Svn

To

1. Deputy Chief Engineer/Stores,
Southern Railway,
Office of the Chief Administrative Officer,
Construction, Egmore,
Chennai - 600 008.
2. Assistant Executive Engineer/Cn/St/Ms,
Southern Railway,
Office of the Chief Administrative Officer,
Construction Branch, Egmore,
Chennai - 600 008.
3. Chief Administrative Officer,
Southern Railway,
Construction Branch, Egmore,
Chennai - 600 008.

+2ccs to M/s.Giridhar and Sai, Advocate, S.R.No.49377

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.48920

WPs 16184 and 16185 of 2015

RGM(CO)

RLP(20/10/2021)