



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.23668 OF 2011

AND

M.P.NOS.1 AND 2 OF 2011

N.Shajahan Engg Works & EB Contractor
Rep by its., Proprietor
N.Shajahan,
23/A, Balamurugan Street,
Chetpet - 606 801,
Tiruvannamalai District.

... Petitioner

.Vs.

1. The Chief Engineering/Distribution,
TANGEDCO Ltd. (TNEB)
Chennai South Region,
802, Anna Salai,
Chennai- 600 002.

2. The Superintending Engineer,
CEDC/West
TANGEDCO Ltd. (TNED)
Chennai.

3. Sr. Resident Audit Officer,
Tamil Nadu Electricity Board,
Chennai.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order made in Lr.No:CED/CSR/EEP/AEEP1/F.P.O. No:11/09-10/D 78/2011 dated 23.02.2011 as well as the Lr.No:CED/CSR/EEP/AEEP1/F.P.O.No:11/09-10/D335/2011 dated 25.07.2011 passed by the 1st respondent and quash the same and consequently direct the 1st and 2nd respondents to return the recovered sum of Rs.1,66,530/- (Rupees One Lakh Sixty Six thousand five Hundred and thirty only) to the petitioner with interest.



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For Petitioner : Mr.K.Balaji
For Respondents : Mr.L.Jai Venkatesh
Standing Counsel
[For TANGEDCO]

O R D E R

The orders dated 23.02.2011 and 25.07.2011 are under challenge in the present writ petition.

2. The impugned orders are relating to penalty amount to be paid by the petitioner for violation of the terms and conditions of the contract. The penalty was recovered from the petitioner towards belated supply of materials as per the clause 10.2 of the purchase order.

3. The learned counsel for the petitioner raises the sole ground that no show cause notice was issued to the petitioner providing an opportunity and therefore, the impugned orders are in violation of the principles of natural justice. In the similar circumstances, the Madurai Bench of Madras High Court in W.P.(MD).No.9489 of 2011 passed an order on 01.02.2021, set aside the order and remanded the matter back to the authorities for passing fresh orders by issuing a notice.

4. It is pleaded that the similar order is to be considered in the present writ petition also, in view of the fact that no notice has been issued to the writ petitioner before passing the impugned order.

5. This Court is of the considered opinion that the impugned order of penalty are passed by the respondents based on the terms and conditions of the contract. It is not in dispute that the agreement was signed between the parties. The penalty was imposed towards belated supply of materials. Thus, whether the materials were supplied in time or belated or disputed issues, which all are to be adjudicated for the purpose of granting the relief of this nature. In respect to contractual obligations between the parties, the issues are to be decided. Such an elaborate adjudication cannot be done by the High Court in a writ proceedings under Article 226 of the Constitution of India, as adjudications requires scrutinisation of documents, examination of evidences including oral evidences. It is not as if the petitioner can file a writ petition by simply stating that no notice was issued and therefore, the order, claiming the penalty is to be set aside.

6. Even in the cases, where the matter is remanded back and notice is given and the penalty is again imposed, it requires an



adjudications of issues between the parties as it is a contractual obligation arising from and out of business transactions, more specifically, supply of materials in this case. Mechanical approach of remitting the matter is not preferable and such orders would do no service to the cause of justice. In all circumstances, issues are to be adjudicated and mere remand again will lead to multiplicity of litigation between the parties.

7. In the present case, admittedly, the penalty was recovered towards the belated supply of materials by the petitioner. Thus, writ petition cannot be an appropriate remedy. The counter affidavit filed by the respondents 1 to 3 reveals that clause 10.2 of the purchase order No.11/09-10 dated 10.06.2009, which reads as follows:

"IN CASE OF DELAY IN SUPPLY, THE MATERIALS WILL BE ACCEPTED SUBJECT TO THE FOLLOWING CONDITIONS:

a) There should be no declining trend in prices.

b) Payment will be released as per the latest purchase order rates or lowest rates obtained during the recent tenders opened subject to levy of liquidated damage for belated supplies."

8. The petitioner had agreed to the terms and conditions of the above said purchase order. The petitioner was requested to pay an amount of Rs.1,66,530/- vide Lr.No.CED/CSR/EEP/AEEP1/F.P.O.10/09-10/D.78/2011 dated 23.02.2011 towards differences in rate due to declining trend for belated supply of 182 Nos. of 9.14m grills, since a price bid was opened on 29.07.2019 in Coimbatore region at the FOR(D) rate of Rs.2441/- and purchase order was placed vide purchase order No.1009 and 1010 dated on 23.08.2009.(at a difference of Rs.915/- per grill).

9. In response, the firm, vide their letter dated 26.02.2011, 28.02.2011, 25.03.2011, 18.05.2011 and 29.06.2011 had raised their objections and requested to set aside the penalty amount of Rs.1,66,530/-. The firm was once again requested to remit the above said amount vide office letter dated 10.05.2011, 09.06.2011, 25.07.2011 as per the clause 10.2 of the purchase order, failing which, the same will be recovered from the pending dues available at any of the circle/region. Accordingly, the said amount of Rs.1,66,530/- was recovered from their pending bills as reported by the 2nd respondent.

10. Therefore, it is not in dispute that the issues arose based on the contractual obligations, governed only by the



purchase order in question as agreed between the writ petitioner and the respondent and not by the B.P. Relied and therefore, the terms of the purchase order will govern the parties.

11. In view of the facts and circumstances that the nature of transaction is contractual between the parties and penalty was recovered towards the belated supply of materials and the petitioner had knowledge about the terms and conditions and further, responded to the claim made by the respondents in their letters as stated above, the issuance of show cause notice is unnecessary and such show cause notice need not be issued by way of an empty formality.

12. In view of the facts and circumstances, the petitioner has not established any acceptable grounds for the purpose of granting the relief and consequently, the Writ Petition stands dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

1. The Chief Engineering/Distribution,
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2. The Superintending Engineer,
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TANGEDCO Ltd. (TNED)
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3. The Sr. Resident Audit Officer,
Tamil Nadu Electricity Board,
Chennai.

+1cc to Mr.K.Balaji, Advocate, S.R.No.58076

W.P.Nos.23668 of 2011

RLD(CO)
PM/26/11/2021