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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.4700 of 2021

M.Kannan

Vs

... Petitioner

1. Southern Railway,
Represented by it's General manager,
Headquarters Office, Park Town,
Chennai - 600 003.
2. The Chief Administrative Officer (Construction)
Southern Railway, Egmore, Chennai - 600 008.
3. Chief Engineer,
(West) Construction,
Southern Railway, Egmore, Chennai - 600 008.
4. Deputy Chief Engineer (Construction) (PTJ)
Office of the Deputy Chief Engineer (Construction),
Southern Railway, Podanur - 641 023.
5. Financial Advisor and Chief Accounts Officer,
Southern Railway,
Egmore, Chennai - 600 008.
6. Assistant Financial Advisor,
Construction, Southern Railway,
MC Donalds Road, Thiruchirapilly,
Egmore, Chennai - 620 001.
7. Board of Railways
Represented by its Chairman,
Rail Bhawan, 1, Raisina Road,
New Delhi - 110 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 2nd respondent to release the security deposit, performance guarantee furnished by way of bank guarantee, price variation benefit, GST neutralisation amount and other amounts due including the final bill amount due to the petitioner within a time to be fixed by this Court by considering his



representation, dated 16.12.2020.

For Petitioner : Mr.K.Chockalingam

For Respondents : Mr.P.T.Ramkumar

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O R D E R

This Writ Petition has been filed seeking a direction to the 2nd respondent to release the security deposit and performance guarantee furnished by way of bank guarantee, price variation benefit, GST neutralisation amount and other amounts including the final bill amount due to the petitioner by considering his representation, dated 16.12.2020.

2.It is the case of the petitioner that he was allotted with work as mentioned in item no.8 of the notice bearing No.44/CE/CN/MS/2016/OT, dated 19.02.2016 valued at Rs.4,87,16,480/- by the Southern Railway and the period of completion was fixed as 12 months. Subsequently, an agreement was executed between the petitioner and the 4th respondent, on 27.12.2016, as per which, the work has to be completed on or before 08.08.2016. However, due to the delay on the part of the respondents in complying with the contractual obligations, the petitioner has not completed the work at Level Cross Nos.133 and 11 within the stipulated time. Therefore, the petitioner sent a representation dated 04.07.2019, to foreclose the agreement without any liability on either side, which was also recommended by the fourth respondent to the third respondent. During the pendency of the said representation, without any information to the petitioner, the 6th respondent sent a letter to the Manager, Indian Overseas Bank, Thiruchengode, Namakkal District to encash the bank guarantee furnished by the petitioner. Aggrieved over the same, the petitioner submitted a representation dated 16.12.2020 to the 2nd respondent requesting to foreclose the agreement and settle the dues, such as, Earnest Money Deposit, Security Deposit, performance Guarantee and the Final Bill amount. Finding no response on the same, he has come up with this Writ Petition for the aforesaid relief.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein it is inter alia stated that despite the several requests made by the fourth respondent, the Senior Divisional Operating Manager, Salem, has not permitted the line block. In the mean while, the petitioner / contractor has sent a letter to the fourth respondent requesting to foreclose the agreement without any liability on either side. However, the said request of the petitioner is pending consideration by the respondent authorities.



4.The learned counsel for the petitioner submitted that the petitioner has completed the work of the subway at Level Cross Nos.2 and 4. However, he could not complete the balance work of insertion of RCC box at LC Nos.11 and 133 for want of line block with caution. Hence, the petitioner submitted representation dated 16.12.2020 to foreclose the agreement entered with the respondent authorities and to settle the amounts due to him. Since the said representation has not been considered till date, the petitioner has come up with this writ petition.

5.Reiterating the averments made in the counter affidavit, the learned counsel appearing for the respondents submitted that if the petitioner submits the written statement with respect to the dues payable to him viz., Security deposit, Performance Guarantee, Price Variation benefits and the Final Bill amount, the same would be considered by the respondent authorities and appropriate orders be passed, within a reasonable time to be fixed by this Court.

6.In reply, the learned counsel for the petitioner agreed upon the submission so made by the learned counsel for the respondents.

7.In view of the above, this Court, without going into the merits of the case, directs the petitioner to furnish the required information enclosing supportive documents before the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. On such submission, the 2nd respondent shall consider the representation of the petitioner dated 16.12.2020 in the light of the documents furnished by him and pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of four weeks thereafter.

8.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The General manager,
Southern Railway, Headquarters Office, Park Town,
Chennai - 600 003.
2. The Chief Administrative Officer (Construction)
Southern Railway, Egmore, Chennai - 600 008.
3. The Chief Engineer, (West) Construction,
Southern Railway, Egmore, Chennai - 600 008.
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Office of the Deputy Chief Engineer (Construction),
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5. The Financial Advisor and Chief Accounts Officer,
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6. The Assistant Financial Advisor,
Construction, Southern Railway,
MC Donalds Road, Thiruchirapilly,
Egmore, Chennai - 620 001.
7. The Chairman, Board of Railways
Rail Bhawan, 1, Raisina Road, New Delhi - 110 001.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No. 40305

+1cc to Mr.K.Chockalingam, Advocate, S.R.No. 40495

W.P.No.4700 of 2021

AK II(CO)
GN(16/08/2021)