



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.29362 OF 2013

G.V.Kumar

...Petitioner

Vs.

1. The General Manager
Southern Railway
Park Town
Chennai.
2. The Principal Chief Engineer
Southern Railway
Park Town, Chennai.
3. The Divisional Engineer
Southern Railway
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to finalise the bill for the agreement No.MDU/106/2001 dated 07.03.2001 and to release the security deposit thereto and also to release the payment of Rs.8,41,985/- (Rupees Eight Lakh Forty One Thousand Nine Hundred Eighty Five Only) withheld under agreement No.MDU/115/2010 dated 31.03.2010 in accordance with the arbitral award dated 28.01.2011.

For Petitioner : Mr.G.Rajan

For Respondents : Ms.A.Sri Jayanthi

O R D E R

This Writ Petition has been filed to issue a mandamus directing the respondents 1 and 2 to finalise the bills for the work done and release the security deposit and payment of Rs.8,41,985/- withheld under agreement No.MDU/115/2010 dated 31.03.2010, as per the arbitral award dated 28.01.2011.



2.It is the case of the petitioner that he was awarded a contract for the supply and collection of the ballast vide agreement No.MDU/106/2001 dated 07.03.2001. Based on the preventive test check conducted by the Vigilance Department, the respondents claimed some of the ballast as inferior quality. While so, the 3rd respondent by letter dated 27.10.2011 sent a communication to the petitioner that the payment for the final bill in respect of another agreement No.MDU/115/2010 dated 31.03.2010 had been kept pending for want of approval. Subsequently, in the remarks furnished to the second respondent, it was stated that out of Rs.21,84,937/-, only a sum of Rs.13,42,952/- has been recovered from the petitioner for supply of inferior quality and an amount of Rs.8,41,985/- was yet to be recovered from him. It is the further case of the petitioner that he challenged the said recovery proceedings by filing W.P.No.12763 of 2011, which was disposed of, on 30.04.2013, directing the respondents to settle the amount of Rs.3,10,795/- and also release the bank guarantee for Rs.7,17,417/- to the petitioner, within a period of eight weeks. It was also observed therein that the amount received by the petitioner was without prejudice to the rights of the petitioner in the pending arbitration proceedings. Thereafter, the petitioner made a representation dated 20.09.2013 to the respondents requesting to disburse the final bill amount of Rs.8,41,985/- to him. 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, in paragraph 23, it is inter alia, stated as follows:

"23.It is respectfully submitted that the award amount of Rs.13,65,515/- out of Rs.21,84,938/- was recovered from the running (on account) part bills from the month of October 2002 till the month of November 2003 under Agreement No.MDU/106/2001 dated 07.03.2001. The said recovery amount was not challenged by the petitioner. Now, the remaining amount of Rs.8,41,985/- which was recovered on 16.05.2013 under Agreement No.MDU/115/2010 dated 31.03.2010 has been challenged along with security deposit. The security deposit will be returned after finalisation of entire dues."

4.The learned counsel for the petitioner submitted that since the respondent railways does not have any right to withhold the sum of Rs.8,41,985/- due to the petitioner for the dumped ballast to the quantity of 1975.173 cubic meter, they have to settle the same and release the payment of security deposit to the petitioner. Hence, the learned counsel prayed for a direction to the respondents to consider the representation dated



20.09.2013 already submitted by the petitioner in this regard.

5. There is no serious objection on the side of the respondents for granting such relief to the petitioner.

6. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs the respondents to consider the representation of the petitioner dated 20.09.2013, if not considered earlier, and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1. The General Manager
Southern Railway, Park Town
Chennai.
2. The Principal Chief Engineer
Southern Railway
Park Town, Chennai.
3. The Divisional Engineer
Southern Railway, Madurai.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.28744

W.P.No.29362 of 2013

SKY(CO)
CS/13/08/2021