

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/2/2021

C O R A M

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.NOS.13238 OF 2020

AND

2987 OF 2021

AND

WMP.Nos.16645, 16357 OF 2020 AND 3344 OF 2021

P. Meeraza

...

Petitioner in both
the writ petitions

Vs

1. Tamil Nadu Generation and Distribution Corporation Ltd
rep. By its Chief Engineer
North Chennai Thermal Power Station - I
Chennai 600 120.
2. The Superintending Engineer/Mech - II
TANGEDCO
North Chennai Thermal Power Station - I
Chennai 600 120.
3. The Superintending Engineer/Mech - I
TANGEDCO
North Chennai Thermal Power Station - I
Chennai 600 120.

...

Respondents in both
the writ petitions

Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent made in Lr.Nos.SE/MI/NCTPS-I/EE/BM/F.Boiler/D.3911/18 and SE/MI/NCIPS-I/EE/BM/FBoiler/D 1605, dated 15/12/2018 and 19/8/2020, respectively and quash the same and further direct the respondent to pay the withheld amount of Rs.1,28,89,595/- and Rs.53,75,690/- respectively with interest which is the amount due to the petitioner for completing the contract successfully satisfactorily completion certificate also given.

For Petitioner ... Mr.B.Kumar
Senior Counsel
for Mr.T.Sudhanraj

For Respondents ... Mr.N.Damodharan
Standing Counsel

C O M M O N O R D E R

Writ Petition No.13238 of 2020 has been filed to quash the order passed by the third respondent, in Lr.No.SE/M.I/NCTPS-I/EE/BM/F.Boiler/D.3911/18, dated 15/12/2018 and direct the respondents to pay the withheld amount of Rs.1,28,89,595/- with interest, which is the amount due to the petitioner for completing the contract successfully.

2. Writ Petition No.2987 of 2021 has been filed to quash the order passed by the third respondent, in SE/M.I/NCTPS-I/EE/BM/F.Boiler/D.1605, dated 19/8/2020 and direct the respondents to pay the withheld amount of Rs.53,75,690/-, with interest, which is the amount due to the petitioner for completing the contract successfully.

3. The brief facts which are necessary for the disposal of the writ petitions are as follows:-

(i). The petitioner was the successful bidder for the work of NCTPS-M II Circle - ECHS - Short Blasting and Epoxy painting of Steel Structures of belt conveyers 44, 45, 52, 58 and 60 and connected Junction Towers in the External Coal Handling System at North Chennai Thermal Power Station - I, in the year 2014 and he completed the work well within the stipulated period, during May 2015 to the full satisfaction and the entire settlement of the work has been paid to the petitioner, as per the schedule of the contract.

(ii). During 2015, he was the successful bidder for the work of sand blasting and epoxy based protective coating to the steel structures of the boilers in Tuticorin Thermal Power Station. The respondent handed over the site on 17/5/2016 and the petitioner has completed the said work on 28/3/2017. The respondents gave satisfactory completion certificate and the amounts were also settled. While so, the respondent has issued an order, directing the petitioner to pay a sum of Rs.1,11,44,567/- due to their internal audit objections. Challenging the same, the petitioner had filed W.P.No.23943 of 2019 and this Court vide, order, dated 22/10/2019, directed the respondents to pay the withheld amount.

(iii). During 2017, the respondent had called for another tender work of NCTPS-I/SE/MI Circle - BM Dn - Unit I, II and III - Boiler - Cleaning, Shot blasting and epoxy painting of boiler columns and structures with three coats of epoxy paint including supply of paint at North Chennai Thermal Power Plant - 1. An agreement was entered, on 8/12/2017 and the petitioner has completed the work to the satisfaction of the respondent in the month of January 2019. For the said work, the respondent had paid only Rs.3,82,388/- withholding Rs.59,27,257/-. Vide, letter, dated 15/12/2018, the respondent had stated that the abovesaid amount was deducted, as per the direction of Vigilance Cell of TANGEDCO. Being aggrieved, the petitioner had filed W.P.No.13238 of 2020, praying for the relief as stated supra.

(iv). The third respondent, vide order, dated 19/8/2020, advised the petitioner to file a separate writ petition, challenging the communication, dated 19/8/2020, to avoid any technical objection. Being aggrieved, the petitioner had filed W.P.No.2987 of 2021.

4. Mr.B.Kumar, learned Senior counsel appearing for the petitioner would submit that the first contract work was completed with full satisfaction of the respondent Board and they have also given a completion certificate and also paid the entire contract amount to the petitioner in the year 2015 itself. While so, by referring to the audit objections, without affording an opportunity to the petitioner, the respondents are withholding the amount which is due to the petitioner arisen out of the third contract.

5. Mr.N.Damodharan, learned Standing Counsel appearing for the Electricity Board has produced audit objections raised by the Audit Officers of the respondent Board which reads as follows:-

"The work relating to the captioned subject was awarded to M/s. P.Meeraza, Tuticorin for a face value of Rs.4,29,08,700/- crores. The total painting area is 76,350 sq.m. Out of the above, the Contractor has completed about 41,130 sq.m and submitted the first Part bill for claim which was duly entertained by the Accounts Branch without verifying the irregularities inspite of audit raising a similar audit slip on the same subject during previous audit. The irregularities noticed on review of the first Part Bill is hereunder:-

1. In the detailed estimate under the captioned head "Compressor Charges" the compressor hire charges for per day has been envisaged as Rs.850 per day and Compressor

operator charges as Rs.308. When such being the position, the entire compressor charges and operator charges if utilised during the entire contract period of 240 days (8 months) would be only Rs.2,77,920/- for the entire 76,350 sq.metres. When worked for per sq.m, the rate is Rs.3,64 sq.m only. Therefore, the inflated cost in the estimate for per sq.m has been arrived as Rs.3486 per sq.m. In terms of monetary value audit has assessed Rs.26,61,561.00 as excess in the detailed estimate. Therefore, the bill passing authorities is required to limit the compressor hire charges and operator cost as envisaged in the annexure and furnish the action taken report to audit.

2. In the instant issue the estimate preparing authorities for the execution of the work in question have certified that diesel and engine oil is to be utilized for carrying out the aforesaid works. But on review of the documents enclosed along with the first part bill and the gate pass Inward Register, it is seen that diesel and engine oil have been brought to the extent detailed vide Annexure - I. This has resulted in an excess claim of Rs.16,11,214.00 which has to be recovered and audit intimated.

6. In response to this audit objection, the learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the following tender conditions.

"3.0 Supply of compressed air: The contractor has to make his own arrangement for the compressed air required for the work at his cost.

4.0 Power Supply: Free power supply will be provided to the Contractor from the nearest available Corporation's power supply point, for the contractor's offices and stores. The contractor should make his own arrangement to extend the power to the area of work and also maintain such extension lines at his cost."

7. The learned Senior Counsel would further submit that the tender condition itself clearly states that the petitioner is entitled to free power supply for their requirements. The petitioner had used diesel compressor for their work because they have to go for almost 6 kms stretch to cover the entire

area. Hence, taking electricity supply from a point provided in an isolated area to such a long distance will not only affect the performance but also incur huge expenditure and that is practically not possible. Moreover, the project was completed during May 2015 and raising the issue after three years of the completion of the contract is illegal and barred by law.

8. After hearing the arguments advanced on either side, this Court is of the considered view that the respondent Board which has not found any defects at the time of execution of the first work in the year 2015 and have issued the completion certificate and has also paid all the dues, is now withholding the amount for certain objections which they have received in the year 2019 for the first work from the third work which the petitioner has executed in the year 2019 and therefore, this impugned order is liable to be rejected.

9. Accordingly, these writ petitions are allowed and the impugned orders dated 15/12/2018 and 19/8/2020, are quashed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs

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Tamil Nadu Generation and Distribution Corporation Ltd
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AK-II(CO)
CS/26/03/2021