

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR

W.P.Nos. 30616 & 30617 of 2014

M/s. GAMMON INDIA LIMITED,
Having its office at Gammon House,
Veer Savarkar Mar,
Prabhadevi,
Mumbai - 400 025.

..Petitioner in both WPs

Vs

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

2. The District Registrar (Admin.)
Office of the District Registrar,
Central Chennai, 182, Bharathi Salai,
Chennai-600 014.

3. The Joint Sub-Registrar - I,
Office of the Joint Sub-Registrar-I,
Central Chennai, 182, Bharathi Salai,
Chennai-600 014.

... Respondents in both WPs

Prayer in W.P.No.30616 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the entire proceedings culminating in the impugned order dated 23.10.2014, passed by the second respondent in proceeding No.9407/A1/2014 and to quash the same.

Prayer in W.P.No.30617 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the entire proceedings culminating in the impugned order dated 23.10.2014, passed by the second respondent in proceeding No.9408/A1/2014 and to quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel
For Mr.R.Senthil Kumar

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

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COMMON ORDER

These two Writ Petitions are filed challenging the impugned orders dated 23.10.2014 passed by the second respondent in Proceeding

Nos.9407/A1/2014 and 9408/A1/2014 and quash the same.

2. Brief facts set out in the petitions are as follows:-

The petitioner's Company had entered into a Joint Venture Agreement dated 17.03.2011 with a registered Company M/s. OJSC Moscow Metrostroy, with a view to collaborate and jointly execute a contract that was to be awarded by the Chennai Metro Rail Limited [CMRL] for the design and construction of underground stations at three locations in Chennai. At the request of M/s.Chennai Metro Rail Limited, and as per the terms and conditions of tender, the agreement had to be executed and registered. Having regard to scope of work, two different but similar agreements were signed by petitioner and its partners. The agreements were duly executed, presented for registration on 17.03.2011 and duly registered as Doc.Nos.100 and 101 of 2011. For the agreement, the consideration was shown as Rs.10,000/- and a sum of Rs.220/- was paid as registration fees and the documents were registered as Document Nos.100 and 101 of 2011 by the District Registrar, Central Chennai on 17.03.2021, the second respondent herein without any reservation.

3. After registration of the agreements, the third respondent issued a show cause notice to the petitioner in respect of Doc.No.100 of 2011 as to why the deficit registration for a sum of Rs.9,32,87,900/- should not be collected under Article 1 (b) of the Table, as prescribed by State.

4. In respect of Document No.101 of 2011, the third respondent issued a show cause notice dated 03.03.2014 to the petitioner as to why the amount of Rs.10,14,41,900/-, being the deficit registration fees due to Document No.101 of 2011 should not be recovered from the petitioner as contemplated under Section 80A(1) of the Registration Act, 1908. To the said show cause notice, a reply was given by the petitioner on 14.03.2014. Though the petitioner has raised several issues questioning the jurisdiction, the authority and the liability, without considering the petitioner's reply, the third respondent once again passed the impugned order confirming the liability that was mentioned in the show cause notice.

5. The learned Senior Counsel appearing for the petitioner submitted that the impugned order is in violation of mandatory procedure contemplated under Section 80(A) of the Registration Act and that the show cause notice determining the quantum even before an enquiry is arbitrary and unconstitutional.

6. Though several issues arise for consideration in this writ petition, and the petitioner has raised other factual and legal issues, one of the grounds raised by the petitioner in this writ petition is regarding the manner in which the impugned order came to be passed. It is stated that the impugned order passed by the second respondent is without following the mandatory procedure as contemplated under Section 80(A) of the Registration Act.

7. Secondly, it is contended that the impugned order was passed by the second respondent without giving an opportunity to the petitioner to know the factual basis for demanding such huge and exorbitant amount. The legal issues raised by the petitioner in response to the show cause notice or notice were not considered. No enquiry as contemplated was

held.

8. Having regard to the factual and the legal issues raised in this case, it has to be seen how a Joint Venture Agreement should be valued for the purpose of collecting registration charges. Though this Court *prima facie* agrees with the petitioner that total value of the executory contract to be performed by the partners in future cannot be the value of contract, the issue needs to be considered on the admitted facts. Though the demand is based on audit objection, it is not known on what basis the objection could be sustained.

9. *Prima facie*, this Court is of the view, that the third respondent has issued the Certificate in violation of mandatory procedure under Section 80(A) of the Registration Act. The second respondent, while passing the impugned order, has not given any reasons while rejecting the objection raised by the petitioner in response to the show cause notice. In the said circumstances, this Court is of the view that the impugned order is in violation of the principles of natural justice and therefore, is inclined to set aside the impugned order and remit the matters

back to the second respondent/District Registrar for further consideration.

To this course, the learned Special Government Pleader has no objection.

10. Accordingly, the Writ Petitions are allowed and the matters are remitted back to the second respondent to commence the proceedings from the stage of show cause notice and pass a reasoned order, after holding an enquiry as contemplated under Section 80(A) of the Registration Act and by considering the objections raised by the petitioner. It is open to the petitioner to raise the question of limitation for passing the order in respect of the case in Document No.100 of 2011. The second respondent is expected to pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

सत्यमेव जयते

31.03.2021

Index:Yes / No
Speaking / Non-Speaking order
msm

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S.S.SUNDAR, J.

msm

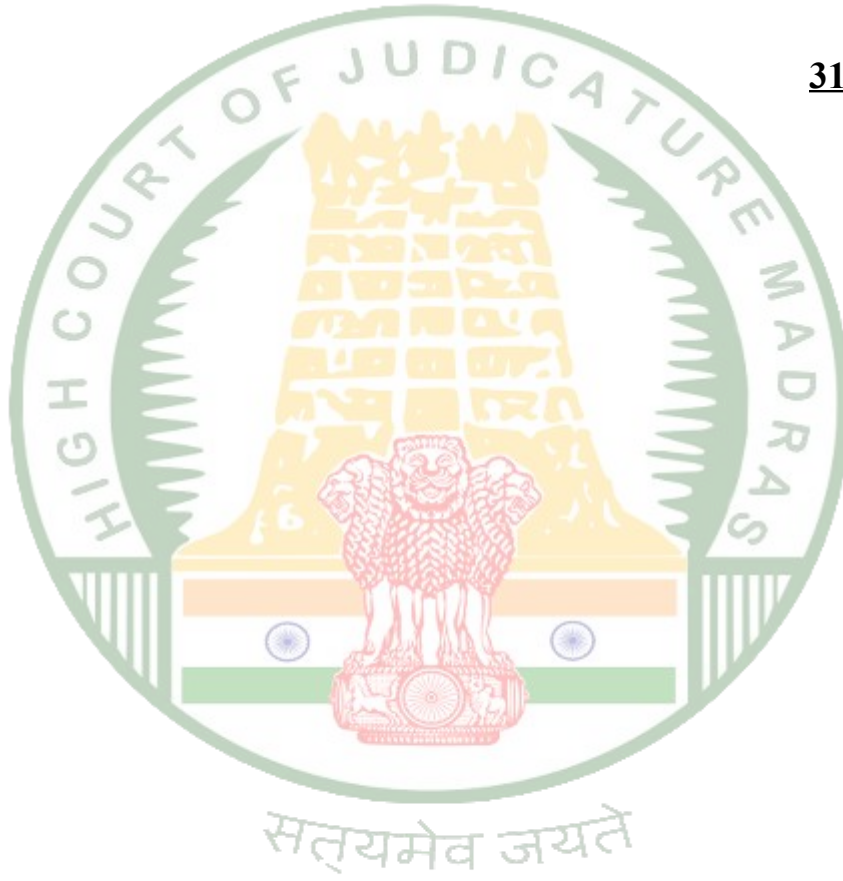
To

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