



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6400 & 6532 of 2016

and

W.M.P.Nos.20385, 5701, 5702 & 5810 of 2016

W.P.No.6400 of 2016:

M/s.Malar Energy & Infrastructure (P) Ltd.
No.57, 1st Floor,
Pantheon Road,
Chennai - 600 008.

...Petitioner

Vs

1. Executive Engineer,
Ministry of Urban Development,
Karaikal Project Division -II,
C.P.W.D., No.01, School Street,
Karaikal - 609 609.

2. Assistant General Manager,
Indian Overseas Bank,
Nehru Park Branch,
856-A, EVR Periyar Road,
Kilpauk, Chennai - 600 010.

3. Manager,
State Bank of India,
Pondicherry,
5, Rue Suffren,
Pondicherry.

... Respondents

PRAYER in W.P.No.6400 of 2016: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 1st and 2nd respondent to restore the Performance Guarantee No.0306/ILG/15/15 dated 21.05.2015 amounting to Rs.40,35,418/- and Performance Guarantee No.0306/ILG/07/15 dated 27.02.2015 amounting to Rs.7,82,528/- and to restore the foreclosed fixed deposit account with receipt No.0447406 amounting to Rs.8,25,000/- and to direct the first respondent, Executive Engineer, Karaikal Project Division -II,CPWD not to take any adverse action against the petitioner.



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For Petitioner : Mr.Kaushik N.Sharma
For M/s.KNS Law chambers

For Respondents : Mr.K.Venkataswamy Babu
Senior Panel Counsel for
Government of India
[For R1]
Mr.N.K.S.Rukmangathan
[For R2]
Mr.R.Vigneshwaran
[For R3]

W.P.No.6532 of 2016:

M/s.Malar Energy & Infrastructure (P) Ltd.
No.57, 1st Floor,
Pantheon Road,
Chennai - 600 008.

...Petitioner

Vs

Union of India,
Represented by Executive Engineer,
Ministry of Urban Development,
Karaikal Project Division -II,
C.P.W.D. No. 01, School Street,
Karaikal - 609 609.

...Respondents

PRAYER in W.P.No.6532 of 2016 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to quash the Notice on Final Action under Clause 3 of the Agreement dated 17.02.2016 letter vide letter number 23 (104)/KPD-II/2016/09 served by the Respondent.

For Petitioner : Mr.Kaushik N.Sharma
For M/s.KNS Law chambers

For Respondent : Mr.K.Venkataswamy Babu
Senior Panel Counsel for
Government of India

COMMON ORDER

The relief sought for in the first writ petition filed in W.P.No.6400 of 2016 is to direct the respondents 1 and 2 to restore the Performance Guarantee No.0306/ILG/15/15 dated 21.05.2015 amounting to Rs.40,35,418/- and Performance Guarantee No.0306/ILG/07/15 dated 27.02.2015 amounting to Rs.7,82,528/- and to restore the foreclosed fixed deposit account with receipt No. 0447406 amounting to Rs.8,25,000/- and to direct the first



respondent, Executive Engineer, Karaikal Project Division -II, CPWD not to take any adverse action against the petitioner.

2. The petitioner is M/s.Malar Energy & Infrastructure Private Ltd. The petitioner was a successful bidder on 23.04.2015 by the Ministry of Urban Development, Karaikal Project Division - II, Karaikal - 609 605 for construction of Multipurpose hall at NIT - Karaikal with prefabricated concrete structure for building portion including pile foundation, internal water supply, sanitary installations, drainage and internal electrical installations.

3. Admittedly, terms and conditions are specified in the tender. The petitioner company has created security in favor of the first respondent. The first respondent made a request to complete construction of the Multipurpose hall within a specified timeline of 150 days. The first respondent issued a show cause notice on 14.09.2015, stating that there was a delay in commencement of the project.

4. The learned counsel for the petitioner states that no further action has been taken against the petitioner company. There were exchange of communication between the petitioner company and the first respondent regarding the dispute. Under these circumstances, the petitioner filed the writ petition for a direction to restore the Performance Guaranteed amount.

5. Admittedly, the transaction between the petitioner and the respondents are contractual obligations. Admittedly, the petitioner was selected as a successful bidder. Performance of contract is relatable to the terms and conditions of the contract. It is contended that the arbitration clause is available in the agreement. Thus, the petitioner has to invoke the arbitration clause for the purpose of resolving the issues. Contrarily, High Court cannot adjudicate such disputed issues arising out of certain terms and conditions of the contract. Furthermore, the contract was allotted for the purpose of construction of Multipurpose hall. Therefore, the adjudication with reference to the documents, terms and conditions and even through oral evidences is required. Thus, the petitioner has to invoke the arbitration clause or initiate appropriate remedy for redressal of grievances before the competent Forum. Contrarily, writ proceedings cannot be initiated.

6. The second writ petition filed in W.P.No.6532 of 2016 is to quash the Final Action under Clause 3 of the Agreement. The said notice was also issued based on the terms and conditions of the contract. Thus, the petitioner has to redress their grievances in the manner agreed between the parties by invoking the arbitration clause or by approaching the competent Forum.



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7. With these observations, both the writ petitions stand disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kak/nti

To

1. Executive Engineer,
Ministry of Urban Development,
Karaikal Project Division -II,
C.P.W.D., No.01, School Street,
Karaikal - 609 609.
2. Assistant General Manager,
Indian Overseas Bank,
Nehru Park Branch,
856-A, EVR Periyar Road,
Kilpauk, Chennai - 600 010.
3. Manager,
State Bank of India,
Pondicherry,
5, Rue Suffren,
Pondicherry.

+2cc to Mr.Venkataswamy Babu, Advocate, S.R.No.55192, 55193
+2cc to Mr.Kaushik N.Sharma, Advocate, S.R.No.55475

W.P.Nos.6400 & 6532 of 2016

BR(CO)
CB(12/11/2021)