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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14389 of 2014
and
M.P.Nos.1 & 2 of 2014

Mr.P.Subramani

...Petitioner

Vs

1. The Authorised Signatory,
Board of Trustees,
Body incorporate under
Major Port Trusts Act, 1963,
The Port of Chennai,
No.1, Rajaji Salai,
Chennai - 600 001.

2. The Chief Engineer,
Port Trust of Chennai,
No.1, Rajaji Salai,
Chennai - 600 001.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to Termination Letter No.P1/3811/2011/E passed by the 2nd respondent dated 09.05.2013 and quash the same and consequently direct the respondents to reimburse the forfeited bank guarantee dated 16.04.2012 vide Bank Guarantee No.04/2012 for a sum of Rs.7, 55, 178/- along with an interest of 24% p.a. from the date of the bank guarantee.

For Petitioner : Mr.G.M.Gokul Ram
For M/s.Nathan and Associates
For Respondents : Mr.P.Saravanan

O R D E R

The Termination letter dated 09.05.2013 issued by the second respondent is sought to be quashed in the present writ petition and further, a direction is sought for to reimburse the forfeited Bank Guarantee dated 16.04.2012 along with the interest.



2. The petitioner participated in the tender process and he was a successful bidder. The petitioner provided Bank Guarantee as per the terms and conditions of a contract between the petitioner and the respondent was executed on 07.06.2012 for the execution of "Widening the Concrete Road from West Fire Service Station to First Container Terminal (DP World)" and the tender was accepted in accordance with the supply/delivery schedules in the sum of Rs.1,51,03,567.71/-.

3. The learned counsel for the petitioner strenuously contended that the petitioner was unable to complete the work due to the failure on the part of the respondents in not removing the high frequency wire in that particular area. The petitioner was ready and willing to complete the work during the relevant point of time and the respondents had not co-operated for the completion of work. Thus, the petitioner cannot be penalized and therefore, the forfeited Bank Guarantee is to be returned to the petitioner.

4. Perusal of the impugned termination order reveals that the petitioner has violated the terms and conditions of the contract and it has been clearly stated as follows:

"1. There is fundamental breach of contract attributable to you attracting action as per clause 45.1 (II), 54.1, 54.2 (a) of section 4 of the agreement for having unauthorisedly stopped the work from 11.11.2012 to till date, for poor progress of work and negligence for not fulfilling the contractual obligations.

Hence invoking clause 45.1(II) and (III) of section 4 of the agreement the contract for the work of widening the concrete road from west fire service station to first container terminal (DP world) under agreement No.28 of 2012 is hereby terminated.

Consequently as per clause 45.1 (Iv), the performance security for a value of Rs.7,55,178/- is forfeited, EMD amount of Rs.1,39,220/- and the payment for the work done are withheld and the balance work will be completed by the port through other means at your risk and cost."

5. Execution of work, adherence of terms and conditions of the contract between the parties require an elaborate adjudication of disputed facts. Mere statement by the petitioner in the affidavit cannot be a ground to allow the writ petition as such allegation requires proof and it is to be established before the competent Court of law.



6. Such an elaborate adjudication cannot be undertaken by the High Court in a writ proceedings under Article 226 of the Constitution of India. The power of judicial review of the High Court under Article 226 is to scrutinize the process, through which, a decision is taken by the authority competent and not the decision itself. Thus, such disputed facts, issues and contractual obligations or its violations require trial natured adjudication based on documents, evidences including oral evidences. The order impugned is categorical that there is a breach of contract and based on the breach, the order of termination was issued. Once termination is issued, forfeiture clause is attracted and accordingly, they have forfeited the Bank Guarantee. All these issues are to be adjudicated by placing documents and evidences before the competent Court of law. Thus, the petitioner is at liberty to approach the competent Court of law for adjudication and to redress the grievances in the manner known to law.

7. The learned counsel for the petitioner raised a ground that the writ petition is pending for long time and there will be a delay in approaching the competent Court.

8. In this regard, in the event of filing any such petition before the competent Court by the petitioner to condone the delay, the period of pendency of the writ petition may be considered for condoning the delay.

9. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorised Signatory,
Board of Trustees,
Body incorporate under
Major Port Trusts Act, 1963,
The Port of Chennai,
No.1, Rajaji Salai,
Chennai - 600 001.



2. The Chief Engineer,
Port Trust of Chennai,
No.1, Rajaji Salai,
Chennai - 600 001.

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+1CC to M/s.Nathan and Associates, Advocate, Sr.No.57745

W.P.No.14389 of 2014

AK-II (CO)

K.RK. (24.11.2021)