



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 9489 of 2011 and

M.P. (MD) Nos. 2 of 2011 & 1 of 2015

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M/s. "Sri Ganga Engineering",
Rep. by its Proprietor,
G. Ganga,
Door No. 25/2D-1, Konar Thoppu,
Iravathanallur,
Madurai - 625 009.

... Petitioner

Vs.

1. The Chief Engineer/Distribution,
TANGEDCO Ltd., (TNEB),
Chennai South Region,
802, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer,
CEDC, Chengalpattu.

3. Sr. Resident Audit Officer,
Tamil Nadu Electricity Board,
802, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order made in Lr.No.CED/CSR/EEP/AEEP1/F.P.O.No:10/09-10/D.76/2011 dated 23.02.2011 passed by the first respondent and quash the same.

For Petitioner	: Mr.D.Sadiq Raja
For Respondents	: Mrs.M.parameshwari, for Mr.S.M.S.Johny Basha, Standing counsel.

ORDER

Heard the learned counsel on either side.

2. The petitioner was entrusted with certain contract works by the first respondent. There was a delay on the part of the petitioner in making certain supplies. Therefore, the impugned order for recovery came to be issued.

3. The petitioner's counsel would state that on the same cause of action, the petitioner was visited with twin proceedings.
<https://hcservices.ecourts.gov.in/hcservices/>



He would draw my attention to the letter dated 21.01.2010 at page No.17 of the typed set of papers.

4. Per contra, the learned Standing counsel would state that the delay in effecting supplies would invite two fold consequences.

a) liability to pay liquidated damages and

b) entitlement to receive payment for the belated supplies only in terms of Clause 10(2) of the Contract.

She would contend that the proceedings dated 21.01.2010 relied on by the petitioner's counsel represented the sum to be paid towards liquidated damages. The impugned proceedings pertain to the excess payment made by the TNEB to the contractor. Since the audit report had later pointed out the same, the amount of Rs.57,694/- has to be recovered from the petitioner herein.

5. The allegations of the learned Standing counsel are undoubtedly sound. But then, since the issue turns on calculation, the respondents ought to have put the petitioner on notice, before passing final orders. The petitioner's objections should have been invited.

6. The order impugned in this writ petition is quashed and the writ petition is allowed and the matter is remitted to the file of the first respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Chief Engineer/Distribution,
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+1 CC to M/s.PALA RAMASAMY, Advocate (SR-2730[F] dated 02/02/2021)

W.P. (MD)No.9489 of 2011
01.02.2021

ARK(CO)
KB(09.02.2021) 3P 5C