



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.NO.20725 OF 2015

&

M.P.NOS.1 TO 3 OF 2015

Uni Pack Industries
Rep by its Proprietor
Shanmuga Sundaram
20/21, Sundarapuram
Madukkarai Road
SIDCO
Coimbatore-641021

...Petitioner

Vs.

The Chief Works Manager
O/o.The Chief Works Manager
S & T Workshop, Podanur
Coimbatore- 641 023

...Respondent

Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus , calling for records pertaining to the order of Termination in No. SGW/S.203/W.O 462 dated 4.6.2015 issued by the respondent and consequential the Tender Notice No. SGW/S.203/W.O.481 (RT) dated 8.6.2015 issued by the respondent and quash the same and further directing the respondent to permit to continue the tender works as per the letter of Acceptance dated 30.3.2015 issued by the respondent.

For Petitioner : Mr.P.Nagaraju
For Respondent : Mr.M.Vijay Anand

O R D E R

The proceedings dated 04.06.2015, issued by the respondent, terminating the contract is under challenge in the present writ petition.

2. The petitioner is a company and participated in the tender pursuant to the Notification dated 15.12.2014 for supply of semi knock down wooden packing box for IRS point machine and



packing of IRS point machine. The petitioner was a successful bidder and entered into an agreement with the respondent, Chief Works Manger of Southern Railways.

3. The grievances of the writ petitioner is that despite the fact that it had complied with the terms and conditions of the contract, based on certain incorrect details, the impugned order of termination was issued terminating the contract. The learned counsel for the petitioner reiterated that no sufficient opportunity was provided to the petitioner to establish his case and by taking a decision in a unilateral manner, the order of termination is issued and immediately, further tender notification was also issued by the respondent.

4. The learned counsel for the respondent made a submission that arbitration clause is provided under the agreement. This apart, the contractual obligation requires an adjudication. The petitioner violated the terms and conditions of the contract. Thus, the authorities invoked the powers conferred under the agreement and accordingly, the writ petition is liable to be rejected.

5. This Court is of the considered opinion that if at all an arbitration clause is agreed between the parties, the parties are expected to invoke the said clause for resolving the disputes. Even in the absence of arbitration clause, writ petition need not be entertained for the purpose of adjudication of disputed facts and circumstances between the parties.

6. The petitioner states that he has complied with the terms and conditions of the contract. The learned counsel for the respondent objected to the said contention by stating that the petitioner has violated the terms and conditions of the contract. The order impugned states that the respondent noticed that the work is progressing at a very slow pace and certain other defects were also pointed out.

7. This Court cannot go into the disputed facts and conduct an elaborate adjudication with reference to the documents and evidences. Thus, the parties are bound to invoke the arbitration clause or approach the competent Civil Court of Law for the purpose adjudication of the issues and resolve the same. Contrarily, the Writ Court cannot conduct such a rowing enquiry for the purpose of issuing any such directions. The petitioner raised several issues with reference to the work performance done by the petitioner. The respondent is disputing the said contentions.

8. Under these circumstances, the petitioner is at liberty either to invoke the arbitration clause or to approach competent



Civil Court of Law, as the case may be. In the event of approaching the competent Civil Court of Law or otherwise, the period during which the writ petition was pending before this Court is to be taken into consideration for the purpose of condoning the delay, if any, and the issues are to be adjudicated on merits and in accordance with law, as expeditiously as possible. With these aforesaid liberty, the writ petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

shr/ska

To

The Chief Works Manager
O/o.The Chief Works Manager
S & T Workshop, Podanur
Coimbatore- 641 023

+lcc to M/s.M.Vijay Anand, Additional Standing Counsel for
Railways, Sr.No.5120

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&
M.P.Nos.1 to 3 of 2015

SJ(CO)
RVM(10/02/2022)