



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.23640 of 2014

Nitiyananda Rahavan

... Petitioner

Vs.

The Chief Engineer
Materials Management
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
4th floor, N.P.K.R.R. Maligai
144, Anna Salai,
Chennai-600 002

... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaraing that clause 8.4.3 (b) of Annexure-I, Commercial Lr.No.SE/MM-II/EEM/A4/M.69/2010-11/RC, 119/D929/11 dated 09.11.2011 (RC.119) of the respondent is illegal and void in so far as the petitioner is concerned and consequently direct the respondent to release the deducted amount of Rs.6,74,605/- from the invoice No.009 dated 19.02.2014 with interest calculated at 12% up to the date of payment.

For Petitioner : Mr.J.Elumalai

For Respondent : Mr.L.Jaivenkatesh, Standing Counsel

O R D E R

Petitioner participated in a tender floated by the respondent and he was awarded with a contract on 09.11.2011. The period of contract is one year from the date of award of contract. It appears that the petitioner was awarded contract for supplying 313 equipments to the respondent. However, he supplied 100 numbers of the switches and 22 KV AB switches with P.T. Insulators during October 2012 with a delay of 200 days. For the delay as per the terms of contract liquidate damages at the rate of 10% was recovered from him and payment was made. The remaining 200 equipments were not supplied by him. Hence it is stated by the respondent that they have issued a final notice on 21.09.2013 to supply the balance materials.



2. On 23.12.2013, petitioner reported the materials would be ready by 17.01.2014 after a lapse of 2 years and 27 months. It is stated by the respondent that final notice dated 21.09.2013 to supply the balance material as per the rate contract order. The petitioner had given an under taking as follows:

" We agree to supply 22 KV AB switches with 22 KV PT insulators against RC 199/dt.09.11.11 at reduced rate as per TANGEDCO'S latest purchase order/tender rate".

3. It is also noted that in the meanwhile the respondent floated new tender on 06.12.2014 for the balance materials not supplied by the petitioner. The L1 tenderer had quoted a price of Rs.12,915/- per unit. Accepting this rate the purchase order was also issued. After having completed the supply on 18.02.2014, the petitioner requested the respondent to make the payment. However, it is noted that the payment was made as per the latest reduced rate. Aggrieved over the same, the petitioner has challenged the condition No.8.4.3 of the contract.

4. It is well settled that the terms and conditions of commercial contract bind on the parties to the contract. Having performed the contract the parties cannot turn around and challenge the terms and conditions. Even assuming the condition unilateral and unreasonable one the petitioner should have challenged it before submitting his tender. On the other hand he has given an undertaking to supply the balance material as per the rate quoted by L1 bidder of the new tender. Having supplied the agreed materials in terms, it is not open to the petitioner to turn around and challenge the terms and conditions of the contract.

5. However, the petitioner would submit that he has made a representation on 07.06.2014 and prayed this Court that an opportunity be given to him to negotiate with the respondent. Considering the request made by the petitioner, the writ petition is disposed of granting liberty to the petitioner to approach the respondent to negotiate the rates on the basis of his representation dated 07.06.2014.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar



kpr

To

The Chief Engineer
Materials Management
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
4th floor, N.P.K.R.R. Maligai
144, Anna Salai, Chennai-600 002

+2ccs to Mr.J.Elumalai, Advocate SR.No.27746

+1cc to Mr.L.Jaivenkatesh, Advocate SR.No.27717

W.P.No.23640 of 2014

EV (CO)
GMY (13/05/2022)