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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WRIT PETITION NO.22206 OF 2021

R.G. Associates
rep. by its Managing Partner,
P.Ganesh,
Registered Office No.260,
Mullai Nagar, A.S.Pettai,
Nammakkal (Dist) - 637 001.

...Petitioner

vs.

1.Government of Puducherry,
rep. by its Secretary,
Public Works Department,
Puducherry - 605 001.

2.The Chief Engineer,
Public Works Department,
Government of Puducherry,
Central Office,
Puducherry - 605 001.

3.The Superintending Engineer,
Circle - 01,
Public Works Department,
Government of Puducherry,
Puducherry - 605 001.

4.The Executive Engineer/Engineer-in-charge,
Buildings & Roads (North Division),
Public Works Department,
Government of Puducherry,
Puducherry - 605 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the 4th Respondent resulting into the Notice of the termination vide order No.250/PW/DB/BRN/D3/3-106/2021-22, dated 21.09.2021 in respect of the termination of the Agt.No.62/PW/BRN/TA/2019-20 and quash the same and consequently direct the 4th Respondent to restraining him from any proceeding with the balance of the work with any other Contractor.



For Petitioner : Mr.Thirumalai Rajagopal

For Respondents : Mrs.N.Mala,
Government Pleader (Pondy)

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O R D E R

Petitioner has come up with the above Writ Petition challenging the termination order passed by the 4th Respondent vide No.250/PW/DB/BRN/D3/3-106/2021-22, dated 21.09.2021 in respect of termination of Agreement No.62/PW/BRN/TA/2019-20 and for a consequential direction to the 4th Respondent to restrain them from proceeding with the remaining work with any other Contractor.

2. According to the Petitioner, they are Class I Contractor engaged in the field of construction and allied activities. The Petitioner participated in the Tender called for by the Government of Puducherry on 28.12.2018 and emerged as L-1 in the Tender process and was awarded the contract for carrying out the project for construction of main building and Open-Air-Theatre for new Tagore Cultural Complex at Bharathiyar Palkalaikoodam, Ariankuppam, Puducherry on 05.02.2019 vide Agreement No.62/PW/BRN/TA/2019-20 for a sum of Rs.8,38,97,680/-. The term of the contract was 12 months, starting from 05.02.2019 to 04.02.2020. The Agreement was executed on 14.06.2019 and the Petitioner submitted a Bank Guarantee for Rs.41,94,884/- to meet the Performance Guarantee. However, as the Petitioner could not complete the project within the time stipulated, due to design overlapping, their contract was terminated by the 4th Respondent vide impugned order dated 21.09.2021.

3. Learned counsel for the Petitioner submitted that, without going into the merits of the case, this Court may direct the Respondents to appoint an Arbitrator under clause 25(ii) of the Agreement and the Arbitrator may be directed to dispose of the Arbitrary proceedings within a reasonable time.

4. Learned Government Pleader (Pondy) appearing for the Respondents has no objection to the submissions of the learned counsel for the Petitioner.

5. Taking note of the submissions of the learned counsel on either side and without going into the merits of the case, this Court directs the Respondents herein to appoint an Arbitrator as regards the termination of the Petitioner's contract within a period of two weeks from the date of receipt of a copy of this order. The Petitioner is directed to file a Claim Petition before the Arbitrator within two weeks from the date of appointment of the Arbitrator. Thereafter, the



Arbitrator shall pass orders on the Petitioner's Claim Petition, after affording an opportunity of hearing to the Petitioner as well as the Public Works Department, Puducherry, in accordance with law, within a period of four weeks, as completion of the project in question is crucial to the Government.

The Writ Petition is disposed of accordingly. No costs. Consequently, W.M.P.Nos.23426 and 23427 of 2021 are closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

(aeb)

To:

- 1.The Secretary,
Government of Puducherry,
Public Works Department,
Puducherry - 605 001.
- 2.The Chief Engineer,
Public Works Department,
Government of Puducherry,
Central Office,
Puducherry - 605 001.
- 3.The Superintending Engineer,
Circle - 01,
Public Works Department,
Government of Puducherry,
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Buildings & Roads (North Division),
Public Works Department,
Government of Puducherry,
Puducherry - 605 001.

+1cc to Mr.Thirumalai Rajagopal, Advocate Sr.No.3528

+1cc to the Government Pleader (Puducherry) Sr.No.3487

W.P.No.22206 of 2021

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