



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NOS.3038 AND 3039 OF 2021

1. Tamil Nadu Generation and Distribution Corporation Ltd
rep. by its Chief Engineer
North Chennai Thermal Power Station - I
Chennai - 600 120.
2. The Superintending Engineer/Mech-II
TANGEDCO
North Chennai Thermal Power Station - I
Chennai - 600 120.
3. The Superintending Engineer/Mech-I
TANGEDCO
North Chennai Thermal Power Station - I
Chennai - 600 120.

.. Appellants/Respondents in both W.A's

Vs

P.Meeraza ...Respondent/Petitioner in both W.A's

Prayer: Appeals under Clause 15 of the Letters Patent against the judgment dated 24.2.2021 passed in W.P.No.13238 of 2020 and 2987 of 2021.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third Respondent made in Lr.Nos.SE/M.I/NCTPS-I/EE/BM/F. Boiler/D.3911/18 and SE/MI/NCIPS - I/EE/BM/F- Boiler/D 1605, dated 15.12.2018 and 19.08.2020, respectively and quash the same and further direct the Respondent to pay the withheld amount of Rs.1,28,89,595/- (Rupees One Crore Twenty Eight Lakhs Eighty Nine Thousands Five Hundred and Ninety five Only) and Rs.53,75,690/- (Rupees Fifty Three Lakhs Seventy Five Thousand Six Hundred and Ninety only) respectively with interest which is the amount due to the petitioner for completing the contract successfully satisfactorily completion certificate also given.



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For the Appellants : Mr.J.Ravindran
Additional Advocate General
for M/s.L.Jaivenkatesh

For the Respondent : Mr.B.Kumar
Senior Advocate
for Mr.T.Sudhanraj

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard the writ appeals for challenge to the judgment dated 24.2.2021, whereby the writ petition filed by the petitioner/non-appellant to quash the proceedings of the third appellant withholding the amount which is due and payable to the petitioner/non-appellant.

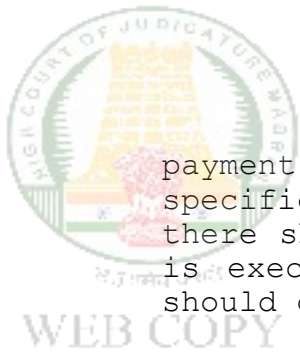
2. It is a case where the petitioner/non-appellant was given three different works under three different contracts. The work in respect of the first and second contracts was completed and, accordingly, the appellants issued completion certificate to show their satisfaction and made the entire payment due towards the first and second contracts. While the third contract was still to be executed by the petitioner/non-appellant, an order was passed to recover the amount in reference to the first and second contracts based on an audit objection and orders to this effect were passed on 15.12.2018 and 19.8.2020. Challenge to the aforesaid orders was sustained for the reason that after issuance of the completion certificate and payment of due amount, the recovery could not have been effected in regard to the works executed qua the third contract.

3. Learned Additional Advocate General submits that even after the issuance of the completion certificate and payment of due amount pertaining to the first and second contracts, recovery was permissible under paragraph 22 of the instructions to bidders, which reads as under:

"22.0 Recoveries of Dues:

Amount due from the supplier to the Corporation for the default in any other previous purchase orders will be adjusted from the pending payments against the purchase order placed on the vendor in this specification, which may plead be noted."

4. Paragraph 22 permits recovery of the amount due from supplier to the Corporation for the default in any other previous purchase orders and can be adjusted from the pending



payment against the purchase order placed on the vendor in this specification. Paragraph 22 can be invoked in two situations (i) there should be default in the previous purchase order, while it is executed; and, (ii) on account of such default, the amount should due from the supplier to the Corporation.

5. In the instant case, both the conditions are not made out for the reason that on completion of the first and second contracts, completion certificates were issued by the writ appellants and the petitioner/non-appellant was paid the entire amount due. The issue has been re-opened only in reference to the audit objection, without showing any provision in the agreement entered into between the parties to re-open the matter even after issuance of the completion certificate and making payment.

6. Accordingly, the learned Single Judge found reason to cause interference with the impugned orders. The audit objection was also taken into consideration by the learned Single Judge in paragraph (6) of the judgment. For ready reference, paragraph (6) is quoted hereunder:

"6. In response to this audit objection, the learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the following tender conditions.

'3.0 Supply of compressed air: The contractor has to make his own arrangement for the compressed air required for the work at his cost.

4.0 Power Supply: Free power supply will be provided to the Contractor from the nearest available Corporation's power supply point, for the contractor's offices and stores. The contractor should make his own arrangement to extend the power to the area of work and also maintain such extension lines at his cost.'"

7. Learned counsel for the petitioner/non-appellant submits that as per the conditions of the agreement, the contractor was entitled to free power supply for their requirement, but the appellants failed to supply the electricity, because the first available point was at the distance of 6 km and it was not possible to get electricity from that place and otherwise it was the obligation of the appellants to provide free power supply and, obviously, it has to be at the place of execution of the work and not at a distance of 6 km and in that circumstances,



the petitioner/non-appellant was left with no option but to use the diesel. It is to cover the default on the part of the appellants in not supplying free power, the audit has raised the erroneous objection about the usage of diesel instead of power supply and mulcted the responsibility on the petitioner/non-appellant.

8. The appellants have otherwise not shown any action taken against the officials who had paid excess amount to the contractor. Therefore, the audit objection remains for the sake of it and, accordingly, the learned Single Judge has rightly caused interference in the order passed by the appellants while allowing the writ petition.

For the foregoing reasons, we do not find any error in the judgment of the learned Single Judge warranting interference. The appeals are dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.20835 and 20836 of 2021 are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Engineer
Tamil Nadu Generation and Distribution Corporation Ltd.,
North Chennai Thermal Power Station - I
Chennai - 600 120.
2. The Superintending Engineer/Mech-II
TANGEDCO
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TANGEDCO
North Chennai Thermal Power Station - I
Chennai - 600 120.

+1cc to Mr.T.Sudhan Raj, Advocate, S.R.No.28716

+2ccs to M/s.L.Jaivenkatesh, Advocate, S.R.No.28559

+1cc to Mr.T.Sudhan Raj, Advocate, S.R.No.28715 [12/05/2022]



W.A.Nos.3038 and 3039 of 2021

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RLP (02/05/2022)