



W.P.(MD).No.5070 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

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M/S.R.V.Enterprises

... Petitioner

Vs.

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Anna Salai,
Chennai.

2. The General Manager,
Bharat Sanchar Nigam Limited,
Virudhunagar,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the second respondent to made payment of sum of Rs.27,09,000/- to the petitioner pursuant to the tender offered to the petitioner for optical fiber cable construction works in Virudhunagar in the proceedings of the second respondent No.N3/RETENDER/OFC/08-09/44, dated 25.04.2009



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based on the representation of the petitioner dated 31.03.2011 and 08.03.2012 within a time frame fixed by this Court, with interest at the rate of 12% per annum.

For Petitioner : Mr.B.Saravanan

For R1 : Mr.G.Rajaraman
Central Government Standing Counsel

For R2 : Mr.K.Govindarajan

ORDER

The present writ petition has been filed seeking a writ of mandamus, directing the second respondent herein to make payment of sum of Rs.27,09,000/- to the petitioner pursuant to the work carried out by the petitioner on the basis of a tender offered to the petitioner for optical fibre cable construction work in Virudhunagar.

2. It is the case of the petitioner that he was issued with a tender on 06.10.2008 for optical fibre cable construction work in Virudhunagar. The period of tender is one year from the date of



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agreement or completion of the work put to tender which ever is earlier.

The estimated cost of the said work is Rs.83.52 lakhs and 2.5% of the said amount was paid as an EMD.

3. The learned Counsel for the petitioner has further contended that as per the agreement, 90% of the amount should be paid as against the running bill and every time 7.5% of the bill shall be deducted towards performance security deposit and statutory taxes as applicable to the contract. The learned Counsel for the petitioner further submits that he has completed 90% of the work, but the payment has been made only to the extent of 67.5% of the work. He could not complete the balance of the work in view of the fact that optical fibre cable was not supplied by the respondent company. Hence, he could not continue the work. The present writ petition has been filed seeking a Mandamus to pay a sum of Rs.27,09,000/- to the balance of the bill due to the writ petitioner for the work which he has already completed.

4. Per contra, the learned Counsel for the respondents had



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contended that there is an arbitration clause in Clause no.17 of the tender documents. Hence, if any dispute arises with regard to the work carried out or the quantum of amount to be paid, the petitioner has to take recourse only to the arbitration proceedings and the present writ petition is not maintainable. However, no counter has been filed on the side of the respondents.

5. I have carefully considered the said submissions made on either side.

6. It is the specific case of the petitioner that he has completed 90% of the work and the payment has been made only to the extent of 67.5% of the work. The said fact has not been disputed by the respondents by filing a counter, even though the writ petition is pending for more than ten years. The only defence that is taken at the time of arguments is that there is an arbitration clause in the agreement and as such the present writ petition is not maintainable.



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7. I have carefully considered the Clause 17 of the agreement which contains the clause for arbitration. As per the said clause, any question, dispute or difference arising under their agreement shall be referred to the sole arbitration of the Chief General Manager of Tamil Nadu. In the present case, there is no factual dispute whether the petitioner has completed 90% of the work or not. It is also not been disputed that the petitioner has been paid only to the extent of 67.5% of the work completed by the petitioner. When there are no factual dispute with regard to the completion of the work and the payment already made, the question of invoking arbitration clause under the agreement does not arise.

8. In view of the above said facts, the writ petition stands allowed. The respondents are directed to pay a sum of Rs.27,09,000/- to the writ petitioner with interest at the rate of 6% per annum from the date of filing of the writ petition namely 15th April 2012 till the amount settled in full.



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9. With the above said observations, the writ petition stands
allowed. No costs.

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Index : Yes / No
Internet : Yes / No
jbr

To

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Bharat Sanchar Nigam Limited,
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R.VIJAYAKUMAR ,J.

jbr

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