

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19998 of 2022

and

W.M.P.(MD).Nos.14557 and14558 of 2022

M/s.Salem Automech Structures LLP,
Represented by General Manager,
V.S.Sankar,
5/37-A, Salem-Bangalore NH Road,
Jagir Ammapalayam PO,
Salem – 636 302.

... Petitioner

Vs

Bharath Heavy Electricals Limited,
Represented by its Deputy Manager,
Contracts and Outsourcing
First Floor,
Building No.53, Outsourcing Department,
HPBP, BHEL,
Tiruchirappalli – 620 014.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records of impugned e-tender in Referene No.2022OVMO14 published on 20.8.2022 by the respondent and quashed the same and consequently direct the respondent to

permit the petitioner to complete the work as per the purchase order in PO No. 7100177807 (RS 03) for Ramagundam SILO Structure and PO No. 7100177808 (RS 04) for Ramagundam Crusher House Project.

For Petitioner : Mr.A.Sivasubramanian

For Respondent : Mr.Raguvaran Gopalan,
for Mr.K.Prabhakaran.

ORDER

Heard the learned counsel for the writ petitioner and the learned counsel appearing for BHEL.

2. The writ petitioner is a registered vendor with the respondent. The respondent issued tender notification, dated 19.11.2021 calling for applications for carrying out as many as 7 rate schedules. The petitioner turned out to be successful in respect of 4 rate schedules. The petitioner was issued with 4 purchase orders. Two contract works ran into rough weather. According to the respondent, the petitioner was guilty of gross delay in carrying out the works. There was regular exchange of e-mail correspondence between the parties. Finally, vide communication dated 20.08.2022, two of the rate schedules were

cancelled and the respondent decided to look for fresh tenders. This has been questioned in the present Writ Petition.

3. When the matter was taken up for hearing, the learned counsel appearing for the respondent drew my attention to the email dated 20.08.2022 issued by the writ petitioner. The said email categorically calls upon BHEL to refer the matter to the Arbitrator as per Clause No.26 of the MOU entered into between the parties. He also pointed out that in the affidavit filed in support of the Writ Petition, there is no reference to this request for reference to Arbitration.

4. I am conscious of the fact that the relationship between the writ petitioner and the respondent is purely commercial in nature. When the agreement between the parties provides for reference to Arbitration to resolve any dispute that may crop up, it is only appropriate that the issues are resolved only through the said process. Invocation of writ jurisdiction is clearly misconceived. This is because the petitioner himself has sought reference to Arbitration. Having sought reference to arbitration, it is not open to the writ petitioner to maintain the Writ Petition on the same cause of action. Therefore,

I have no hesitation to decline the relief sought in the Writ Petition by relegating the petitioner to avail the arbitral remedy.

5. However, one grievance expressed by the writ petitioner deserves to be redressed. The petitioner's complaint is that when he wants to take part in other tender works floated by the respondent, he is not even able to login and the writ petitioner appears to have been blocked. The learned counsel for the respondent clarifies that it must have been due to some technical glitch and that it would be rectified. He clarified that no black-listing order has been passed against the writ petitioner as of now. He, of course, hastened to add that the writ petitioner cannot participate in the tender process floated in respect of cancelled contractual works.

6. The aforesaid submission of the learned Standing Counsel that no black-listing order has been passed against the petitioner and that he can take part in the other tender works that may be floated by the BHEL, is placed on record. The respondent is also directed to set right the technical glitch referred to in para 5 immediately.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

02.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To
The Deputy Manager,
Bharath Heavy Electricals Limited,
Contracts and Outsourcing
First Floor,
Building No.53, Outsourcing Department,
HPBP, BHEL,
Tiruchirappalli – 620 014.

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G.R.SWAMINATHAN, J.

Nsr

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