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W.P.No.22806 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.08.2023

Pronounced on : 15.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.22806 of 2021
and WMP.No.24032 of 2021

M/s.P.C.Projects Pvt. Ltd.,
Represented by its Director
Having its Regional Office at
P & C Garden, Nolambur
Mogappair West
Chennai - 600 037.

... Petitioner

Vs.

The Director General of Manager (Civil)
NTPC Tamil Nadu Energy Company Limited
(A Joint Venture of NTPC Limited and TANGEDCO)
Vallur Thermal Power Project
Vellivoyal Chavadi
Ponneri Taluk
Thiruvallur District - 600 103.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus to call for the records of the
respondent in impugned proceedings in Ref.No.NTECL/CIVIL/3345 dated
19.07.2018 and Ref.No.NTECL/Civil/Ash Dyke Lagoon-1/3927 dated



W.P.No.22806 of 2021

08.06.2021, quash the same as arbitrary, illegal and unsustainable and further direct the respondent to release a sum of Rs.89,84,196/- which has been withheld by the respondent for want of production of Royalty Payment Receipts / Challan / No Due Certificate, together with interest @ 12% p.a. from the date of withholding until the date of payment, within a stipulated time to be fixed by this Court.

For Petitioner : Mr.V.P.Sengottuvel, Senior Counsel
Assisted by Mr.K.R.Nishanth

For Respondent : Mr.M.Vijayan
of M/s.King and Partridge

ORDER

The petitioner has undertaken a works-contract for the respondent, and the said contract could not be fully executed owing to the intervention of this Court when it passed an order of injunction restraining the execution of the work in W.P.No.30237 of 2018. The petitioner now seeks payment of Rs.89,84,196/- along with interest for the work so far done.

2.The respondent has filed the counter wherein it alleges that the sample material collected from the quarries by the petitioner have to be produced before the respondent for its approval, and there is no dispute that the material collected is from the approved quarry by the respondent. In such a



W.P.No.22806 of 2021

event where the sample material has been approved by the respondent, the petitioner has to produce a no-due certificate issued to the approved quarries by the Government for payment of fees/royalty, and that the respondent insisted only for a copy of the said certificate issued by the Government. And that on production of the same, the amount withheld by the respondent would be released forthwith. Accordingly, on principle it agrees that the payment must have to be made, but states that the petitioner may have to produce necessary documents for payment of royalty or cess paid on the minerals, such as quarried sand and stone.

3. Heard Mr.V.P.Sengottuvel, the learned Senior Counsel for the petitioner and Mr.M.Vijayan of M/s.King & Partridge for the respondent.

4. Learned counsel for the respondent brought to the notice of the Court that Clause 27.8.0 of the Contract stipulates that the petitioner may have to show proof of payment of royalty and cess as stipulated therein.

5. Learned counsel for the petitioner however, relied on Clause 2.7.2 (c) and argued that the obligation to pay royalty and cess would arise only if the



W.P.No.22806 of 2021

petitioner itself directly quarried sand or stone based on any mining lease issued to it. So far as the petitioner is concerned, it has no licence to quarry, and that it has only procured the material from the market, for which it has produced ample receipts.

6. The relevant terms of the contract dated 01.09.2017 which rival sides relied on, may now be reproduced :

Clause 27.8.0	<i>Payments shall only be released for the portion of work for which original chalans / certificate from the concerned authority as a proof of having paid royalties/cess etc. on the material used in the work has been submitted by the contractor.</i>	<i>Relied on by respondent</i>
Clause 2.7.2	Materials : a) b) <i>If excavated materials are to be used for filling, then the contractor shall select the materials from the stockpile, load and transport this material and execute the filling. These shall include excavation of earth which may become hard due to lying in stock yard for a long period of time.</i> c) <i>In case the materials have to be brought from pits/quarries, then it shall be the Contractors responsibility for identification of such quarry areas, obtain approval for their use from concerned authorities, excavation/quarrying, loading and carriage of such materials, unloading and filling at specified locations. The contractor shall pay any fees, royalties, etc., that may have to be paid for utilisation of borrow areas.</i>	<i>Relied on by petitioner</i>



W.P.No.22806 of 2021

Clause (b) and Clause (c) make it amply clear that they are intended to cover situations where the contractors themselves excavate or quarry any mineral from any quarrying site and only in those circumstances, it is necessary pay royalty to the State. This Court therefore, is constrained to concur with the argument of the counsel for the petitioner that Clause 27.8.0 will apply only where Clause 2.7.2 will apply, which implies the former will apply only where the contractors themselves quarry the necessary minerals.

7. Here is a situation where the petitioner contends that it had procured the requisite minerals only from the open market, and has also furnished necessary invoices or bills for the same. If that is so, it may not be proper for the respondent to insist the petitioner to show proof of payment of royalty or cess, something which it need not pay as it had not quarried any mineral required for the execution of the work.

8. Now if the respondent continue to hold the belief that the petitioner had quarried the mineral in terms of Clause 2.7.2(c), then it must show some proof about it as the petitioner cannot prove the negative. The burden therefore, is essentially on the respondent.



W.P.No.22806 of 2021

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9. Therefore, unless the respondent has proved that the petitioner itself has quarried the mineral required for executing the work contemplated in the contract, it has only the responsibility to ascertain the correctness of the bills / invoices produced by the petitioner and to make necessary payments.

10. This Court therefore allows the petition, and sets aside the impugned proceedings of the respondent, and remands the matter back to the respondent, and requires,

- (a) the respondent to share any proof that the petitioner had quarried the minerals such as stones or sand, as the case may be, for executing the contracted work, and if they have any, then to hold an enquiry on the same;
- (b) if the respondent did not have any such proof, then to process the bills/invoices produced by the petitioner, and to ascertain its correctness and to make necessary payment to the petitioner;
- (c) the entire exercise contemplated herein above is required to be completed within a period of eight weeks from the date of receipt of a copy of this order.



W.P.No.22806 of 2021

WEB COPY

No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
ds

To:

The Director General of Manager (Civil)
NTPC Tamil Nadu Energy Company Limited
(A Joint Venture of NTPC Limited and TANGEDCO)
Vallur Thermal Power Project
Vellivoyal Chavadi
Ponneri Taluk
Thiruvallur District - 600 103.



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W.P.No.22806 of 2021

N.SESHASAYEE.J.,

ds

Pre-delivery order in
W.P.No.22806 of 2021

15.09.2023