



W.P.No. 33474 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.01.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 33474 of 2022

Balajee Structurals (India) Private Limited
Agrasen Chowk, Bajrang Nagar,
Raipur – 492 001 (C.G.) Chhattisgarh
Represented by its Authorized Signatory
Mr. Mahesh Iyengar.

... Petitioner

Vs

1. The Managing Director,
TANGEDCO
7th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.

2. The Chief Engineer,
Material Management,
TANGEDCO
4th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.

3. Senior Manager
Punjab National Bank
Raipur Main Branch
Motibagh Chowk,
Raipur, Chhattisgarh.

... Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records in proceedings related to Show Cause Notice Lr. No. CE/MM/SE/MMI/EEI/AEE1/F.PO.No.99/D.244/2022 dated 20.10.2022 issued by the second respondent and quash the same which is arbitrary and in violation of the established principles of law.

Amended prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records in proceedings related to the impugned order Lr. No. CE/MM/SE/MMI/EEI/A1/F.PO.No.99 dated 09.11.2020/D.249/22 dated 09.11.2022 issued by the second respondent and quash the same which is arbitrary and in violation of the established principles of law. (Prayer amended vide order dated 16.12.2022 made in W.M.P.No. 33195/2022 in W.P.No. 33474/2022 by CVKJ)

For Petitioner : M/s. Surya Senthil
for Surana and Surana

For Respondents : Mr. Mohammed Yaqoob Kafeel
for M/s. D.R. Arun Kumar
Standing Counsel
for R1 and R2
Mr. M.L. Ganesh for R3

ORDER

The writ petition had originally been filed in the nature of certiorari seeking interference with the show cause notice in Letter No. CE/MM/SE/MMI/EEI/AEE1/F.PO.No.99/D.244/2022 dated 20.10.2022 of the second respondent which according to the petitioner was arbitrary and violation of established principles of law.



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2. Unfortunately during the pendency of the writ petition, the second respondent appears to have acted in furtherance of the show cause notice and it is the grievance of the learned counsel that the reply to the show cause notice was not at all considered but the threat held out in the show cause notice was actually enforced and the bank guarantee which the petitioner had given was invoked by the second respondent. This necessitated the petitioner to bring about an amendment to the relief sought for in the writ petition. Accordingly, they challenged the impugned order which now transformed itself to Letter No. CE/MM/SE/MMI/EEI/A1/F.PO.No.99/D.249/22 dated 09.11.2022 issued by the second respondent again, according to the petitioner is arbitrarily and in violation of the established principles of law.

3. The writ petitioner is a registered manufacturer of structural steel and reinforced steel products. They supply steel and reinforced steel products to Central and State government organizations including the State Electricity Boards and more particularly to the first and second respondents namely TANGECO.



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4. In June 2020, the first and second respondents had floated an open e-tender for the supply of RS Joist 200 *100 mm of 5 Length to UDAY Schemes and routine works in EDCs. The petitioner had participated in the tender and was awarded the Rate Contract on 09.11.2020 for a period of 12 months.

5. The petitioner in the affidavit filed in support of the writ petition, had listed out various grievances as against the first and second respondents indicating that they had failed to honour their commitments under the contract. But, I would rather stress that the fresh agreement between the petitioner and the first and second respondents was the outcome of consensus between the two parties. They had agreed to abide by the terms of the contract. They had agreed to honour the terms of the contract. Since I am not entering into any detailed discussion as to the terms of the contract, I would primarily lay stress on the fact that once a contract comes into play, it would be extremely inappropriate for the Writ Court under Article 226 to either interpret the terms of the contract or thrust a new term on the parties. I would straight away dispose of the writ petition by stating that invocation of the terms of the performance guarantee given by the petitioner was only under the terms of the contract. If at



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all the petitioner has any grievance they should work his remedy as agreed by them and the respondents.

6. If there is any breach of the terms of the contract or any grievance arising out of the performance of any of the terms of the contract, the parties are bound by a specific clause which is termed as Jurisdiction for Legal Proceedings:

" No suit or any proceedings in regard to any matter arising in any respect under this contract shall be instituted in any court save in the City Civil Court of Chennai or the Court of Small Causes at Chennai and it is agreed that no other court shall have jurisdiction to entertain any suit or proceedings even though part of the cause of action might arise within their jurisdiction. In case, any part of cause of action arises within the jurisdiction of any of the courts in Tamil Nadu and not in the courts of Chennai city then it is agreed to between parties that such suits or proceedings shall be instituted in a court within Tamil Nadu and no other courts outside Tamil Nadu shall have jurisdiction even though any part of the cause of action might arise within the jurisdiction of such courts. An undertaking in this regard as per Annexure -III enclosed should be furnished in a non-judicial Stamp Paper of value not less than Rs.80/- agreeing to the above, on receipt of the purchase order."



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7. This is the clause which has been agreed by the petitioner and the respondents. They had agreed that they can institute a suit in a court of law within Tamil Nadu and in no court outside Tamil Nadu. The right to file a suit is an inherent right. The right to file an appeal is governed by the Statute. If the suit is otherwise maintainable and not specifically or impliedly barred under Section 9 of the Code of Civil Procedure, the petitioner can very well file a suit. This observation is not to grant a liberty to the petitioner to file a suit but only an indication that this forum is not the proper forum for the petitioner to approach.

8. It is however represented that the performance guarantee has also been invoked by the respondents. Unfortunately the writ court cannot grant any relief.

9. Learned counsel for the petitioner states that the reasons given in the show cause notice and in the final order differ but the show cause notice is only a skeleton pointing out the reason for issuance of that particular notice. It is only in the order wherein reasons have to be given. If a show cause notice by itself has reasons and gives a conclusion then the show cause notice can very well be



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interfered with. Therefore, it is only appropriate that any show cause notice is kept within bounds and does not indicate the conclusion of the authority issuing the show cause notice. It is only calling upon the recipient to give an explanation and putting the respondent on notice that if a proper reply is not given further steps will be taken in accordance with the terms of the agreement. The second respondent had invoked performance guarantee in accordance with the terms of the agreement.

10. The writ petition stands dismissed. No costs. Consequently, connected W.M.P.No. 32914 is closed.

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Index: Yes/no
mrn



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C.V.KARTHIKEYAN, J.
(mrn)

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