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W.P.No.35006 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35006 of 2019

and

W.M.P.Nos.35795 to 35797 of 2019

Megha Engineering and Infrastructures Limited,
Represented by its authorised signatory
Mr.T.Ashok Reddy,
A Company incorporated under the provisions
of Indian Companies Act, 1956,
Having its registered Office at
S-2, Technocrats Industrial Estate,
Balanagar, Hyderabad,
Telengana – 500 037.

... Petitioner

Vs.

1. Municipal Administration and Water Supply Department,
Represented by its Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Tamil Nadu Water Supply and Drainage Board,
Represented by its Managing Director,
No.31, Kamarajar Salai, TWAD House,
Chepauk, Chennai – 600 009.



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3. The Project Chief Engineer,
TWAD Board, Gandhi Nagar,
Vellore – 632 006.
4. The Executive Engineer,
Project Maintenance Division,
TWAD Board, Hogenakkal Project Office,
A.Jettihalli (PO), Collector Bungalow Campus,
Dharmapuri – 636 807.
5. Indian Overseas Bank,
Represented by its Authorised Signatory,
4-3-25-28 and 32, 1st Floor, Kaswa Complex,
RP Road Branch,
RP Road, Secunderabad – 500 003.
6. State Bank of India,
Represented by its Manager,
Commercial Clients Group,
Door No.8-2-684/2/A,
Anand Banjara Colony, Banjara Hills,
Road No.12, Near Ratnadeep,
Hyderabad,
Telengana – 500 034.
7. TVRCL Limited,
(Formerly Known as IVRCL Infrastructures
and Projects Limited),
Represented by its Liquidator Mr.Sutanu Sinha,
M-22/3 RT, Vijaynagar Colony,
Hyderabad,
Telengana – 500 057.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents 1 to 4 to act in accordance with and furtherance of Board Resolution of the second respondent dated 23.04.2015 and forthwith release the Bank guarantees bearing Reference No.432/LG(1)/21/13 dated 29.01.2013 issued by the fifth respondent Bank and Nos.1303915BG1014920, 1303915BG1014921, 1303915BG1014922 dated 22.01.2015, No.1303913BG1000464 dated 27.12.2013 issued by the sixth respondent for a total sum of Rs.15,17,82,434/- and release all the payments due for the work done by the petitioner in respect of the Contract and towards Operation and Maintenance directly to it in a time bound manner together with interest thereon.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.P.Sathish
Additional Govt. Pleader for R1
Mrs.Shahila Bhanu
Senior Counsel for R2 to R4
Mr.C.Mohan
for M/s.King and Patridge for R6

O R D E R

This Writ Petition has been filed for a direction to the respondents 1 to 4 to act in accordance with and furtherance of Board Resolution of the second respondent dated 23.04.2015 and forthwith release the Bank guarantees bearing Reference No.432/LG(1)/21/13 dated 29.01.2013 issued by the fifth respondent Bank and



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Nos.1303915BG1014920, 1303915BG1014921, 1303915BG1014922 dated 22.01.2015, No.1303913BG1000464 dated 27.12.2013 issued by the sixth respondent for a total sum of Rs.15,17,82,434/- and release all the payments due for the work done by the petitioner in respect of the Contract and towards Operation and Maintenance directly to it in a time bound manner together with interest thereon.

2. The case of the petitioner is that the petitioner is the Sub-contractor under the seventh respondent who had been awarded the contract of Hogenakkal Water Supply and Fluorosis Mitigation Project, Package-II by the TWAD Board / Second respondent. In terms of the said contract, the seventh respondent has submitted a Retention Bank Guarantee in lieu of disbursement of retention money. In addition to the Bank Guarantee, there was another Performance Bank Guarantee issued on behalf of the petitioner drawn on State Bank of India for an amount of Rs.1,26,97,434/- issued on 27.12.2013. The project work was subsequently completed and handed over. Thereafter, the second respondent by letter



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dated 12.08.2014 had requested to release the Bank Guarantees on completion of substantial portion and completion of defects liability period.

The TWAD Board passed a resolution dated 23.04.2015 wherein the Board has resolved that payments could be made directly to the petitioner for the works executed by them and accepted the approval. Pursuant to the said Board resolution, the seventh respondent vide its consent letter dated 24.04.2015 also confirmed that the petitioner may receive all the payments directly. Subsequently, the pending minor works and defects pertaining to the scope of works undertaken by the petitioner was also completed and the TWAD Board took over these facilities in eleven stages progressively. Thereafter, on 28.12.2018, the TWAD Board grants further approval for the payment to be made directly to the Sub-contractor, i.e, petitioner herein and by subsequent letters dated 25.01.2019 and 20.05.2019, the Executive Engineer and Superintending Engineer in their letters have recognized the consent letter issued by the seventh respondent to release the payments directly to the sub-contractor / petitioner. Since the petitioner has not received the payments for the work undertaken by him, he sent a request /



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reminder dated 29.07.2019 to the Executive Engineer who in turn sent a communication to the Chief Engineer recommending release of all outstanding payments directly to the petitioner. This was finally communicated by the Chief Engineer to the Board vide letter dated 31.07.2019. The petitioner states that Clause 60.3 of the Contract Agreement dated 02.07.2010 also relates to the return of Bank Guarantees, which has been violated by the respondents.

3. Subsequently, the seventh respondent, namely IVRCL Limited has gone into liquidation wherein the National Company Law Tribunal, Hyderabad Bench, has granted an interim relief in I.A.Nos.1073 and 1074 of 2019, wherein the Ld. Resolution Professional of M/s.IVRCL Limited had undertaken not to invoke two Bank Guarantees issued by the petitioner in favour of the seventh respondent towards performance of obligations under four piece rate contracts and one supply contract entered into between the petitioner and the seventh respondent in relation to the instant project, until the disposal of the I.As. The grievance of the petitioner is now that the Bank



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Guarantees issued by the petitioner towards the performance of obligations are not yet released to the petitioner. Even though representations have been given by the petitioner and assurances were given by the second respondent that the Sub-contractor will be paid directly and the Bank Guarantees will be returned, the same are withheld by the respondents in an unfair and arbitrary manner even though the entire project and scope of works covered by the main contract has been completed and the petitioner is also completed five years O&M being the official Sub-contractor of the seventh respondent. The petitioner pleads that the substantial delay in settling the amounts due to the petitioner is causing serious financial crisis to him which has necessitated the filing of the present Writ Petition.

4. The learned counsel appearing for the petitioner submits that on perusal of the counter affidavit filed by the second respondent especially in paragraph No.10 reveals that some defects were pointed out by the fourth respondent, i.e., Executive Engineer, Project Maintenance Division, Project Maintenance Division, Dharmapuri vide letter dated 30.08.2021 which



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would amount to Rs.3.5 Crores and except this allegation, no other allegation was made against the petitioner. He further submits that it is open to the respondents to retain a sum of Rs.3.5 Crores and the balance amount may be released by the respondents in favour of the petitioner within a stipulated time fixed by this Court.

5. The learned Senior Counsel appearing for the respondents 2 to 4 submits that the payment for work done was made to the seventh respondent through Liquidator. No money transaction was made directly between the respondent Board and the petitioner. The petitioner has no *locus standi* to claim the Bank Guarantee furnished by Banks on behalf of the seventh respondent. The Bank Guarantees referred to in the affidavit were not furnished by the petitioner herein as stated in the affidavit. The Bank Guarantees were submitted by the seventh respondent, the Contractor herein to the Project Chief Engineer who is made an agreement with IVRCL Limited, the Contractor herein. Hence, the petitioner has no right to claim the same by filing the present Writ Petition.



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6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly the petitioner entered into contract with the seventh respondent and the seventh respondent has subcontracted the Section-I and Section-II works to the petitioner herein in three stages and the same was approved by the Project Chief Engineer, Hogenakkal Water Supply and Fluorosis Mitigation Project, Dharmapuri. The Section-II works, i.e., the Operation and Maintenance of Package -II commenced from 01.01.2014 onwards for which Bank Guarantees to the tune of Rs.13,90,85,000/- were submitted. The Package-II Operation and Maintenance period was completed on 30.06.2021 including extension period of two and half years from 01.01.2019 to 30.06.2021. The grievance of the petitioner is that even after completion of the defects liability period, the respondents have not returned the Bank Guarantee to the petitioner. However, in order to ascertain the facts, this Court perused the counter affidavit filed by the second respondent. A perusal of the counter



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affidavit, it reveals that the Operation and Maintenance of Package -II commenced from 2014 and the same was completed on 30.06.2021 including extension period. However, the respondents claimed that as per Clause 60.3 of the Agreement, the return of Bank Guarantee to the Contractor will arise only after the period of defect liability is over. If any work remains to be executed under Clause 49, the Engineer shall be entitled to withhold the certification of the estimated cost of this work until it has been executed. The Engineer shall certify payment in accordance with sub-clause 60.2 and as per Clause 60.7, upon submission of the final sectional statement, the Contractor shall give to the employer, with a copy to the Engineer, a written discharge confirming that the total of the final sectional statement represents full and final settlement of all money due to the contractor arising out of or in respect of that Section of the Contract.

8. However in the present case, the Executive Engineer, Project Maintenance Division, Dharmapuri vide letter dated 30.08.2021 pointed out certain defects executed by the petitioner which would amount to



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Rs.3.5 Crores but the respondents retained a sum of Rs.13,19,85,000/- is not sustainable one. Hence, this Court is inclined to issue a direction to the official respondents to retain Rs.3.5 Crores and return balance amount to the petitioner within a period of six weeks from the date of receipt of a copy of this order, which is mentioned in the Paragraph No.10 of the counter affidavit. The petitioner is at liberty to adjudicate the issue of return of Bank Guarantees in the manner known to law as per the terms of contract.

9. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.06.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
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Chennai – 600 009.
2. The Managing Director,,
The Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, TWAD House,
Chepauk, Chennai – 600 009.
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TWAD Board, Gandhi Nagar,
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TWAD Board, Hogenakkal Project Office,
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