



W.P.No.31845 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.31845 of 2018

M/s.Malar Energy & Infrastructure Pvt.Ltd.
Represented by its Director
No.57, 1st Floor,
Pantheon Road,
Chennai-600 008

... Petitioner

Vs

Executive Engineer,
Central Public Works Department (CPWD)
Ministry of Urban Development
Karikal Project Division-II
C.P.W.D., No.1, School Street,
Karaikal-609 609

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate Writ or order directing the respondent to refund the sum of Rs.56,42,946/- (Rupees Fifty Six Lakhs Forty Two Thousand Nine Hundred and Forty Six Only) to the Petitioner Company.



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For Petitioner ... M/s.Kaushik N.Sharma

For Respondents ... Mr.A.R.C.Sundaresan,
Additional Solicitor General
Assisted by
Mr. Venkataswamy Babu,
Senior Panel Counsel

ORDER

This Writ Petition has been filed for a direction to the respondent herein to refund a sum of Rs.56,42,946/- to the Petitioner Company.

2. It is the case of the petitioner that he participated in the tender process and he was the successful bidder by bidding an amount of Rs.8,07,08,354/-. As per the terms of the tender, the petitioner has also deposited the Earnest Money Deposit which was to be returned after receiving the performance guarantee. The performance guarantee was also provided by the petitioner. Though the petitioner has to complete the project within 150 days due to inordinate delay on the part of the respondents, it was not completed on time. Though, a mutual agreement contract was extended, the respondents arbitrarily encashed the performance guarantee and thereafter terminated the contract with the petitioner. However, the project has not been



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taken up with anybody for completion. It is evident that from the information obtained by the petitioner on his RTI Application. In such a scenario, the respondent is bound to return the amount of Rs.16,07,528/- towards EMD and the amount of Rs.40,35,418/- towards performance guarantee to the petitioner. However, the respondent has not refunded the amount to the petitioner. Hence, this Writ Petition has been filed seeking to refund the amount to the petitioner.

3. Learned Additional Solicitor General submits that with regard to the very same issue, Writ Petitions were filed before this Court in W.P.Nos.6400 & 6532 of 2016 and the said petitions were disposed of with the observation that the petitioner has to get their grievances redressed either by invoking the arbitration clause as agreed between the parties or by approaching the competent forum.

4. In view of the above submission and on perusal of the materials available on record, it is evident that pertaining to the very same issue in the present petition, other Writ Petitions were filed before this Court, wherein certain observations have been made directing the petitioner to approach the appropriate forum. While so, filing of Writ Petition once again before this



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court is wholly impermissible. Hence, the prayer sought for in this Writ Petition cannot be granted and this Writ Petition is liable to be dismissed.

5. For the reasons aforesaid, this Writ Petition stands dismissed.

There shall be no order as to costs.

10.03.2023

Index:Yes/No

Internet:Yes

NHS

To

Executive Engineer,
Central Public Works Department (CPWD)
Ministry of Urban Development
Karikal Project Division-II
C.P.W.D., No.1, School Street,
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M.DHANDAPANI, J

NHS

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