



WEB COPY



W.P.No.34124 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.34124 of 2018
and W.M.P.Nos.39646 & 39647 of 2018

M.Jayabalan

.. Petitioner

Vs.

1. The General Manager,
Union of India
Southern Railway,
Moore Market Complex,
Chennai-600 003.

2. Senior Divisional Commercial Manager,
Southern Railway,
Commercial branch,
Moore Market Complex,
Chennai-600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent in proceedings No.M/C.14/Pay and use Toilets/Expenditure model/E and F/KBT-AJJ-RU-CJ/17 dated 29.11.2018 wherein the 2nd respondent had illegally and arbitrarily terminated the Petitioner contract for Operation and Maintenance of pay and use toilet at E and F category station at KBT-AJJ-RU-CJ and quash the same.



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For Petitioner : Mr.M.Karthick
for M/s.G.Vijayanand Associates

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways.

ORDER

This Writ Petition has been filed seeking to quash the impugned proceedings dated 29.11.2018 which was passed by the 2nd respondent terminating the petitioner's contract for Operation and Maintenance of pay and use toilet at E and F category station at KBT-AJJ-RU-CJ.

2. It is the case of the petitioner that he is the highest bidder in the tender notified by the respondents for award of contract for operation and maintenance of pay and use toilets at E and F category stations between KBT-AJJ-RU-CJ for a period from 09.02.2018 to 08.02.2019, pursuant to which, the petitioner was issued with letter of acceptance by the respondents on 02.02.2018 for award of the said contract. Subsequently, on verification, the respondent authorities having found that the certificate of experience, which was given by the petitioner while submitting the tender application was the bogus one, the petitioner was issued with the show cause notice.



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Subsequently, the petitioner's contract was terminated vide impugned order dated 29.11.2018. Challenging the same, the petitioner has come up with this Writ Petition.

3. Learned counsel for the petitioner submits that show cause notice was issued questioning the genuinity of the experience certificate produced by the petitioner, even before giving an explanation to the show cause notice, the Assistant Commissioner/Executive Officer, Arulmigu Angalamman Temple, Melmalayanur & Taluk, Villupuram District having conducted an inspection with regard to the genuinity of the experience certificate, had issued a certificate dated 08.09.2018 confirming its genuinity. However, the 2nd respondent without conducting proper enquiry, has mechanically terminated the contract awarded to the petitioner, which is wholly unsustainable.

4. Per Contra, learned Additional Government Pleader appearing for the respondents submits that though the petitioner claims the experience certificate produced by him to be genuine, and placing reliance on the



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certificate issued by the Assistant Commissioner confirming the genuinity of the experience certificate, however, on verification, the certificate issued by the Assistant Commissioner, Villupuram District was found to be bogus one. The petitioner having breached the tender conditions, by producing a bogus certificate on the basis of which the contract was awarded, has no right to question the cancellation of the said award of contract. Hence, the order under challenge cannot be found fault with. Accordingly, this Writ Petition deserves to be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Though, the aforesaid contract was awarded to the petitioner, subsequently, the said contract was cancelled by the respondents on the ground that bogus certificate has been produced by the petitioner on the basis of which the contract was awarded. However, the petitioner claims the said certificate to be genuine. Such being the case, as per the terms of the contract, there is a remedy available for the petitioner through arbitration by



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invoking arbitration clause. Without resorting to such remedy, rushing to this Court and filing the present Writ Petition as against the order of cancellation is wholly impermissible. Hence, the prayer sought for in this Writ Petition cannot be granted. However, it is open for the petitioner to work out his remedy by invoking the Arbitration clause and substantiate his claim before the arbitrator.

7. For the reasons aforesaid, this Writ Petition is dismissed. There shall be no order as to costs. The petitioner is granted liberty to invoke the arbitration clause and the parties shall abide by the terms of the contract relating to arbitration. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Internet : Yes / No

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To

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