



W.P.No.3283 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.3283 of 2021

and

W.M.P. Nos. 3724 and 3725 of 2021

M/s. Royal Engineering Company,
Site No. 29, SF No. 479/3-A,
Balaji Industrial Estate,
Kondayampalayam Road,
Keeranatham Village,
Coimbatore District – 641 035,
Rep by its Partner,
V.V.Nagendran.

... Petitioner

Vs

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai – 600 002.

2. The Chief Engineer / Distribution,
Coimbatore Region,
TANGEDCO, Tatabad,
Distribution Circle,
Udumelpet – 641 012.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent culminating in its letter bearing number Lr.No. CE/D/CBE/AEE/MM/F/PO MCE 45/18-19/D.571/20 dated 19.08.2020 issued by the second respondent and quash the same as illegal, arbitrary and consequently, direct the respondent to pay the petitioner company all pending dues without making any deductions and refund the amounts wrongly deducted.

For Petitioner : Mr. N.L.Rajah,
Senior Counsel
for Mr. K.Narasimhan

For Respondents : Mr. L.Jaivenkatesh,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the order dated 19.08.2020 passed by the second respondent, thereby cancelling the purchase order and liquidated damages to the tune of Rs.7,11,706/- was levied.



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2. The Petitioner is one of the regular bidder for various electrical item tenders floated by the respondents. In the year 2019, the purchase orders were placed by the respondents for various circles with the petitioner, by way of floating tenders for procurement of 500 sets of Transformer Centre Set (TC Set) O & M works in the year 2018 dated 22.10.2018. The petitioner/Company had bid for the tender and it was declared as a successful bidder for the tender work and the respondents placed the purchase orders on the basis of the tender. As per the agreement, delay in supply to the respondents deducting liquidated tenders was agreed in the purchase order. However, as per the purchase orders, the second respondent failed to make payment in time and there was an abnormal delay. That apart, there was due from the respondents to the petitioner. Therefore, the petitioner did not have sufficient funds to pay for purchase of goods to make requirements made in the purchase orders. Though the petitioner duly informed the same to the second respondent, there was no sufficient funds for payment to the second respondent. Therefore, the second respondent cancelled the purchase order and levied liquidated damages.



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3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was not given an opportunity of hearing before claiming damages and levy of liquidated damages. Therefore, the cancellation of purchase order is in excess of jurisdiction and it is clear violation of principles of natural justice. The second respondent had cancelled the purchase order in an arbitrary manner, that too without issuing a show cause notice to the petitioner. If at all the petitioner was given an opportunity, he would have explained for non complying the purchase orders only due to the delay on the part of the second respondent in making payment to the petitioner for the past supplies made by the petitioner. Though the parties agreed on the terms and conditions of the purchase order dated 04.03.2019 in Clause 10.3(i), the payments towards the supplies made by the petitioner/Company would be made within reasonable time and such payments were unreasonably delayed due to no fault on the part of the petitioner. In support of his contentions, the learned Senior Counsel for the petitioner relied upon the judgement of this Court in ***Messrs Chempast Sanmer Limited -vs- the Secretary*** (Order dated 01.09.2022 in W.P.Nos.32152, 34628, 34629 of 2012 and batch).



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4. The second respondent filed counter affidavit and the learned Standing Counsel for the respondents submitted that the materials were not supplied as per the purchase orders. The supplier turned up in person and assured the second respondent that 50% of the material will be supplied in 30 days and another 50% within two months. However, the materials were not supplied as assured by the petitioner. Therefore, the second respondent cancelled the purchase order by order dated 19.08.2020 and the petitioner was imposed penalties based on terms and conditions stipulated in the purchase order. In fact, the petitioner had given reply dated 19.09.2020 that the balance amount of Rs.17,90,630/- is yet to be paid by the second respondent against the various purchase orders and requested to withdraw the cancellation of purchase order. On receipt of the same, the second respondent duly replied that the recoveries have been claimed based on the clause relating to liquidated damages for the purchase order. Therefore, the request made by the petitioner was not considered and it was rejected. However, the learned Standing Counsel for the respondents submitted that the petitioner is a consistent defaulter in supply from 23.11.2023. As per the purchase order, the petitioner had only supplied 13 sets of AB Switch and



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balance of 737 sets were not supplied. Based on the non supply of transformer, an AG audit slip has been raised for an amount of Rs.21,06,317/- towards LD & difference in cost. Similarly, in Villupuram Region, the purchase order of the petitioner was cancelled and penalty amount of Rs.8,41,199/- was imposed.

5. However, the only ground raised by the petitioner is that the petitioner was not given any opportunity of hearing by way of issuing of show cause notice and conducting enquiry before the impugned order of penalty has been passed by the second respondent.

6. The learned Senior Counsel for the petitioner has earlier relied upon the judgement of this Court in ***Messrs Chempast Sanmer Limited -vs- the Secretary*** (Order dated 01.09.2022 in W.P.Nos.32152, 34628, 34629 of 2012 and batch), which reads as follows:-

“4....

b. To answer the second question, it may be relevant to bear in mind that any order of enhancement of



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demands results in adverse civil consequences, if so, the question whether the proceedings is ministerial/ administrative/quasi-judicial appears to pale into insignificance while examining the question of the need to comply with the principles of natural justice. The concept of natural justice as well as administrative law has undergone a sea change. It appears that while examining the question whether a particular proceeding ought to be in compliance with principles of natural justice, the test may no longer be as to whether such order/ proceeding is not whether one can fairly call the same to be ministerial/ administrative/quasi-judicial but whether civil consequences ensue. In other words, be it ministerial/ administrative /quasi-judicial, it appears that any proceeding which results or involves civil consequences then irrespective of whether such proceeding/order is administrative/quasi-judicial, the said proceedings ought to be in conformity with principles of natural justice. Its been a long while since the dividing line



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*between administrative and quasi-judicial functions/powers have become blurred. The dividing line between administrative and quasi-judicial power was perceptibly mitigated in the case of **State of Orissa Vs. Dr.(Miss) Binapani Dei**, reported in **AIR 1967 SC 1269** and rubbed out to a point where it has virtually become non-existent in the case of **A.K. Kraipak and others Vs. Union of India and others**, reported in **(1969) 2 SCC 262**. Thereafter, the above principles have been consistently followed and the dichotomy, if any, which might have existed between administrative and quasi-judicial function vis-a-vis applicability of the doctrine of natural justice has been judicially abandoned/discarded as unsound as held in the case of **S.L.Kapoor vs. Jagmohan and others** reported in **(1980) 4 SCC 379**. The position that prevails is that whenever civil consequences ensue the distinction between an ministerial/administrative/quasi-judicial order with reference to applicability of principles of natural justice gets*



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obliterated. The reason behind extending the applicability of natural justice is to ensure prevention of miscarriage of justice and compliance with natural justice could be a means of ensuring that. Thus, it may be necessary to extend the principle irrespective of the nature of the proceedings if the same were to result in civil consequences. Thus any demand on the basis of Audit Objection, ought to be in conformity with principles of natural justice.

Now as to what would constitute natural justice which the petitioners claim to have been violated in view of the fact that consequent to the impugned orders, they are subjected to demands that are at times astronomical and bears no connection or relation to the electricity that could have been possibly consumed or that such demands are contrary to the law governing the demand of electricity charges, in this regard, it may be relevant to note that the Hon'ble Supreme Court in K.I.Shephard's case reported in



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1988 AIR 686, 1988 SCR (1) 188, wherein, it was clarified that natural justice requires that persons likely to be affected by proposed ministerial/ administrative/quasi-judicial acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry, if one is held; and c) effectively to prepare their own case and to answer the case, if any, they have to meet.”

7. The above judgement is squarely applicable to the case on hand. After relying upon the judgement of the Hon'ble Supreme Court of India, this Court in the said decision held that whenever civil consequences ensue, the distinction between ministerial/administrative/quasi-judicial order with reference to applicability of principles of natural justice, gets obliterated. The reason behind extending the applicability of natural justice is to ensure prevention of miscarriage of justice and compliance with natural justice could be a means of ensuring that. Thus, it may be necessary to extend the



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principle irrespective of the nature of the proceedings, if the same were to result in civil consequences. Thus, any demand on the basis of Audit Objection, ought to be in conformity with the principles of natural justice.

8. Admittedly, the petitioner was not served with any show cause notice and the petitioner was not given an opportunity of hearing before passing the order impugned in this Writ Petition. Though, after cancellation of the purchase order, some other person placed order in respect of the purchase of transformer, the order of levying liquidated damages is liable to be quashed.

9. In view of the above, the order dated 19.08.2020 insofar as it relates to levying of the liquidated damages to the tune of Rs.7,11,706/- alone, is quashed and the matter is remanded back to the second respondent for passing fresh order, after giving an opportunity of hearing to the petitioner. It is made clear that the impugned order can very well be treated as fresh notice and as such, the petitioner is at liberty to send reply within two weeks from the date of receipt of a copy of this order. On receipt of the



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same, the respondents are directed to pass orders after giving an opportunity of hearing to the petitioner on merits and in accordance with law within a period of four weeks thereafter.

10. In the result, this Writ Petition is allowed to the extent indicated above. Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.06.2024

Index:Yes/No
Neutral Citation/Yes/No
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