



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-04-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.2122 of 2022

And

WMP Nos.2288 and 2290 of 2022

M/s.Orion Ventures,
Represented by its Partner,
No.15/355Q, Opposite to Post Office,
Tirur Road, Down Hill PO,
Malappuram,
Kerala-676 519
Site address near Basin Bridge Railway Station,
BBQ Depot,
Chennai-600 079.

.. Petitioner

-VS-

1.The Chief Mechanical Engineer,
Southern Railway,
Park Town,
Chennai-600 003.

2.The Senior Divisional Mechanical Engineer,
Southern Railway,
Park Town,
Chennai-600 003.

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 02.11.2021 in Letter No.M/M/W271/BOOT/21 and order dated 20.11.2021 in Letter No.M/M/W271/Boot Laundry of the second respondent and quash the same and consequently declare the act of second respondent in imposing deductions on account of cost of missed / lost linen materials from bills of petitioner company as illegal and also direct the respondents to immediately refund the excess deduction effected from PV bills of the petitioner with retrospective effect from October, 2011.

For Petitioner : Ms.AL.Gandhimathi for
Mr.AR.Karthik Lakshmanan

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

ORDER

The order dated 20.11.2021 issued by the second respondent levying penalty, is under challenge in the present writ petition.

2. The petitioner is running a Mechanised Laundry Plant for Southern Railway functioning at BBQ Depot. The petitioner had been



awarded contract for the work of collection of soiled linen from the AC Coaches, washing in Mechanised Laundry, supply and loading washed linen into AC Coaches at MAS and MS/GSN Stations including supply and installation of plant/equipment/related infrastructure and operation for a period of 10 years at Basin Bridge Coaching Depot from 01.10.2011 till 30.09.2021.

3. Ms.AL.Gandhimathi, learned Senior Counsel, appearing on behalf of the petitioner, would submit that as per Clause 5.9.4 of the contract, the petitioner has paid penalty and claiming penalty again by the respondent through impugned order, is in violation of the terms and conditions stipulated under the Memorandum of Understanding (MoU).

4. Per contra, the second respondent filed counter-affidavit, disputing the said facts raised by the petitioner and the relevant paragraphs 4 to 7 and 10 of the counter-affidavit of the respondents, read as under:-

“4. I submit that, as per para 5.9 of the Agreement, the penalty pertaining to various instances have been laid down. Vide para 5.9(iv) of the Agreement, “the cost of linen items lost or



damaged while in contractor's custody which is attributed to their account may be recovered from the contractor as per the rates prevailing at that point of time. Railways decision as to whether such loss or damage is on contractor's account shall be final and binding on the contractor". Further, as per para 5.9(xi) of the Agreement, "In the train where distribution is also being done by the contractor, the actual purchase cost of any shortage of linen on run will be recovered from the contractor".

5. The contractor is supplied with linen items such as bedsheets, pillows, pillow covers, hand towels and blankets at the beginning of every year duly replacing the linen which have completed their codal life. Accountal of linen items is verified every trip for each train before loading in train and after unloading from train after arrival of train in the platform. Any shortage/damaged linen are jointly verified with the contractor and joint statement is prepared every month. The penalty for linen lost/damaged are calculated based on the actual purchase cost at that point of time as per paras 5.9(v) and 5.9(xi) of the Agreement. The penalty thus calculated is



deducted from the monthly bill submitted by the contractor.

6. I submit that the Clause on applicability of Price Variation is given in para 5.1(xvi) which states that “Tenderers may note that the rates of penalties as per para 5.9 shall be increased by the same factor as the Overall Price Variation”. Para 5.9(ii) imposes penalty on the contractor for linen lost or damaged while in his custody and reiterates that “Contractor may note that the rates of penalty mentioned shall be increased by the same factor as the Overall Price Variation as per para 5.9”. Hence, for any linen lost or damaged, the contract provides for deduction of the actual cost of the linen as penalty and levy of Price Variation over and above the actual cost of the linen.

7. I submit that penalty for the linen lost/damaged during operation of the contract was recovered from the monthly bills starting from December 2011 onwards. The Price Variation bills for the above contract was first submitted by the contractor during February 2013 and paid till suspension of the work. However, based on the objection by Sr. Divisional Finance Manager, Chennai Division, that the penalties need to be



increased as per Price Variation ratio, the recovery of Price Variation on the penalty was initiated from 14.03.2014 and deducted from the beginning of the contract period. The levy of this Price Variation has been done till the suspension of the contract. The Applicant ide letter dated 24.08.2020 has represented that in the event of linen missing/damaged when Railway recovers the actual cost of such missing/damaged items from monthly bills as per paras 5.9(iv) and 5.9(xi) of the Agreement, levy of equivalent Overall Price Variation (PV) percentage on the recovered amount shall not be made.

10. I submit that, contention of the petitioner is unsustainable in law and liable to be rejected as the Contract Agreement provides for applying Price Variation on the levy of penalty for linen items lost/damaged. The penalty is levied at purchase cost and meant to act as deterrence towards losing/damaging linens. It is pertinent to mention that an amount of Rs.3.84 crores has been deducted as penalty towards lost/damaged linen at the custody of the contractor for the entire period from October 2011 till the suspension of the contract. Further, Rs.1.69 crores has been



deducted as Price Variation on this penalty of Rs.3.84 crores. The fact that an amount of Rs.3.84 crores is levied as penalty reflects on the poor handling of the Railway property by the contractor. This cost covers only the actual cost incurred by the Railways towards purchase of the linen items as replacement towards lost/damaged linen by the contractor.”

5. The dispute exists between the parties with reference to MoU and it is to be referred to arbitration under Clause 14 of the very same MoU. Such disputed facts, cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India.

6. It is the contractual obligation between the parties, which all are to be enforced in the manner contemplated and as agreed between them. Since the Arbitration Clause has already been incorporated in the MoU, the petitioner is at liberty to invoke the said Clause in the manner known to law.

7. With the above observations, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the



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connected miscellaneous petitions are also dismissed.

02-04-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

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S.M.SUBRAMANIAM, J.

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