



W.P.No.6811 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.04.2024
Pronounced on	03.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6811 of 2022

M/s.ECE Industries,
Represented by its President,
Hanuman Mal Mot
Ashok Marg, Sanath Nagar,
Hyderabad – 500 018

...Petitioner

-Vs-

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
6th Floor, TANTRANSCO Building,
144, Anna Salai,
Chennai – 600 002

2.The Chief Engineer,
Materials Management,
4th Floor, Western Wing,
N.P.K.R.R.Maligai,
No.144, Anna Salai,
Chennai – 600 002

...Respondents



W.P.No.6811 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to pay a sum of Rs.7,96,35,831/- being the value of 33 transformers supplied, erected and commissioned in several parts of Tamil Nadu and to return the two Bank Guarantees both dated 01.06.2020 bearing Nos.555GPGE201530001 and 555GPGE201530002 for a sum of Rs.10,03,590.00 and Rs.2,06,98,742.00 respectively and to declare the contract dated 20.03.2020 for supply of remaining 57 transformers as terminated.

For petitioner : Mr.V.Ramesh
for Mr.T.Thiyagarajan

For respondents : Mr.J.Ravindran
Additional Advocate General
assisted by Mr.D.R.Arunkumar
Standing Counsel

ORDER

This writ petition has been filed for direction to direct the respondents to pay a sum of Rs.7,96,35,831/- being the value of 33 Transformers supplied and erected and commissioned in several parts of Tamilnadu and also return the bank guarantees dated 01.06.2020 to the tune of Rs.10,03,590/- and Rs.2,06,98,742/- respectively and also brought to declare the contract dated 20.03.2020 for the supply of remaining 56 transformer.



W.P.No.6811 of 2022

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2. The petitioner participated in the tender quoted by the respondents for the supply of erection of 8MVA, 33/11 KV outdoor power transformers in various parts of Tamilnadu. The 2nd respondent accepted the petitioner for supply and erection of 90 transformers by its communication dated 20.03.2020. Accordingly, letter of acceptance and purchase order issued for which the petitioner had executed two bank guarantees for security dated 01.06.2020. The respondents by its communication dated 01.09.2020 stated about delivery schedule for 90 outdoor transformers. Accordingly, supply of 13 transformers has to be completed on or before 20.12.2020. The last batch of 17 transformers have to be supplied on or before 20.07.2021. Accordingly, the petitioner had supplied and had erected 8 transformers during the month of October, 2020 and 10 transformers had supplied during the month of November 2020 and 7 transformers during the month of December 2020, one transformer was supplied during the month of January 2021. Transformers supplied between 09.09.2021 to 03.11.2021 were also erected and commissioned by the petitioner. The delay in supplying these transformers on account of non



W.P.No.6811 of 2022

issuance of discharge instructions by the respondents after their inspection.

Insofar as erection of 33 transformers are concerned, the respondents have to pay a sum of Rs.7,96,35,831/-. Though the petitioner made request for the payment on several occasions, the respondents failed to make any payment.

3. The learned counsel for the petitioner would submit that as per terms and conditions, the respondents have to pay 95% of the price of the transformer including GST and 5% on satisfactory commissioning of the respective transformers. As per clause 6.3.1 the respondents cannot take their own time for several months to make payment. Therefore, the respondents also liable to pay interest inspite of several requests, the respondents neither releasing any payment nor considering the price variations for issuance of delivery schedule for remaining 57 transformers. Therefore it would amounts to frustration of contract and leading to the termination of the contract by the conduct of the respondents. Even as per the communication sent by the 2nd respondent dated 30.12.2020, the intents will be issued at lease 60 days in advance, indicating the date of delivery.



W.P.No.6811 of 2022

Further, by communication dated 04.01.2022 the respondents had taken same stand informing that the 2nd respondent would give 60 days time to delivery the transformers. But till date, the respondents did not issue any delivery schedule suggesting that they have not interested in continuing the contract.

4. The learned Additional Advocate General appeared on behalf of the respondents filed counter and submitted that the writ petition itself is not maintainable. Since it involves disputed question of facts and it has to be tried before the Civil Court any dispute over the purchase order and contract order. The petitioner ought to have approach the civil Court for appropriate relief. It is purely contractual dispute between the petitioner and the respondents. Therefore, the writ petition is not maintainable. The prayer sought for in this writ petition also not maintainable. Since the petitioner asked for maintenance as well as declaration in a single writ petition. Both the prayers cannot be maintainable. Though the petitioners had supplied and commissioning 33 8MVA, 33/11 KV Power transformers out of 90 transformers, the balance 57 numbers of power transformers as per the



W.P.No.6811 of 2022

purchase order as remains pending and it caused huge inconvenience and loss to the respondents. Further, the petitioner was requested extent the bank guarantee for which they did not comply the said request. Both the bank guarantees were expired as on 30.04.2023 and 31.05.2023. He further submitted that the respondents also issued show cause notice to the petitioner to supply the balance 57 numbers of power transformer and fails to supply, the purchase will be canceled as per clause 10.7 of the purchase order. Further, there shall be a recovery as per Clause 7.5 and 10.04 of the purchase order.

4.1. He further submitted that for supply of 33 numbers of power transformers so far a sum of Rs.13,87,72,028/- has been released to the petitioner and the balance amount of Rs.1,63,21,901/- will be released within a reasonable time. Further, the amount of Rs.60,34,176.00/- to be paid by the respondent on production of invoice bill.

5. Heard, the learned counsel appearing on either side.



W.P.No.6811 of 2022

6. Admittedly, the petitioner declared successful bidder for supply and erection of 8MVA 33/11 KV outdoor power transformers on the tender quoted by the 2nd respondent. Accordingly, the petitioner and the respondents had entered into contract order and purchase order dated 20.03.2020. As per the erection contract order, insofar as payment is concerned 95% of the price of the transformer including GST and 5% on satisfactory commissioning will be released directly to the supplier by the funding institutions within a reasonable time from the date of satisfactory commissioning. It will be paid after deducting the appropriate amount of liquidated damages. The balance 5% of all inclusive price of erection charges with GST will be released directly to the supplier by the funding institutions after commissioning of the unit and closure of purchase order after recovery of dues, if any. Insofar as security deposit is concerned the supplier shall furnish 5% of order value of contract as security deposit as bank guarantee in the form DD/Banker's cheque/irrevocable bank guarantee. The security deposit cum performance guarantee shall be furnished for 5% value of the material and shall be valid for 60 months. Insofar as jurisdiction for legal proceedings is concerned no suit or any



W.P.No.6811 of 2022

regard it is the learned counsel for the petitioner relied upon the judgment of

Hon'ble Supreme Court of India in the case of ***ABL International Ltd., and***

another vs Export Credit Guarantee Corporation of India Ltd., and

others reported in ***2004 (3) SCC 553*** and held that if the facts require, oral

evidence can be taken so where disputed questions of fact pertaining to the

interpretation/meaning of documents or parts thereof are involved, held the

courts can very well go into the same and decide the objections if facts

permit. Moreover, merely because one of the parties wants to dispute the

meaning of a document or part thereof would not make it a disputed fact.

High Court can intervene under Article 226 if the state or its instrumentality

acts in an arbitrary manner even in a matter of contract, instrumentality of

State discharging public function/duty. It is clear that when an

instrumentality of the State acts contrary to public good and public interest,

unfairly, unjustly and unreasonably, in its contractual, constitutional or

statutory obligations, it really acts contrary to the constitutional guarantee

found in Article 14 of the Constitution. Therefore, once the State or an

instrumentality of the state is a party, it has an obligation in law to act fairly,

justly and reasonably to a contract which is the requirement of Article 14 of



W.P.No.6811 of 2022

the Constitution.

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7. Admittedly, the petitioner erected 37 numbers of transformers and the respondents are in due of Rs.Rs.1,63,21,901/-. Therefore, the respondents are liable to pay the dues for the erection of transformer by the petitioner and as such writ petition is very much maintainable under Article 226 of Constitution of India. In fact, jurisdiction as per the purchase order is also clear that this Court got jurisdiction to entertain this writ petition. Thus alternative remedies is available, the court should on account of exercising jurisdiction under article 226 of Constitution of India and delegate the parties to settle the remedy.

8. The learned Additional Advocate General also relied upon the judgement of Hon'ble Division Bench of this Court *in W.A.No.1389 of 2021* in the case of *M/s.Himachal Aluminum and Conductors vs The Chairman and Managing Director, TANGEDCO, and others* dated 08.06.2023 and held that In a writ petition, the Court, under Article 226 of the Constitution, would not go into the disputed questions of fact. The disputed questions of



W.P.No.6811 of 2022

facts exist. It cannot be properly decided in the writ petition or in the writ appeal.

9. However, the said order is not applicable to the case on hand for the simple reason that the respondents admitted their liability to the petitioner for the erection of 37 transformers and they are to give huge amount and delayed in payment to the petitioner in due course. Further, on perusal of documents relied upon by the petitioner there was no delay on the part of the petitioner for erecting the transformers. That apart, for erection of 33 numbers of transformers were concerned though the petitioner always ready to erect remaining numbers of transformers, the respondents failed to issue any intent to supply of power transformers. Insofar as the bank guarantees are concerned though it got expired by way of interim order passed by this Court, the respondents were restrained from invoking the bank guarantees and as such the bank guarantees were not extended for further period. Further, the respondents also failed to pay the amount which were raised by the petitioner in time and there is a balance due for the erection of 33 transformers. Therefore, now the contract dated 20.03.2020



W.P.No.6811 of 2022

become inoperative since time fixed in the contract has been lapsed long back.

10. In view of the above, the respondents are directed to pay the balance amount of Rs.1,63,21,901/- for erection of 33 numbers of power transformers within a period of four weeks from the date of receipt of copy of this order. Insofar as Rs.60,34,176.00/- is concerned the respondents shall pay the said sum after furnishing of invoice bill by the petitioner within a period of four weeks from the date of furnishing invoice bill.

11. With the above direction, this writ petition is disposed of. No costs.

03.06.2024

Index : Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes/No
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W.P.No.6811 of 2022

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W.P.No.6811 of 2022

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W.P.No.6811 of 2022

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