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W.P.No.10483 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10483 of 2021

RDS Project Limited,
HO : 427, Somdutt Chambers – II,
9, Bhikaji Cama Place,
New Delhi – 110 066.
Represented by its Authorised Signatory,
Col C Balakrishnan (retd.)

.... Petitioner

Vs

1. The Chief Engineer (Projects),
TANGEDCO,
5th Floor, Western Wing,
NPKRR Maligai,
No.144, Anna Salai, Chennai – 600 002.

2. The Chief Engineer/Project,
TANGEDCO,
NCTPS Stage II
Chennai – 600 120.

3. The Superintending Engineer,
Mechanical – I,
NCTPS-II,
Chennai – 600 120.

4. The Superintending Engineer,
Civil Maintenance, NTPS-II,
Chennai – 600 120.



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5. Financial Controller,
NCTPS Stage II,
Chennai – 600 120.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents to make payment of Rs.50,00,000/- payable to the petitioner as per the second respondent's completion letter bearing Lr.No.SE/M-1/NCTPS-II/EE/A/CA/F-65/D2217/18 dated 28.08.2018 along with interest at 1% per month from 28.08.2018 till the date of actual payment and also to release the bank guarantee No.0983ILG013914 of Punjab National Bank for Rs.4,53,60,000/- issued on 30.12.2014 valid upto 28.02.2018.

For Petitioner : No appearance

For R1 to R4 : Mr.K.Arun Prasad
Standing Counsel

ORDER

This Writ Petition has been filed for a direction directing the respondents to make payment of Rs.50 Lakh payable to the petitioner as per the communication of the second respondent dated 28.08.2018 with interest.

2. Heard the learned Standing Counsel appearing for the respondents 1 to 4. There is no representation for the petitioner, hence, this Court is inclined to pass orders on merits.



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3. The petitioner offered to bid tender as per the Notification of the first respondent for construction of RCC channel including intake, forebay, pump house with all accessories for drawl of cooling water from Ennore Port basin for NCTPS stage II on EPC basis. The first respondent accepted the tender amount quoted by the petitioner to the tune of Rs.90,81,31,875/- for completion of construction work as per their specifications. Accordingly, an agreement was executed between the petitioner and the first respondent dated 23.01.2010, thereby agreed that the petitioner shall execute and complete the construction works in accordance with the terms and conditions of the contract. As per the agreement, the work was to be completed by 31.01.2011. Further, as per the agreement, the first respondent has to recover 5% of the contract amount on each monthly bill, based on the completed work, as additional security deposit/retention money being 5% of the contract value towards the satisfactory performance of the contract.

4. It was mutually agreed between the parties as per Clause C.23.0 thereby retention amount for additional security of Rs.4,53,56,594/- shall be returned after expiry of twelve months from the date of completion of whole project after obtaining an indemnity bond



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and an irrevocable bank guarantee for the same amount till completion of defect liability period i.e., till 28.02.2018 from the petitioner.

Accordingly, the petitioner had also submitted bank guarantee as additional security for the said sum. As per the agreement, it was further agreed between the parties under Clause 4 of the agreement that the respondents can withhold the amount equal to 5% of value of work done by recovery in each bill towards retention amount as an additional security deposit and it shall be released in the manner as stipulated in Clause 6 of the acceptance letter dated 31.08.2009.

5. As per the contract, the work should be completed by 28.02.2011. However, due to various reasons, the entire project was completed with satisfaction of the respondents on 28.02.2013. The respondents had retained 5% of the value of each bill raised by the petitioner as retention amount towards additional security deposit in total a sum of Rs.4,53,56,594/-. For the said sum, the petitioner had already submitted bank guarantee which has expired on 28.02.2018 i.e. till defect liability period. As per the agreement, the respondents are liable to return the said retention amount to the petitioner after expiry of twelve months from the date of completion of work. After completion of entire work,



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the petitioner had obtained completion certificate from the third respondent. However, the petitioner was settled with a final bill only for a sum of Rs.2,33,05,811/- and the respondents deducted a sum of Rs.50,00,000/- from the non-rectification of work and paid only Rs.1,53,54,745/-.

6. A perusal of the counter filed by the second respondent reveals that there was a delay in completion of work. As per the agreement, the work should be completed as on 30.01.2011. But the petitioner had completed the entire project only on 28.02.2013. The petitioner also failed to complete certain works and as such, as directed by the second respondent, a sum of Rs.50,00,000/- has been withhold from the final bill. Further, it reveals that the audit has raised point that the property liquidation damages to be recovered from the petitioner and issued audit slip. However, the second respondent furnished reply to the audit points and requested to drop the audit points, since the extension of time upto 28.02.2013 was duly approved by the TANGEDCO with penalty of Rs.1,18,61,030/- and the works carried out by the petitioner after 28.02.2013 were only rectification works.



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7. In view of the above, this Court directs the authority concerned to drop the audit points as requested by the second respondent and disburse the balance amount in favour of the petitioner as per the final bill and release the bank guarantee to the tune of Rs.4,53,60,000/- issued on 30.12.2014 valid upto 28.02.2018 within a period of six weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition stands disposed of. No costs.

03.06.2024

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