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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10085 of 2019

and

W.M.P.No.10652 of 2019

Shri U.P.Rammiah

... Petitioner

Vs.

The Chairman,
Chennai Port Trust
No.1, Rajaji Road,
Chennai – 600 001.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in issuing the notice bearing No.WM6/1010/2017/E dated 31.12.2018 and quash the same and consequently direct the respondents to return the Bank Guarantee dated 27.02.2018 and process the payment of Rs.11,50,992/- (Rupees Eleven Lakhs Fifty Thousand Nine Hundred and Ninety Two) to the petitioner along with interest and costs.

For Petitioner

: Mr.S.R.Rajagopal,
Senior Counsel
For Mr.Praveennath Selvam



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W.P.No.10085 of



For Respondent

: Mrs.Madhuri Donti Reddy

ORDER

The writ on hand has been instituted questioning the validity of the notice dated 31.12.2018 issued by the respondent / Chennai Port Trust.

2. On 13.11.2017, the respondent floated a tender for laying bituminous concrete pavement for parking bays, patch work and providing storm water drain in EE (C) G Division. Subsequently, an information was provided to the petitioner that there was a typographical error in the tender document and the petitioner accepted the said error and was willing to proceed with the works. In this context, the respondents issued a letter of acceptance to the petitioner on 20.02.2018. Admittedly, work order bearing No.T/WMA/60/2017 dated 20.02.2018 was issued. Consequently, the petitioner furnished Bank Guarantee on 27.02.2018. An information was provided to the respondent by the petitioner that the possession of the site had been taken over on 03.03.2018. The petitioner availed insurance policies as required for the tender conditions. The petitioner made a request to the respondent for execution of agreement on 25.04.2018. There was no proper



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response from the respondent. A meeting was convined between the petitioner and respondent on 14.05.2018. Again the petitioner insisted the respondent to execute the agreement and informed that the work came to a halt due to the un-amended work order and un-executed agreement. The respondent issued a letter informing the petitioner that the agreement will be executed as per the Bill of Quantity (BOQ).

3. On 02.07.2018, the petitioner issued a letter to the respondents seeking for an extension of time to complete the works, in view of the un-amended work order and un-executed agreement as well as monetary compensation for idle men and machinery.

4. Several such exchange of letters were placed before this Court and ultimately the fact remains that the petitioner has not executed the works. It is brought to the notice of this Court that 2% of the works alone had been completed by the petitioner and finally the contract was terminated through the impugned notice dated 31.12.2018.

5. The another writ petition filed by the petitioner in W.P.No.33225 of 2018, challenging the notice dated 21.11.2018 was dismissed by this Court as



infructuous.

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6. Mr.S.R.Rajagopal, learned Senior Counsel appearing on behalf of the petitioner would submit that there was an enormous delay on the part of the respondent in responding to the request of the petitioner to execute the agreement. Due to non-execution of agreement, the petitioner was unable to proceed further and to complete the works and thus, the impugned termination notice is untenable and by setting aside the said notice, the Bank Guarantee is to be released.

7. The learned Senior Counsel appearing on behalf of the petitioner would submit that the facts leading would be sufficient to form an opinion that there was a lapse on the part of the respondent in executing an agreement and providing other required facilities and the amended work order. Therefore, the petitioner was not at fault and thus, the writ petition is to be allowed.

8. In support of the said contentions, Mr.S.R.Rajagopal, learned Senior Counsel appearing on behalf of the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of *Siemens Limited vs.*



State of Maharashtra and Others reported in **(2006) 12 SCC 33**. The Apex

Court held that the Statutory Authority has already applied his mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent had already determined, the liability of the appellant and the only question which remains for its consideration, if quantification thereof, the same does remain in the realm of a show cause notice and therefore, the writ petition was held maintainable.

9. However, the facts in the said case decided by the Hon'ble Supreme Court reveals that a demand notice directing payment of cess was questioned in the appeal and in that context, the Apex Court formed an opinion that the liability or otherwise of the appellant was determined by the Appellate Authority. Since the liability was determined, the Hon'ble Supreme Court held that the writ petition is maintainable. However, no such situation aroused in the present case. The contributory delay or lapses on the part of the petitioner or the respondent have not been determined nor decided and therefore, this Court cannot adjudicate such disputed facts.

10. The learned Senior Counsel would further rely on the judgment of the Hon'ble Supreme Court in the case of ***Ram and Shyam Company vs.***



State of Haryana and Others reported in **(1985) 3 SCC 267**, wherein, the Apex Court held that presence of an alternate Statutory remedy, is not a bar for entertaining a writ proceedings under Article 226 of the Constitution of India. Catena of judgments are delivered across the country by the Constitutional Courts that exhausting the remedy may be the rule and the dispensing the appellate remedy and entertaining a writ petition is the discretion of the Courts, which is to be granted based on the facts and circumstances of each case. Thus, there is no general rule in all cases an aggrieved person must be directed to exhaust the Statutory / appellate remedy available under the enactments. In the present case, the facts are different and therefore, the said principles has no direct application.

11. Yet another case of ***K.I.Shephard and Other vs. Union of India and Others*** reported in **(1987) 4 SCC 431** was relied on. In paragraph 12, the Court considered the rules of natural justice. It is held that the natural justice co-exists with, or reflected, a wider principle of fairness in decision making and that all judicial and administrative decision making and that all judicial and administrative decision makers had a duty to act fairly. There is no controversy in respect of the said rules of natural justice which is being



adopted by the Courts time and again in number of decisions.

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12. In the present case, the learned Senior Counsel for the petitioner would urge that the rules of natural justice has not been followed in the present case, since the petitioner was not afforded with an opportunity even to defend his case before taking final decision to terminate the contract, which is impugned in the present writ proceedings.

13. Mrs.Madhuri Donti Reddy, learned counsel for the respondents would oppose the case by stating that internal communication letters between the petitioner and the respondent would reveal that opportunities were afforded to the petitioner to participate in the meetings arranged by the respondent for the purpose of resolving the issues. Even before passing the order of termination of contracts, such an opportunity was provided to the petitioner by issuing a show cause notice. Unfortunately the petitioner had failed to respond to the said show cause notice and filed the writ petition. Therefore, the petitioner had not taken any effort to co-operate with the respondent for the purpose of resolving the issues and to complete the work order as issued by the respondent in proceeding dated 20.02.2018.



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14. The learned counsel for the respondent solicited the attention of this Court with reference to the facts narrated in the counter affidavit, which would reveal that the petitioner had not showed any interest on mobilising the materials at site, though the work progress has made only 2% as on 01.05.2018 even after a lapse of one third of the contract period. Therefore, the petitioner had been informed in the meeting held on 14.05.2018 to carry out the remaining work as per Bill of Quantity (BOQ) and also informed by letter dated 05.06.2018 to engage more men and material and to complete the balance work within the stipulated contract period. Instead of mobilising the men and materials to carry out the work, the petitioner had constantly stuck to their claim of unit correction in BOQ and incorporation of same in agreement vide their letter dated 07.06.2018. All their request were examined and the petitioner have been informed on 22.06.2018 that the contract may be executed as per BOQ.

15. It is further stated by the respondent that even after the petitioner was informed that their quoted rate for the unit in e-tender was issued as per BOQ of work order, the petitioner had raised further claims in their letter



dated 02.07.2018, 14.07.2018 and 11.08.2018 for extension of time without liquidated damages and idle charges for men and equipments.

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16. The statement of the petitioner that the respondent has instructed not to proceed with the work until the agreement was signed is denied. No such instruction was issued regarding stoppage of work rather the petitioner has been repeatedly instructed to restart the work and complete the same within the stipulated time.

17. The facts elaborately stated in the counter affidavit would reveal that disputed facts between the petitioner and the respondent exists. Such disputed facts relating to contractual obligation cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India. Power of judicial review cannot be extended for such adjudication, since any such findings of the facts merely based on the writ affidavit, would result in miscarriage of justice and cause prejudice to the interest of the parties. All such findings are to be made only after conducting an adjudication with reference to the documents in original and evidences available on record. Rowing enquiry cannot be conducted by the High Court with reference to the disputed facts.



18. The learned Senior Counsel would submit that the facts placed could be sufficient to form an opinion, however, all those factual submissions made by the petitioner are disputed by the respondent in their counter affidavit elaborately. The petitioner submits that the respondent committed default resulted in non-execution of work. The respondent would submit that the petitioner committed default and non-co-operation of the petitioner and disinterest shown by him resulted in passing of an order of termination of contract.

19. This nature of allegations and counter allegations made with reference to contractual obligations are to be adjudicated before the Competent Forum and therefore, this Court has arrived at an irresistible conclusion that the writ would be not maintainable and the contractual obligations and the non-execution of works and the other issues raised between the parties are to be resolved in the manner known to law, by approaching the Competent Civil Court of Law or an appropriate Forum as the case may be.



W.P.No.10085 of

20. With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.01.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Chairman,
Chennai Port Trust
No.1, Rajaji Road,
Chennai – 600 001.



WEB COPY



W.P.No.10085 of

S.M.SUBRAMANIAM, J.

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