



Arb.Appln.No.263 of 2024

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G.K.ILANTHIRAIYAN, J.

This application has been filed for a direction to the respondents to release the final bill to the applicant after deducting the performance guarantee on termination of the contract dated 19.02.2024.

2. The applicant participated in the tender floated by the first respondent for the works to be performed under the second respondent. In the tender, the applicant was declared as successful bidder and they were awarded with the contract for the proposed third line between Tambaram-Chengalpattu; and for the proposed construction of Island passenger platform, foot over bridge extension, platform shelters, passenger amenities, watering and drainage arrangements etc. at Tambaram Yard and it was valued for Rs.7,13,00,171.42 and accordingly, letter of acceptance dated 30.04.2018 was also issued by the first respondent. To that extent, the parties have also entered into an agreement dated 09.08.2018. The applicant was also directed to provide bank guarantee for the performance and the same was also provided in bank guarantee No.916BGG1800292, dated 28.04.2018, for



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Rs.35,65,009/-. It has been extended from time to time. As per the work order, the work has to be completed within 12 months from the date of letter of acceptance. But, the time was extended from time to time as per Clause 17A(ii) of the General Conditions of the Contract.

3. While being so, the second respondent, by letter dated 12.01.2024, directed the applicant to complete the backlog of work, failing which, the agreement would be determined as per Section 62 of the General Conditions of the Contract. On receipt of the same, the applicant, vide its letter dated 27.01.2024, requested the second respondent to release the payment on time. However, without appreciating the same, the second respondent, by letter dated 29.01.2024, gave a 7 days' notice as per Section 62 of the General Conditions of the Contract, and for which, the applicant submitted their explanation and requested to release the payment on time and also requested to record the work performed by them. However, without considering the same, the second respondent once again issued a 48 hours' notice as per Clause 62 of the General Conditions of the Contract vide letter dated 14.02.2024. But, the said letter was served after expiry of 48 hours.



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4. Therefore, the applicant has filed O.A.No.117 of 2024 and this Court, by order dated 20.02.2024, granted interim injunction restraining the respondents from invoking and encashing the bank guarantee for a period of one week. While being so, the respondents have terminated the contract on 19.02.2024. Therefore, once again, this Court, by its order dated 26.03.2024, extended the interim injunction by another 60 days and also directed the applicant to renew the bank guarantee. Subsequently, the applicant submitted a representation and requested to settle the final bill. The applicant has also invoked arbitration in accordance with the arbitration clause contained in the agreement to challenge the termination of the contract and also extended the bank guarantee till 30.10.2024.

5. Now, the applicant has filed this application seeking a direction to the respondents to release the final bill after deducting the performance guarantee on termination of the contract dated 19.02.2024.

6. The submission of the learned standing counsel for the respondents on the basis of the counter affidavit filed by the first



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respondent, would reveal that as per the termination notice, final measurement on the work executed by the applicant has been taken at site along with the contractor's representative, and the payment will be made as per the actual measurements taken at site. Even after issuance of 48 hours' notice, the contractor has not taken any steps to commence the work. The contractor was directed to complete the work before March, 2024, but, they could not complete the work and therefore, the contract was terminated on 19.02.2024 as per Clause 62 of the General Conditions of the Contract. Hence, full performance guarantee for this contract shall be encashed and security deposit will be forfeited as per Clause 16(4)f of the General Conditions of the Contract, and the completion certificate for this contract will not be issued.

7. It is also informed by the learned counsel for the applicant that inspection was completed and final measurements were jointly taken by the applicant and the respondents. Therefore, the respondents ought to have settled the final bill amount in favour of the applicant. Even on the last hearing date i.e. 18.09.2024, learned counsel for the respondents sought time to prepare final bill of the applicant.



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8. Therefore, considering the aforesaid facts and circumstances of the case, the respondents are directed to release the final bill amount to the applicant after deducting the performance guarantee on termination of the contract dated 19.02.2024 on the final measurement and variation statement signed, within a period of four weeks from the date of receipt of a copy of this order. With the above directions, this application is allowed.

23.10.2024

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