



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-04-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.19307 of 2023

And

WMP No.18560 of 2023

M/s.BVD Power Private Limited,
(Formerly known as Balavimodhan Power Process
Pvt. Ltd.),
Represented by its Managing Director,
Shri K.R.Dhanasekar,
26J, Tamilnagar, Erode,
Tamil Nadu-638 452.

.. Petitioner

-VS-

1.The Chairman,
TANGEDCO,
6th Floor, TRANSCO Building,
144, Anna Salai,
Chennai-600 002.



2. The Director,
Transmission,
6th Floor, TRANSCO Building,
144, Anna Salai,
Chennai-600 002.

3. The Chief Engineer,
Transmission,
5th Floor, Northern Wing,
TRANSCO Building,
144, Anna Salai,
Chennai-600 002.

4. The Chief Engineer,
Transmission Project-II,
Periyamilaguparai,
110KV Grid SS Campus,
Trichy-620 001.

5. The Superintending Engineer,
GCC/TANTRANSCO,
182, Dr.Subbrayan Street,
Tatabad,
Coimbatore.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to immediately pay a sum of Rs.5,88,47,323/- to the petitioner herein towards repayment of retention amount, reimbursement of GST and other statutory levels in respect of erection and commissioning of Tirupur – 230/110KV SS and Shenbagapudur 230/110KV SS along with interest.



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For Petitioner : Ms.Hema Muralikrishnan
For Respondents : Mr.D.R.Arunkumar,
Standing Counsel for TANGEDCO.

ORDER

The Writ of Mandamus has been instituted to direct the respondents to immediately pay a sum of Rs.5,88,47,323/- to the petitioner towards repayment of retention amount, reimbursement of GST and other statutory levels in respect of erection and commissioning of Tirupur – 230/110KV SS and Shenbagapudur 230/110KV SS along with interest.

2. The petitioner, admittedly, was a Sub Contractor engaged by the Principal Contractor and has not been impleaded as a party respondent in the present writ proceedings. The petitioner states that, in their capacity as a Sub Contractor, they had completed all the works and endorsed by the respondents.

3. Having admitted the completion of works as per the specifications, the respondents are bound to settle the dues to the petitioner.



Since they failed, the present writ petition came to be instituted.

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4. Ms.Hema Muralikrishnan, learned counsel for the petitioner, would submit that the respondents have already admitted the works completed by the petitioner in their capacity as Sub Contractor and therefore, they are bound to settle the dues as per the Agreement.

5. The learned counsel for the petitioner drew the attention of this Court with reference to the Agreement stating that the petitioner, as Sub Contractor, were permitted to execute the works in accordance with the terms and conditions stipulated in the Agreement with the main Contractor. It was further agreed that the respondents will settle the dues directly to the petitioner as Sub Contractor. When the terms and conditions are agreed between the parties, the dues are not settled. Thus the present writ petition came to be instituted.

6. The learned Standing Counsel for the respondents would oppose by stating that the present writ petition is not maintainable and the principles regarding entertaining the present writ petition in contract matters



are settled and the Division Bench of this Court also reiterated the same in WA No.1389 of 2021 dated 08.06.2023, wherein in paragraph-5, it has been observed as under:-

"5. The appellant appears to be a small scale industry. The dispute between the parties is arising out of a commercial contract. In a writ petition, the Court, under Article 226 of the Constitution, would not go into the disputed questions of fact. On the one hand, the respondents contend breach of contract on the part of the appellant and on the other hand, the appellant contends nonperformance of covenants on the part of the respondents. Disputed questions of fact exist. It cannot be properly decided in the writ petition or in the writ appeal."

7. The present case is also relating to commercial contract. The disputed facts in commercial contract, cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India.

8. Thus the petitioner is at liberty to approach the Competent Civil Court of Law for the purpose of recovery of money due to the



petitioner.

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9. With the above liberty, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

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



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S.M.SUBRAMANIAM, J.

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