



WEB COPY



C.S.No.409 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2023

PRONOUNCED ON : 04.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.409 of 2013

M/s.Global Energy Consulting
Engineers Private Ltd.,
having its registered office at
12-2-823/A/25
Santhosh Nagar Colony
Mehdipatnam
Hyderabad, represented by its
Power of Attorney Agent
Mr.M.V.Suresh Kumar

.. Plaintiff

..Vs..

Tamil Nadu General and Distribution
Corporation Ltd.,
having its office at First Floor, No.802,
Anna Salai, NPKRR Maaligai
Chennai-600002 represented by its
Chief Engineer, Distribution
Chennai North Region.

... Defendant



C.S.No.409 of 2013

WEB COPY

Prayer: Civil Suit has been filed under Order IV Rule 1 of O.S Rules read with Order VII Rule 1 and 2 CPC, praying to pass the following judgment and decree against the defendants:

a) directing the defendant to pay a sum of Rs.80,15. 430/- towards principal together with interest at the rate of 15% per annum from 03.07.2009 till date of plaint amounting to Rs.37,78,702/- totalling a sum of Rs.1,17,94,132/- and also future interest at the rate of 15% from the date of plaint till date of realization

b) for costs of the suit.

For Plaintiff : Mr.P.Subba Reddy

For Defendant : M/s.M.Sneha

J U D G M E N T

This Civil Suit has been filed, directing the defendant to pay a sum of Rs.80,15,430/- towards principal together with interest at the rate of 15% per annum from 03.07.2009 till date of plaint amounting to Rs.37,78,702/- totalling a sum of Rs.1,17,94,132/- and also future interest



C.S.No.409 of 2013

at the rate of 15% from the date of plaint till date of realization.

WEB COPY

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

- a) The defendant called for tender sale of the project for implementation of GIS System and GPS Mapping of Distribution Network and Consumer Indexing of Chennai City comprising the details as specified therein in the month of January 2004. The plaintiff has submitted its tender and was declared as successful bidder. Pursuant to the successful bidding, the defendant has placed an order for supply, installation and commissioning of computer hardware and peripherals with System Software and Packages for implementation of GIS and GPS based Mapping Distribution Network and Consumer Indexing of Anna Nagar in Chennai City vide P.O No.109/04-053.24/05 dated 10.03.2005 and Letter No.CE/CNR/SE/CDC/EECC/EEP/AEE/Comp/F.CEIT-GIS-1/P.O No.109/04-05/D.24/05 dated 10.03.2005. The F.O.R value of the order including ED and F & I, unloading at stores/sites excluding sales tax is Rs.1,03,69,404.45. Annual maintenance and Map



WEB COPY

uploading for a period of 5 years is Rs.38,95,600/- which will be paid on periodic basis during the above said five years period. The order includes creation of base maps using aerial photogrammetry.

- b) As per clause 7.1 of the P.O, the plaintiff has to provide a security deposit in the form of bank guarantee for 5% of the total value of the contract of Rs.1,42,65,004/- amounting to Rs.7,19,640/-. The plaintiff provided a cash deposit as EMD for a value of Rs.50,000/- at the time of submission of bid response. The balance amount of Rs.6,69,640/- towards security deposit was provided as bank guarantee. This arrangement was accepted by the defendant as per their letter No.CED/CNR/EEP/P1/EE/CC/F GIS/D 49/05 dated 18.04.2005. According to clause 15 of the purchase order, a performance guarantee for 5% of the order value excluding annual maintenance and map updating, amounting to Rs.5,18,500/- valid for a period of 36 months was furnished by the plaintiff. This was also extended from time to time as per the request of the defendant. The payment terms for the order are as follows:

[i] 70% of the all inclusive prices of equipment / materials



C.S.No.409 of 2013

WEB COPY

including sale tax will be paid as and when completed against each component within a reasonable time at site in good condition.

[ii] Balance 30% shall be released on successful implementation after 3 months.

c) The plaintiff supplied, installed and commissioned the following hardware and software as per the purchase order:

S.No	Description of Material	Quantity	Date of Supply	Value in Rs.	Amount Received
1	Creation of Base Mpa per sq.km. in scale 1:500 as per specification.	20 sq.km	Supplied	No charge	
2	Over Laying UG cable routes/OH Line routes with data and all related network equipments with date per meter	1020 km	Completed before October 2005	66999	
3	Collecting of data of LT UG route using suitable technology per meter	910 km	Completed before August 2006	251537	
4	Collection of data various land marks/features using GPS per item	As per mapping requirement s and could not be completed within six months	Completed on 27.07.2009		



C.S.No.409 of 2013

WEB COPY

S.No	Description of Material	Quantity	Date of Supply	Value in Rs.	Amount Received
		period			
5	Consumer Indexing per consumer	80,000 Nos.	Completed during August 2006	75461	
6	Hardware Installation:				
6.a.	Spatial Database Engine	1	070705	1255858	7,24,533
6.b	Internet Map Server	1	22.08.2005	610118	862693
6.c	Information Processor	1	22.08.2005		
6.d	Work Stations	11	22.08.2005		
6.j	Modems	10	22.08.2005		
6.k	Inject Printer A3	1	22.08.2005		
6.e	Palmtop PCS	3 Nos.	Supplied on 7.11.2005		
6.f	LAN EXTENDER	2 sets	19.08.2005		
6.g	Lan Hub 8 Port	1 No	19.08.2005	57851.46	
6.h	Lan and Wan cabling	200 mts	19.08.2005	3461.38	
6 j	Scanner A3	1 No.	Pending as we have not received the payment		
6.I	UPS 5 KVA	1 No.	Completed 04.08.2005	161173	235437
	UPS 6 KVA	1 No.	Completed 04.08.2005		
7	Supply of Software installation	Sent	Completed 04.08.2005	1662823	837168
8	Customization of Software		Completed from 19.06.2008	1000000	



C.S.No.409 of 2013

WEB COPY

6.e	Palmtop PCS	3 Nos.	Supplied on 7.11.2005		
			to 24.06.2008		
9	Networking Lan/Wan/Internet		19.08.2005	200000	
10	HT Billing Server Interface		Completed. Delay due to Data Map to be provided NRCS	1000000	
11	LT Billing Server Interface		Completed. Delay due to Data Map to be provided NRCS	100000	
12	SCADA Real Time Interface		Completed. Delay due to Data Map to be provided NRCS	300000	
13a	Cables Computer Center for Server and Lan		All the works completed on 19.08.2005		
13b	Section Office for Work Stations				
13c	Cable Office for Palm Top PCS				
				132000	48000



C.S.No.409 of 2013

WEB COPY

6.e	Palmtop PCS	3 Nos.	Supplied on 7.11.2005		
14	Electrification work related to the above		Completed on 19.08.2005		
15	GIS Project Integration and Implementation		Completed	500000	
16	Training		Provided	300000	
17	Annual Maintenance Contract of the entire scheme/project for a period of five years		No communication has been received		
18	Map updating and network updating with geo referencing every 15 days for a period of 5 years		No communication has been received		
	Total			67,77,290.84	27,08,831

d) Apart from Rs.67,77,290.84, the defendant is due and liable to pay to the plaintiff a sum of Rs.12,38,140/-, totalling a sum of Rs.80,15,430.84. The Executive Engineer/Control Centre sent a letter to the Stores Officer in respect of receipt of materials for the said serial numbers, 1, 6, 7, 8, 9 and 10 vide letter No.EE/ CC/ FGIS-Stores dated 17.09.2005 declaring the completion of the supply of hardware and acceptance by the defendant. According to



WEB COPY



C.S.No.409 of 2013

the Government of India Rules, (GOI), the base map has to be supplied by National Remote Sensing Agency (NRSA) which is now National Remote Sensing Centre (NRSC). The plaintiff had placed an order for base map under intimation to the defendant. A letter to NRSC for supply of base map to the plaintiff by the Chief Engineer / Distribution vide letter No.CE/ D / CNR / ACE / CDC / EE/ CC / SM/ IS / F-GIS- Corres/D.125/05 dated 23.08.2005 which is self explanatory and filed as a document along with the plaint. A letter was received from NRSC vide letter No.NRSA.AS & DMN.AS & DP 1360 dated 08.04.2005 which indicated that they have applied for Ministry of Defence (MOD) to get clearance for supply of base map and aerial photography will be taken after receipt of clearance. NRSC Letter No.NRSA/AS & DM/ AS & DP/1360 dated 5.8.2005 has clearly stated that the base map of Chennai City was made in 1989 using Aerial photography and updated with IKONOS imaginary, in the scale of 1:2000. The map was delivered to the plaintiff by NRSC vide gate pass no.3725 dated 3.9.2005. The plaintiff insisted for latest aerial photography for preparing base maps. Pursuant to the same, the plaintiff wrote letter to NRSC in



WEB COPY



C.S.No.409 of 2013

the year 2005 with a copy marked to the defendant informing that the entire project work has been completed and only on base map portion is left out. It was also informed to NRSC that they are refusing to pay their invoices and also refusing to undertake training of software for non creation of maps.

- e) A communication was received on 8.11.2005 from NRSC which clearly indicates that Ministry of Defence for carrying out aerial photogrammetry was received by it and they are in the process of carrying out flight planning and necessary actions for aerial photography was received by it and necessary actions for aerial photography over Chennai subject to weather conditions. It was informed that after aerial photograph acquisition, NRSC has to carry out ground control survey, aero triangulation, digital mapping and quality control. The completion of the aforesaid process was estimated to take minimum 5 to 6 months. The said fact was communicated to the defendant i.e CE (Distribution), North for information. The plaintiff subsequently addressed several letters to NRSC for aerial photograph but all in vain. In the circumstances when NRSC was not conducting aerial photograph for creation of



WEB COPY

base maps, in view of the inordinate delay, it was agreed between the plaintiff and defendant to procure Digital Globe imagery for Anna Nagar area from NRSC and prepare base maps using the said imagery along with aerial photography of 1989. Pursuant to the above understanding, the plaintiff has paid Rs.67,095/- as consideration in the year 2007 for purchase of Data Globe Product Digital Globe imagery for Anna Nagar area from NRSC. Subsequently, the plaintiff prepared base maps and delivered the same to the defendant.

- f) The plaintiff raised invoices for each item separately as given in the payment terms of the purchase order. The plaintiff has given training to the staff of the defendant for operation and implementation of the project and raised separate bills for the same. Only part payment of invoices were made with inordinate delay. The plaintiff had to render services upto December 2009 attending their calls due to pendency of payment of invoices. The defendant is denying complete payment on the false ground of non-supply of base maps. The defendants are very well aware that the delay in supply of base maps was not under their control. Even the base



C.S.No.409 of 2013

WEB COPY

maps delivered to the defendant were as agreed between the plaintiff and the defendant. Therefore, denying the outstanding payment to the plaintiff by the defendant on the aforesaid ground is untenable and unjustifiable.

g) The defendant has wrongfully invoked the Bank guarantees furnished by the plaintiff amounting to Rs.12,38,140/- on the wrongful premise of non performance without any notice. The plaintiff has addressed several detailed letters dated 06.04.2010, 13.04.2010 bring about various works done by the plaintiff and the outstanding amount payable by the defendant is to the tune of Rs.80,14,430.84 as on 13.04.2010 which is inclusive of wrongful invocation of bank guarantee to the tune of Rs.12,38,140/-. In reply to its claim, the defendant faxed curt, brief and vague reply on 24.04.2010 stating that "all other works related to implementation of the project had not been executed as per the requirement of TNEP" which is false. The plaintiff in fact issued a legal notice on 16.02.2012 demanding the defendant to pay the balance sum of Rs.80,15,430.84 for which the defendant has given vague reply. Hence the suit.



WEB COPY

3. The case of the Defendant, in a nutshell, as set out in their written statement, is as follows:-

a) All the allegations contained in the plaint those that are specifically admitted herein are denied as false. The defendant generally admits the averments made in para 1 to 7 of the plaint. It has been specifically mentioned in the purchase order by this defendant asking the plaintiff to create a Base Map with a scale of 1:500. The averments made in para 8 of the plaint are not entirely correct. Among other things, clause 10.3(b) of the purchase order read as follows:

"10.03. The contractor opts for furnishing performance guarantee for 5% of the contract value.

1. For the materials delivered with in the contractual delivery period

i) 70% of the all inclusive price of the equipment/materials including sales tax will be paid as and when completed against each component within a reasonable time at site in good condition.



C.S.No.409 of 2013

WEB COPY

ii) Balance 30% shall be released on successful implementation after 3 months.

2. For the materials delivered beyond the contractual delivery period

i. 60% of all inclusive prices of the equipments/ materials including sales tax will be paid as and when completed against each component within a reasonable time at site in good condition.

ii. Balance 30% shall be released on successful implementation after 3 months.

iii. The balance 10% shall be paid on closure of P.O and finalizing the amount of liquidated damages to be levied.

b) The averments made in para 9 of the plaintiff are not correct. The accompanying data of the plaintiff Item No.1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 were not done as per the P.O order and the allegation that the plaintiff has completed the installation and commissioning of the Hardware and software are not correct. Item No.6a, 6b, 6c, 6d, 6i, 6k, 6f, 6g, 6h, 6l, 7 were only partially



WEB COPY



C.S.No.409 of 2013

supplied and item No.13 & 14 were supplied. When competing form the tender very well know about the specifications and requirements of the Tamil Nadu Electricity Board, with reference to the Base Map and as such ought to have taken note of about the availability of the possibility of providing such a Map within the project period. Therefore, the averments made in paras 11 to 15 cannot be taken as a defence for the plaintiff's failure to execute the purchase order in time, without the base map drawn in the scale of 1:500 resolution as specified in the purchase order. The subsequent completion of works as claimed by the plaintiff in part is not at all the completion of the project in its commercial as well as performance angle. The plaintiff before participating in the tender, ought to have made appropriate enquiries about the rules and other formalities of Government of India relating to the base map specified in the tender. Hence, it cannot raise issues at any later stage that too having accepted the purchase order conditions and after failing to execute the contract as agreed to obtain base map of 1:500 scale in regard to Anna Nagar area, Chennai and ought to have taken such steps as is necessary to complete the project within



WEB COPY



C.S.No.409 of 2013

the stipulated time. Subsequently, based on the plaintiff's request, the defendant had occurred approval, based on the extract of the minutes of the 1059th meeting of the tender committee held at 11.00 hrs on 08.07.2007 for the following:

The Tender Committee has approved:

1. To complete the pilot project in 1:2000 scale base map and later adopt to 1:1000 scale base map supplied by M/s.NIC without any additional expenditure.
 2. To release the payment for the Spatial Data Base Engine to M/s.GECE which amount to Rs.7,24,533.324(60% of Rs.12,07,555.57) to speed up the project.
 3. To release the remaining payment to the company on fulfilment of other P.O terms and conditions.
- c) The details of payments released to the company is enclosed in Annexure-A of the written statement. Item No.6e, 6j were not supplied at all. The defendant has paid the 60% of the value of the goods supplied by the plaintiff as provided in Annexure - "1A" of



WEB COPY



C.S.No.409 of 2013

the written statement. For the non supply and delayed supply and also for not performing the works within the stipulated time in purchase order, recoveries had to be made from the plaintiff at 10% as liquidated damages for total contract value inclusive of taxes and duties, amounting to Rs.14,26,500/-. Whiles, 10% L.D of Rs.4,86,777/- has already been adjusted in the payment for certain supplied items. After deducting the said amount, the balance LD to be recovered is as follows:

a) Balance L.D to be recovered Rs.9,39,723/- (Rs.14,26,500/- minus Rs.4,86,777/-)

b) Penalty for delay payment of S.D Rs. 2,825/-

c) Total still to be recovered Rs.9,42,548/-

d) Performance B.G available Rs. 5,16,500/-

e) Balance to be recovered after
adjusting the performance Rs.4,24,048/-
Bank Guarantee of Rs.518500/-
(Rs.9,42,548 - 5,18,500)

Therefore, the allegation that the total amount due is



WEB COPY



C.S.No.409 of 2013

Rs.67,77,290.84 besides Rs.12,38,140/- and the total amount due and liable as Rs.80,15,430.84 is hereby denied as not correct.

d) The averments made in para No.10 of the plaint are totally false. Item No.6a, 6b, 6c, 6d, 6i, 6k, 6f, 6g, 6h, 7i, 7 have been received as partial supply and item No.13 and 14 have been supplied for which payment has been as mentioned in Annexure-A and 1A. The first item in the purchase order is specified as creation of Base Map per sq.km in scale of 1:500. Subsequently, the plaintiff obtained the Base Map in the scale of 1:2000 from NRSA, Hyderabad and digitized and loaded in the system at GIS Centre in TNEB on 09.01.2008. However, the base map was improperly digitized. The roads and streets were drawn as disjointed line segments with improper or nil attribute data. The over layered electrical network on the map was not as per field condition. In spite of repeated reminders, plaintiff did not update the base map or electrical network data as required by TNEB. For supply of application software and Arc IMS software during December 2008, 60%



WEB COPY



C.S.No.409 of 2013

payment has been released and even then the company did not complete the other works related to the P.O as per TNEB's requirement.

e) This defendant has nothing to do with the plaintiff applying for base map before the NRSC as alleged in para 11. This defendant believed and accepted the tender of the plaintiff on the promise that the plaintiff would either have base map of 1:500 resolution of Anna Nagar area, Chennai or has the capacity to obtain the same within the period to complete the project within time as stated in the purchase order. As the plaintiff has participated in the tender and accepted the purchase order condition that aerial photography would be carried out on the base map of scale 1:500 resolution, the plaintiff cannot be heard to say that it was impossible to obtain the base map of scale 1:500. The averments of the plaintiff that he has obtained digital map for Anna Nagar area from NRSC and prepared base map and delivered in to the defendant is not correct. The plaintiff were not able to satisfactorily accomplish the project as stated in the purchase order and as such the defendant was forced to apply L.D clause for non performing of the A.C contract work.



C.S.No.409 of 2013

WEB COPY

f) The averments made in para 16 are not correct. The entire project referred above, is for supply, installation and commissioning of computer hardwares and peripherals with system software and package for implementation of GIS and GPS based mapping of distribution network and consumer indexing of Anna Nagar in Chennai City. The project is a composite one and the supply of materials alone will not cloth plaintiff with right to claim bills separately unless plaintiff prepare the GIS mapping of entire project area as required in specification and use the software with the help of such Map to complete the purpose of the project. Plaintiff has led the TNEB to believe that the plaintiff can get the project implemented and on the understanding some staff training were imparted to the staff of TNEB, but activities would not go to show that plaintiff had completed the project as per the purchase order. The TNEB had paid only the value of the materials which are otherwise useable and as such the plaintiff is not entitled to receive any further amount. Moreover, the plaintiff has to compensate TNEB by way of Liquidated damages which the Board reserves the



C.S.No.409 of 2013

WEB COPY

right to claim.

g) Further, plaintiff stopped all works in July 2009 (vide their letter dated 31st July 2009) stating that they had completed all the works as per P.O. 109 dated 10.03.2005 and requested for the following:

1. Work completion certificate for the entire scheme/project
2. Issue AMC from 01.08.2009
- 3.To release all the pending payments vide letter dated 31.07.2009
4. Waiver of LD clauses.

A detailed analysis of the work done by the plaintiff was undertaken and it has been physically verified that the contention of M/s.GECE that they have completed works as per P.O is not correct. TNEB has sent to M/s.GECE a detailed reply by fax on 24.04.2010 that M/s.GECE has not so far completed the projects as envisaged in the purchase order and as such is liable to pay liquidated damages to defendant as required under the purchase order. No services were



C.S.No.409 of 2013

WEB COPY

rendered after 31.07.2009.

h) The forfeiture of bank guarantee furnished by the plaintiff for the non performance of the contract as per purchase order is correct and quite legal and in accordance with contract conditions. The defendant sent a detailed reply on 21.03.2012 to the notice issued by the plaintiff to the defendant demanding payment. The suit is barred by limitation.

Recoveries to be made from GECE:

10% L.D for total contract value inclusive of taxes and duties amounting to Rs.14,26,500/-. Whiles 10% L.D of Rs.4,86,777/- has already been adjusted for the payment, made for certain supplied items.

a) Balance L.D to be recovered Rs.9,39,723/- (Rs.14,26,500/- minus Rs.4,86,777/-)

b) Penalty for delay payment of S.D Rs. 2,825/-

c) Total still to be recovered Rs.9,42,548/-



C.S.No.409 of 2013

WEB COPY

d) Performance B.G available Rs. 5,18,500/-

e) Balance to be recovered after
adjusting the performance Rs.4,24,048/-
Bank Guarantee of Rs.518500/-
(Rs.9,42,548 - 5,18,500)

Additional loss to Board:

1. Sun solaris server could not be used Rs.7,24,533/-

2. Application softwares Rs.6,90,000/-

Total payable Rs.14,14,533/-

Total Loss: Rs.4,24,048 + 14,14,533 Rs.18,38,581/-

15% interest from 2009 Rs.11,03,148.60

Total payable to TANGEDCO Rs.29,41,729.00

Hence the suit is liable to be dismissed as devoid of merits with exemplary cost.

4.On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

(1) Whether the suit filed by the plaintiff is barred by limitation?

(2) Whether the plaintiff has completed part of contract and is



C.S.No.409 of 2013

WEB COPY

eligible for payment from the defendant for material/supplied and work completed?

(3) Whether the plaintiff is not liable to pay liquidated damages for the non-supply and delayed supply and also for not performing the works within the stipulated time specified in the Purchase Order?

(4) Whether the defendant is responsible and liable for lapse in completion of contract?

(5) Whether the plaintiff is entitled for the any other relief?

5. On the side of the Plaintiff, P.W.1 was examined and Ex.P1 to Ex.P25 were marked. On the side of the Defendant, D.W.1 was examined and Ex.D1 to Ex.D27 were marked.

6.Issue No. 1

(i)The plaintiff contented that the defendants did not pleaded the point of limitation. The point of limitation raised only during the cross



WEB COPY

examination. However, the defendant encashed the Bank Guarantee on 07.04.2010. On 27.06.2010, by Ex.P25 the defendant in its letter stated that in order to release the pending payments, the P.O. has been referred to the board level tender committee. Thereby it has been accepted that there were pending payments. The suit is filed in January 2013 within 3 years from date of encashment of Bank Guarantee. Hence, the suit is well within the limitation.

(ii) The defendant contended that by Ex.B26 dated 31.07.2009, the plaintiff clearly stated that, it had completed all the works and requested for entering into annual maintenance contract. According to the plaintiff the entire work was completed on 31.07.2009, which is the starting period of limitation for the suit. As per Article 18 of the limitation Act 1963, the time for claiming the amount due is 3 years, from the date when the work is done for the price work done by the plaintiff. The plaintiff's work was completed on 31.07.2009 and the period expired on 30.07.2012 itself. The present suit filed in the year 2013. Therefore the suit is barred by limitation.

(iii) The defendant further submits that the plaintiff filed the suit



C.S.No.409 of 2013

WEB COPY

which is barred by limitation based on legal notice issued by it dated 16.02.2012. It is well settled principle that issue of legal notice will not extend the period of limitation. In fact even acknowledgment of debt after the period of limitation will not extend the period of limitation. Therefore the suit is barred by limitation. Learned Counsel for the defendant relied on the judgement reported in (1999) 2 SCC 679 (Sampuran Singh and others Vs. Niranjan Kaur and others).

(iv)The defendant stated that the issue of limitation framed in the year 2019 and the plaintiff had not taken any steps for recasting of issue. Moreover, Section 3 of the Limitation Act clearly states that any suit instituted after the prescribed period shall be dismissed although limitation has not been set up as a defence. Limitation can be confined to a question of law if the foundational facts that determine the starting point if limitations are clearly stated in the plaint averments. Here it is the admitted case of the plaintiff that as per Ex. B26 the work was completed on 31.07.2009 and the suit is filed in the year 2013 which is clearly barred by limitation. Hence, the defendant contended that the suit is liable to be dismissed on the sole ground of limitation.



WEB COPY

(v) By considering both side submissions, this Court finds that the transaction is from the year 2005 to 2009. On completion of work, it is for the plaintiff to submit his final bill to the defendant. The defendant is duty bound to pay the amount as per the purchase order. By Ex.B26 there is no amount mentioned and it simply says that all the pending payments would be released and the bank gaurantees were to be encased since the expiry is nearing. Articles 18 says that the limitation for the work done is 3 years from the date of work done. The work was done on 31.07.2009. It is settled law that the acknowledgment of liability must be clear and unambiguous. The suit is filed beyond 3 years. Hence, the suit is barred by limitation.

7. Issue No: 2

(i) The plaintiff argued that by Ex. P3, NRSC, it had applied to Ministry of Defence [MOD] for supply of base map and aerial photography over Chennai. By Ex. P5, NRSA states that the base map of Chennai City was made in 1989 using Aerial Photography and updated with IKONOS imagery, in the scale of 1: 2000. The NRSA letter concludes that they would supply base map to the Defendant. The maps are very sensitive data and could be handled only by government institutions only. Ex. P7 dated



C.S.No.409 of 2013

WEB COPY

08.11.2005 from NRSC clearly indicates that Ministry of Defence had given clearance for Aerial Photogrammetric and Aerial Photography over Chennai would be undertaken subject to weather conditions. But it was never happened and forcing the Defendant to change the scale from 1:500 to 1:2000.

(ii) The plaintiff further argued that it paid Rs.67,095/- as consideration on 07.11.2007 for purchase of Data Globe product Digital Globe imagery for Anna Nagar area from NRSC. It was borne by plaintiff. Subsequently, the Plaintiff Company prepared base maps and delivered to the Defendant. The defendant accepted receipt of all hardware components within 6 months from date of purchase order. Moreover, the defendant has changed the terms of project with respect to base map by accepting in the scale of 1:2000 only on 08.06.2007 after approval by tender committee. The plaintiff has completed all other aspects including development of software. Once the base map was obtained in 1:2000 scale plaintiff have collaborated the data collected, imparted training to the staff of defendant. The only stand taken by the defendant in its written statement is that plaintiff has not completed the project as per terms of purchase order i.e



WEB COPY

not provided base map in the scale of 1:500. Having accepted the base map in scale of 1:2000, defendant cannot again go back and take a defence that plaintiff has not provide base map in scale of 1:500. If the defendant was very particular about the base map to be provided only in 1:500 scale ought to change the terms. Only on receipt of both the hardware and software, the defendant take a stand that the software has not matched the purchase order terms. Ex P23 clause 4, says that “software has been installed in the GIS client and the same was demonstrated”. Furthermore in the written statement (inner page 6) defendant has admitted that “some staff training were imparted to the staff....” It is very obvious that when a big government corporation like the defendant has to permit staff to attend training the same would have to be approved by various departments and officials. Without software being installed the training could not have been imparted. The defendant is trying to deprive plaintiff of its due full rights after having extracted all the work for 5 years and not paying them is nothing but cheating. As a government department the defendant has to act responsible towards its citizens, instead the defendant has used its dominance against the plaintiff in a very coercive and arbitrary manner.



C.S.No.409 of 2013

WEB COPY

(iii) The plaintiff further argued that by Ex.P24 it wrote to the defendant about the new project undertaken by the defendant and request a letter stating the reason for closure of contract, but the same has not been specifically denied or replied by defendant. It is settled position that something which is not specifically denied is deemed to be accepted. The defendant admits that a similar project has been undertaken even in cross examination of DW1. Ex. P 8 & Ex.21 are self explanatory and detailed with respect to providing that all aspects of the project haven been completed and that many concern of the defendant have also been attended.

(iv) On the other hand the defendant argued that the contract price for supply installation and commissioning of contract is Rs.1,03,69,404/- only. The defendant is liable to pay a sum of Rs.40,68.459/- towards, material supplied. The plaintiff had supplied material only to a tune of Rs.67,77,290/- only as against the entire contract value and it had not completed the project in full i.e supply, installation and commissioning. As per clause 10.3(b) of the purchase order, if the supply of the material is delayed as against the time granted in the purchase order, the defendant is liable to pay 60% of the amount for the said supply of material, 30% after



WEB COPY

3 months on successful implementation of the project and 10% on closure of the purchase order. Since the time for completion of the project was 6 months from the date of purchase order as per clause 9 of the purchase order. The purchase order was issued on 10.03.2005 and the time for completion of the project was 09.12.2005. The project was not successfully implemented. The plaintiff as per Ex. B26, had completed the project on 31.07.2009 there is a delay of more than 3 years and the materials were not supplied on the schedule dates and therefore the defendant is liable to pay only 60% of the amount and also entitled for liquidated damages of 10% of the total value of the contract. That, 10% of the contract value is Rs.14,26,500/- 60% of Rs.67,77,290/- is Rs.40,68,459/- out of which the defendant had paid a sum of Rs.27,08,831/- and the defendant is liable for LD for a sum of Rs.14,26,500/- for the delayed and incomplete work as per clause 12 of the purchase order. Therefore, the defendant is not liable to pay any amount to the plaintiff and it is the plaintiff, who had to pay to the defendant for the loss incurred.

(v) In the light of the above submissions, it is admitted by both parties that the project was delayed for the reason of obtaining the base



C.S.No.409 of 2013

WEB COPY

Map from the Central Government Institutions. The changed version of the Map was accepted by both parties. There are payments released by the defendant for the materials supplied by the plaintiff. This court is of the view that the project was delayed for 3 years, the explanation given by the plaintiff to the delay is not satisfactory. When the project is delayed, the parties must have entered the agreement afresh. In this case both parties did not do so. Hence, the project was not implemented in its full form. This issue is answered in favour of the defendant.

8. Issue No: 3

(i) The plaintiff argued that the Defendant have wrongfully invoked the Bank Guarantees furnished by the Plaintiff amounting to Rs.12,38,140/- on the wrongful premise of its being a procedure for short closing and in order to process the payment due to plaintiff, without prior notice. The Plaintiff Company has addressed several detailed letters dated 06.04.2010, 13.04.2010 bring about various works done by the Plaintiff Company and the Outstanding amount payable by the Defendant is to the tune of Rs.53,06,599/- as on 03.07.2009 which is inclusive of wrongful invocation of Bank Guarantee to the tune of Rs.12,38,140/-.



WEB COPY

(ii) The defendant argued that as per the Purchase order the entire supply, installation and commissioning should have been completed on or before 09.12.2005, it is admitted fact that, the plaintiff had stopped work as on 31.07.2009 and according to the plaintiff the work was completed on 31.07.2009, admittedly delay of three years. As per clause 12 of the Purchase order it has been categorically stated that if the supplier fails to deliver the equipments/ materials and implement the project within the time specified in the contract or nay extension thereof, the purchaser shall recover from the supplier as liquidated damages, as um of half percent (0.5%) of the contract price of the undelivered equipments/ materials delay. The total liquidated damages shall not exceed ten percent (10%) of the contract price of the equipments/materials so delayed. Only that date of actual implementation at site after satisfaction of user requirements will be reckoned as date of delivery for the purpose. It is clear case of delay and the plaintiff has never sought for extension of time at any point and therefore the defendant are entitled to claim liquidated damages. EX B2, B3, B5, B6, B7, B8, B9, B10, B16, B17, B19 would clearly establish the delay and defective supply of materials by the defendant and therefore the



WEB COPY

defendant are entitled to claim liquidated damages as per clause 12 of the Purchase order.

(iii) The plaintiff did not lay any counter for the delayed project and in fact they have conceded for the delay in execution of work and implementation of the project. Hence, this issue is decided in favour of the plaintiff.

9. Issue No.4

(i) The plaintiff argued that A legal maxim “**volenti non fit injuria**” is pressed upon by plaintiff, since the defendant accepted to base map in the scale of 1:2000 voluntarily cannot now plead injury against the plaintiff for not providing base map in scale of 1:500 which is the only contention raised by defendant against the plaintiff.

(ii) The defendant argued that no where it is the case of the plaintiff that the delay in completion of the contract was due to the defendant. It has been the cause all along that the Government of India had not supplied with aerial map for base map and therefore the delay. It is to be submitted that, at the time of bidding for the tender, it is the duty of the bidder to gain knowledge of the tender before bidding for the same. Moreover it is the



WEB COPY

case of the plaintiff that non-supply of Ariel photographs is by GOI, but the plaintiff had failed to request for extension of time and thereafter only after the intervention on the Board, on 08.06.2007, the Board had granted approval for the completion of the project in the scale 1:2000 instead of the agreed 1:500 (this can be borne out from Ex.B 16). In spite of the approval being granted in June 2007, the plaintiff to complete the project and had stopped work on 31.07.2009, alleging that it had completed the work without admitting if accepting that failure on the part of the plaintiff in not able to get the aerial picture due to delay by the GOI, the defendant had agreed to get along with the project in the scale of 1;2000 instead 1;500 as early as June 2007 but even according to the plaintiff it had completed the project only on 31.07.2009, two years thereafter , which clearly establishes the project only on 31.07.2009, two years thereafter , which clearly established the facts that the delay is purely on the part of the plaintiff.

It is admitted by both parties that there was a delay in completing the project for want of base map. There were difficulties expressed by the concerned authorities in providing the required map. However, with the available base Map the work was completed with inordinate delay. The defendant conceded the delay in execution of the work. However, it is the



C.S.No.409 of 2013

WEB COPY

duty of the plaintiff who has to complete the work within the time frame or atleast within a reasonable period. Hence, the defendant is not responsible and liable for lapse in completion of contract. Therefore, this issue is answered accordingly.

10. Issue No.5

The issue Nos.1, 2 and 4 are decided as against the plaintiff. Hence he is not entitled for any relief.

11. In the result, the suit is dismissed on the point of limitation without costs.

.03.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

uma

List of Witness examined on the side of the Plaintiff:-

1. P.W.1 - M.V.S.Vijay Kumar

List of Witness examined on the side of the defendants:-

1. D.W.1. - N.Vijayee

List of Exhibits marked on the side of the Plaintiff:-



C.S.No.409 of 2013

WEB COPY

Ex.P1 - Original purchase order issued by the Defendant in favour of the Plaintiff dated 10.03.2005

Ex.P2 - Fax copy Letter No.D4410 issued by the Defendant in favour of the Plaintiff dated 24.04.2010.

Ex.P3 - Original National Remote Sensing Agency letter to the Plaintiff Company dated 08.04.2005

Ex.P4 - Photocopy of the Tamil Nadu Electricity Board Letter to the Plaintiff Company dated 18.04.2005

Ex.P5 - Fax copy from National Remote Sensing Agency Letter to the Plaintiff Company dated 05.08.2005

Ex.P6 - Copy of the Letter No.D125/2005 dated 23.08.2005 from Defendant to National Remote Sensing Agency

Ex.P7 - Original letter dated 08.11.2005 from National Remote Sensing Agency to plaintiff

Ex.P8 - Office copy of the letter dated 06.04.2010 to Defendant.

Ex.P9 - Office copy of the letter dated 13.04.2010 to Defendant.

Ex.P10 - Office copy of the Legal Notice issued to Defendant dated 16.02.2012

Ex.P11 - Original Reply Notice dated 21.03.2012.

Ex.P12 - Original Power of Attorney dated 28.06.2012

Ex.P13 - Copy of the Extract of Board Resolution authorizing Mr.M.V.S.Vijayakumar to represent Plaintiff
(Subject to objection raised by the Defendant counsel for marking of documents)



WEB COPY

Ex.P14 - A copy of delivery challan dated 23.08.2005
(marked during DW! Crous examination)

Ex.P15 - A copy of invoices dated 23.08.2006 and 14.10.2005
issued to the defendant
(marked during DWI Cross examination)

Ex.P16 - A copy of letter dated 07.03.2008 letter from plaintiff to
defendant (marked during DW1 Cross examination).

Ex.P17 - A copy of letter dated 29.03.2008 letter from defendant to
plaintiff (marked during DW1 Cross examination).

Ex.P18 - copy of letter dated 16.04.2008 letter from defendant to
plaintiff (marked during DWI Cross examination)

Ex.P19 - a copy of letter dated 12.12.2008 letter from defendant to
plaintiff (marked during DWI Cross examination)

Ex.P.20 - a copy of letter dated 10.06.2009 letter from plaintiff
to defendant (marked during DW1 Cross examination).

Ex.P21 - a copy of letter dated 10.07.2009 letter from plaintiff to defendant
(marked during DWI Cross examination)

Ex.P22 - A copy of letter dated 15.07.2009 letter from defendant
to plaintiff (marked during DWI Cross examination).

Ex.P23 - A copies of two letters dated 31.07.2009 letter from
plaintiff to defendant (series)
(marked during DW1 Cross examination)

Ex.P24 - a copy of letter dated 14.05.2010 letter from plaintiff
to defendant (marked during DWI Cross examination)

Ex.P25 - a copy of letter dated 27.06.2010 letter from defendant



to plaintiff (marked during DWI Cross examination)

WEB COPY

List of Exhibits marked on the side of the defendant:

Ex.D1 - copy of the Authorization Letter dated 20.06.2019 from Tamil Nadu Generation and Distribution Corporation Limited.

Ex.D2 - original letter dated 31.10.2005
(marked during DWI chief
[recalled and reopened DWI evidence])

Ex.D3 - original letter dated 05.11.2005
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D4 - original letter dated 11.11.2005
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D5 - original letter dated 02.12.2005
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D6 - Original letter dated 18.10.2006
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D7 - Original letter dated 30.01.2008
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D8 - Original letter dated 13.02.2008
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D9 - Original letter dated 11.06.2008
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D10 - original letter dated 10.07.2008
(marked during DWI chief [recalled and reopened DWI
evidence])



C.S.No.409 of 2013

WEB COPY

Ex.D11 - original letter dated 19.07.2008
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D12 - Original letter dated 04.08.2008
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D13 - Original letter dated 06.09.2008
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D14 - Original letter dated 04.11.2008
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D15 - Original letter dated 21.11.2008
(marked during DWI chief [recalled and reopened DW1 evidence])

Ex.D16 - Original letter dated 31.12.2008
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D17 - Original letter dated 24.02.2009
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D18 - Original letter dated 03.03.2009
(marked during DWI chief recalled and reopened DWI evidence))

Ex.D19 - Original letter dated 19.03.2009
(marked during DWI chief [recalled and reopened DWI evidence])

Ex.D20 - Original letter dated 15.04.2009.
(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D21 - Original letter dated 08.05.2009.



WEB COPY



C.S.No.409 of 2013

(marked during DW1 chief [recalled and reopened DWI evidence])

Ex.D22 - Original letter dated 15.07.2009.

(marked during DW1 | chief [recalled and reopened DWI evidence])

Ex.D23 - Original letter dated 14.06.2010. (marked during DWI chief [recalled and reopened DW) evidence])

Ex.D24 - Original letter dated 28.05.2008.(marked during DWI chief (recalled and reopened DWI evidence])

Ex.D25 - Original letter dated 15.05.2008.(marked during DW1 chief (recalled and reopened DWI evidence))

Ex.D26 - Original letter dated 31.07.2009 along with annexures I and II. (marked during DWI chief [recalled and reopened DW1 evidence])

Ex.D27 - Original letter dated 22.06.2010.(marked during DWI chief (recalled and reopened DW1 evidence))

04.04.2024



WEB COPY



C.S.No.409 of 2013

A.A.NAKKIRAN, J.

uma

Pre-Delivery Judgement in
C.S.No.409 of 2013