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W.P.Nos.25517 & 22738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM :

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.25517 & 22738 of 2022
and
WMP.Nos.24515 & 21771 of 2022

Vinayak Industries,
Rep. by Authorised Representative Mr.K.Vijayarangam,
Having Office at No.179, Sector F,
Sanver Road Industrial Area,
Indore, Madhya Pradesh – 452 010. ...Petitioner in W.P.No.25517 of 2022

Mamta Transformers Pvt. Ltd.,
Rep. by Authorised Representative Mr.K.Vijayarangam,
Having Office at No.A-1, A1/2,
Sector E, Sanwer Road, Indore,
Madhya Pradesh – 452 010. ...Petitioner in W.P.No.22738 of 2022

Vs.

The Chief Engineer,
Materials Management,
TANGEDCO,
4th Floor, NPPKRR Maaligai,
144, Anna Salai, Chennai – 600 002. ...Respondent in both W.P's.

Prayer in W.P.No.25517 of 2022: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in Lr.No.CE/SE/MM-II/EEDT/A3/SPEC.



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No:M-66/16-17/PO.153/09.10.17/D.No:1309/22 dated 18.07.2022, and to quash the same.

Prayer in W.P.No.22738 of 2022: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in Lr.No.CE/SE/MM-II/EEDT/A3/SPEC. No:M-66/16-17/PO.154/09.10.17/D.No:1309/22 dated 18.07.2022, and to quash the same.

For Petitioner : Mr.J.Srinivasa Mohan

For Respondent : Mr.P.S.Raman, AG,
Assisted by Mr.D.R.Arun Kumar

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. These Writ petitions have been filed seeking quashment of the letters of the respondent both dated 18.07.2022 bearing Lr.No.CE/SE/MM – II/EEDT/A3/SPEC.No:M-66/16-17/PO.153/09.10.17/D.No:1309/22 and Lr.No.CE/SE/MM – II/EEDT/A3/SPEC.No:M-66/16-17/PO.154/09.10.17/D.No:1309/22.



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3. When the matters were taken up for hearing, the learned counsel for the petitioners submitted that, the issue involved in these Writ petitions is no longer *res integra* and the similar issue has already been decided by the learned Single Judge of this Court in W.P.Nos.27567 of 2020 etc., batch on 02.07.2024 and therefore the same order may be passed in these petitions as well. Learned counsel appearing for the respondent has not disputed the facts submitted by the learned counsel for the petitioners.

4. The learned Single Judge of this Court, vide order dated **02.07.2024** made in **W.P.Nos.27567 of 2020 etc.**, batch in identical circumstances which was also relied upon by the learned counsel for the petitioners held as under:-

“8. It is relevant to extract clause No.8.5b of the subject tender M-68/16-17 and the modified clause of the recent tender M-13/2022-23 hereunder:

<i>Tender M-68/16-17 Subject Tender</i>	<i>Recent Tender M-13/2022-23 Where the clause is modified</i>
<i>Clause 8.5 b) Payment will be released as per the recent</i>	<i>Clause 8.5 b) Payment will be released as per the lowest rates</i>



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<i>Tender M-68/16-17 Subject Tender</i>	<i>Recent Tender M-13/2022-23 Where the clause is modified</i>
<i>purchase order rates or lowest rate obtained during the recent tenders opened subject to levy of LD for belated supplies.</i>	<i>obtained during the recent tenders opened with effect from the date of price bid opening, subject to levy of liquidated damages for belated supplies.</i>

9. As per the notification, the petitioner in WP.No.27576 of 2022 had quoted price at the rate of Rs.2,83,667/- and purchase order was placed on 09.08.2017 for supply of 117 transformers. Thereafter, subsequent tender notification was floated by the respondent and purchase order was issued on 18.12.2017 at the rate of Rs.2,59,600/-. Therefore, the petitioner had completed the supply of transformers even before 18.12.2017. As per clause 8.5 of both the purchase orders, the rate shall be the one arrived at after negotiation leading to purchase order and not the rate one quoted at the time of tender. The words used in clause 8.5 is 'rate obtained' and not 'rate quoted'. Therefore, the rate is obtained after negotiation and the rate so obtained is the basis for the issuance of the purchase order. The rate mentioned in the purchase order being the rate obtained can alone be the basis for levying liquidated damages or price payable. Until the negotiation completed, tenders finalised, there is no guarantee that the purchase orders will be issued. The proposed recovery



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of differential price as insisted by the audit is contrary to the terms of the tender and without reference to the category of tenderers. The respondent now ordered to levy differential price from the date of opening the price bid and not the date of purchase order.

10. Further the purchase order was issued for the subsequent tender, for which the date of applying the liquidated damages or recovery for price difference goes with the date of the purchase order. The purchase order reflects lesser rate and it is only the date that can be the basis for demanding recovery of price difference. Instead the respondent, on the basis of the audit objection, raised demand which has no relevance to the delay clause 8.5 of purchase order. After supply of transformers, the respondent had settled the entire amount and accordingly the petitioners also had paid GST for the amount paid by the respondent.

11. In view of the above, the impugned orders cannot be sustained and the same are liable to be quashed. Accordingly, all the writpetitions are allowed and the impugned orders dated 08.08.2022, 22.08.2022 and 29.08.2022 of the respondent are quashed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.”



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5. In view of the above fact that the earlier Writ petitions involving similar issue being allowed by this Court in the aforesaid terms, the present Writ Petitions also stand allowed in terms of the above said order of this Court dated 02.07.2024 made in W.P.Nos.27567 of 2020 etc., batch. With regard to the other issues which were not dealt with by this Court, it is left open to parties in the future tender. No costs. Consequently, the connected Miscellaneous petitions are closed.

06.09.2024

skt

Index : Yes (or) No
Neutral Citation : Yes (or) No
Internet : Yes (or) No

To

The Chief Engineer,
Materials Management,
TANGEDCO,
4th Floor, NPPKRR Maaligai,
144, Anna Salai, Chennai – 600 002.



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M.DHANDAPANI, J.

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