IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. Nos.26076, 26077, 26098 and 26100 of 2021
and
W.M.P. Nos.27521 of 2021, 27554, 27523 and 27556 of 2021,
19847, 19848, 19849 and 19850 of 2022

M/s.Sri Kathavarayan Enterprises,
Proprietorship Concern,
Rep. By its Proprietor. ... Petitioner in W.P. Nos.26076 and 26077 of 2021

S. Sankar ... Petitioner in W.P. Nos.26098 and 26100 of 2021

Vs

Tamil Nadu Magnesite Ltd.,
Rep. By the Managing Director,
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem – 636 302. ... Respondent in all W.P.s

Prayer in W.P. Nos.26076 and 26077 of 2021 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified

Mandamus, after calling for records pertaining to the orders Ref. ACC/1/AG Audit /2018/1457 and 1452, both dated 24.09.2021 issued by the respondent, quash the same and consequently direct the respondent to repay the recovered amount to the petitioner respectively.

Prayer in W.P. Nos.26098 and 26100 of 2021 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, after calling for records pertaining to the orders Ref. ACC/1/AG Audit /2018/1455 and Audit/4-Vol.5/2018/1451, both dated 24.09.2021 issued by the respondent, quash the same and consequently direct the respondent to repay the recovered amount to the petitioner respectively.

For petitioner in all W.P.s	:	Ms. S. Meenakshi
For respondents in all W.P.s	:	Mr.B. Vijay Addl. Govt. Pleader

COMMON ORDER

Since the issue involved in all these writ petitions, is one and the same, these writ petitions are disposed of by way of a common order.

2. The short facts leading to filing of these writ petitions are as follows :-

a) The petitioners herein are the Contractors. The contract for Spoil removal work using Excavator & Tippers for Transporting Spoil & Dumping at Mines dumping area was awarded to the respective petitioners vide Proceedings, dated 10.08.2015 for the period from 11.08.2015 to 10.08.2016. Though the contract was awarded, initially for a period of one year at Rs.29.74 per MT with certain conditions, the said contract was extended from a time to time. Likewise, the contract was further extended, vide Proceedings, dated 03.12.2016, for a period of one year, but with an increase of 12% over the agreed rate of Rs.29.74 i.e., to Rs.33.31 per M.T. Thereafter, the respondent-Company have returned the Security Deposit paid by the respective petitioners to Rs.2,92,200/- (after adjusting the EMD amount of Rs.6,00,000/- on 12.10.2017 and 17.10.2017 respectively. The Bank Guarantee for Rs.9,00,000/- each towards Security Deposit was also returned to the respective petitioners, as per the condition No.5 mentioned in the Work Order.

b) Moreover, it is stated that the respective petitioners were further awarded the said Contract through open tender for the year 2020-22 for Spoil Removal work and Deep hole drilling work. While so, the respondent have charged penalty to the respective petitioners for the shortfall in production by quoting the Work Order Agreement. Though it is stated that warning notices were issued, but without any notice, deductions have been made by the respondent, which is prior to issuance of the impugned order. On the next day, i.e., after making deductions, the impugned order, dated 24.09.2021 was issued by the respondent. Aggrieved over the respective impugned orders, all dated 24.09.2021, these writ petitions have been filed by the respective petitioners.

3. Learned counsel for the petitioner submitted that the work assigned to the respective petitioners were effectively done by them, but due to certain unforeseen circumstances, there was some shortfalls in the production and the same was also explained to the respondent by way of communication. When that be so, unilaterally without any notice to the respective petitioners, the recovery was made by the respondent on 23.09.2021, which is arbitrary and mere violation of principles of natural justice. She further submitted that prior to passing of impugned notice, dated 24.09.2021, the respondent had commenced the deductions from the bills of the petitioner viz., August and September 2021, that too for the

shortfall occurred in the year 2015-16 and 2017-18 contract works, the said deductions were effected. She vehemently argued that in the impugned order, the respondent failed to mention the specific shortfall caused by the petitioner.

4. Drawing the attention of this Court to the reply affidavit, she submitted that the calculation of shortfall done by the respondent is wrong, they calculated, the holiday period, rainy season as well as the closure period, which have not to be taken into account. Therefore, the basic calculation done by the respondent, while imposing penalty for the said contract of spoil removal during the period 2015-2016 is totally wrong and which resulted in leving huge amount as penalty to the petitioner and a substantial amount was deducted from the billing of the respective petitioners. Further, she reiterated the contents of the reply affidavit, particularly paragraph 15, with regard to AG Audit report. She pointed out the heavy penalty imposed by the respondent, which is in contrary to the Audit Report, wherein it was mentioned nly Rs.3/- as penalty per MT for spoil removal. Finally, she stated that due to non-providing of opportunity to the petitioner as well as without prior intimation, the respective impugned

orders were passed, which are unsustainable and accordingly, the same is liable to be quashed. In view of the above, she prays for quashment of impugned orders, all dated 24.09.2021 and also for issuance of appropriate directions to the respondent to repay the recovered amount to the respective petitioners in these writ petitions.

5. Mr.B. Vijay, learned Additional Government Pleader appearing for the respondent submitted that the respective petitioners were awarded the contract of Spoil removal work and he conceded with the aforesaid submission in respect of the period of awarding the said contract as well as the further extension alone. Further, he submitted his arguments based on the respective counter affidavits and contended that pursuant to AG audit report, the shortfall in production committed by the respective petitioners were noted by the respondent. He vehemently argued that the target fixed by the respondent was not achieved by the respective petitioners and for which, penalty was charged as per the Work Order Agreement. Prior to imposing of penalty, warning notices were issued to the respective petitioners with regard to their poor performance of contract, inspite of above, steps have not been taken on the side of the respective petitioners.

6. He fairly submitted that the respondent have committed some arithmetic errors in the calculation, which was due to oversight and the same will be rectified. However, he submitted that even though the contracts are for different work, the contractor is liable for penalty and therefore, he prays for issuance of appropriate directions by this Court in the above regard.

7. Heard the learned counsel on both sides and perused the materials placed on record.

8. The facts in respect of awarding of contract for Spoil removal work and further extension of contract to the respective petitioners are not in dispute. It is an undisputed fact that pursuant to AG-Audit, the respondent found the shortfall in production activities of the respective petitioners. Further, on a bare perusal of records, it reveals that the deduction was made much earlier and the orders impugned herein were passed by the respondent on subsequent date. The contention of the respondent is that for non-fulfilment of the target fixed, they have levied penalty in the bills of the petitioner, which is as per the Work Order and thereby deductions were made. In a common parlance, before making any deductions, one must be

provided an opportunity of hearing or sufficient time has to be afforded to submit their explanation. Though it is stated that warning notices for the shortfall noticed by the respondent was issued, it is crystal clear that neither notice was served to the respective petitioners, nor they have been heard before passing of the orders, which are impugned herein. In such a view, apparently, there is a clear violation of principles of natural justice.

9. Moreover, from the submissions made by the learned counsel on both sides, it reveals that there was an arithmetical error crept in by the respondent, while calculating the penalty charges as against the shortfall. Considering all, this Court is of the considered view that the orders impugned herein, all dated 24.09.2021 passed by the respondent are liable to be set aside for the violation of principles of natural justice.

10. For the aforesaid reasons, the impugned order, dated 24.09.2021 passed by the respondent in all writ petitions are hereby set aside and these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed. However liberty is granted to the respondent to initiate fresh proceedings as against the respective petitioners by issuing proper notices and shall provide an opportunity of hearing to the

respective petitioners and thereafter pass appropriate orders on merits and in accordance with law.

30.09.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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To
The Managing Director,
Tamil Nadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem – 636 302.

M.DHANDAPANI, J.

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26098 and 26100 of 2021

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