



W.P.(MD)No.10271 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2024

Pronounced on : 29.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.10271 of 2021

and

W.M.P.(MD)No.7955 of 2021

R.P.Engineering Works
represented by its Proprietor
R.Perumal
1/42-38, R.P.Complex,
Muthunagar, Thermal Nagar-I,
Tuticorin-628006.

... Petitioner

Vs.

The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.

... Respondent

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 09.04.2021 in க.எண்.மே. போ/தூமிபவ/உ.செ.பொ/சிவில்/தூடி/கோ.10/அ.எண்.118/21 and quash the same and for a consequential direction to refund the Security Deposit and Retention amount bills.



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For Petitioner : Mr.A.Srinivasan

For Respondent : Mr.S.Deenadayalan
Standing Counsel

ORDER

The Writ Petition is directed against the order dated 09.04.2021 passed by the respondent and for a direction to the respondent to refund the security deposit and retention amount bills.

2. The case of the writ petitioner is that the writ petitioner was an authorized contractor of the respondent Board, that the respondent has called for tender for supply of concrete poles for supply of electricity to the consumers, that the writ petitioner was declared as a successful tenderer and he was called for negotiation on 21.12.2013 and based on the said negotiations, the respondent has passed an order dated 27.12.2013 accepting the rate quoted by the writ petitioner, that the writ petitioner was directed to pay Rs.67,000/- as security deposit and enter into an agreement for starting the work, that the writ petitioner entered into an agreement and the same was also accepted by the respondent on 23.05.2015, that the writ petitioner started manufacturing concrete poles and as on 29.10.2015, he



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had produced 287 poles, that due to the onset of northeast monsoon, there was a heavy rain which affected the entire manufacturing process which require hot climate for drying of the concrete poles and for curing in the water tanks for a specific period, that the manufacturing process was affected upto February-2016 due to the rainy season, that the writ petitioner had thought for extension of time to complete the balance work due to non-availability of the curing tank, that the respondent sent a communication dated 14.03.2018 stating that the audit department has raised objections and directed the Board to recover a sum of Rs.1,31,111/- from the writ petitioner, that the writ petitioner submitted his objection and requested to send particulars based on which the audit objection has been made and sought for certain documents, that the respondent, without furnishing the documents and without considering the writ petitioner's explanation, sent a communication dated 21.08.2019 stating that Rs.1,31,111/- will be deducted from the writ petitioner's future contracts with the Board, that thereafter the respondent has issued the impugned order dated 09.04.2021 informing that security deposit and retention amount bills were deducted from the amount due to the writ petitioner and that therefore the writ petitioner with no other option has approached this



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Court challenging the impugned order dated 09.04.2021 and for directing the respondent to refund the security deposit and retention amount bills.

3. The respondent has filed a counter affidavit disputing the writ petitioner's averments and further stated that as per the condition in the work award, the writ petitioner has to pay security deposit amount at Rs.54,100/- within 15 days to execute the agreement but the writ petitioner has not paid the amount despite several request letters sent by the respondent and lastly the writ petitioner has paid the amount on 05.05.2015, which was delayed by nearly 16 months, that the writ petitioner has to complete the work within a time frame of 7 months but the work was only completed on 18.06.2016 with a delay of 3 months, that the writ petitioner has also not followed the monthly target fixed in the contract, that no time extension order was issued by the respondent, that the reason advanced for non-availability of curing tank cannot be accepted as 25 curing tanks were available for the said work till the month of March-2016, that after the period given to the writ petitioner, next pole casting work was awarded to M/s.East Coast and work was commenced on 11.03.2016, that the Board Office Audit Branch Audit Slip No.135 dated



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15.09.2016 was sent to the writ petitioner to pay the balance amount of Rs.1,31,111/-, that the writ petitioner's objection letter dated 28.03.2018 was forwarded to the Audit Department for dropping of audit amount but after careful examination, the Chief Internal Audit Officer explained that the Audit Slip cannot be dropped due to delayed supply of poles about 3 years from the work award and that the said amount was recovered from the same bill amount from EMD, SD and RA totalling Rs.1,35,400/- and the amount of Rs.1,31,111/- was recovered and the balance amount was credited to the writ petitioner's account.

4. It is the further contention of the respondent that action was taken only as per the Department Rules, vide circular No.309/DFC/T/A1/97-1 (Accounts Branch) dated 07.05.1999, wherein, it was stated that wherever the supplier does not commence supply as agreed to the EMD/SD paid by the bidder should be forfeited as per the terms of the purchase order/ contract and the firm will be blacklisted after due notice and that the firms bad performance should be recorded for reference in future ordering.

5. The learned Standing Counsel appearing for the respondent at the time of hearing would raise a preliminary objection that the writ petition



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itself is not maintainable on the ground that disputed question or rival claim of the parties with regard to breach of contract cannot be gone into by the writ Court and that the existence of alternative and effective remedy is a bar for filing the writ petition.

6. It is pertinent to note that writ petition being a public law remedy can be invoked only whenever the State or its instrumentalities failed to discharge any public function that they are obligated to do under any statute, not for private laws because contract between two parties is a realm of private law.

7. It is settled law that a breach of contract will be a pure and simple matter of contract law and will be governed by it only with the remedies as provided and the writ Court cannot interfere.

8. The learned Standing Counsel appearing for the respondent would rely on the decision of the Hon'ble Supreme Court in the case of ***State of Bihar and others Vs. Jain Plastics and Chemicals Ltd.*** reported in ***2002 (1) CTC 254***, wherein, the Hon'ble Apex Court has specifically



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held that seriously disputed question or rival claim of parties with regard to breach of contract are to be decided by the competent civil Court and not by the writ Court and that the existence of alternative remedy would be a ground to refuse to exercise discretion under Article 226 of the Constitution of India and the relevant passages are extracted hereunder:-

“3. Settled law writ is not the remedy for enforcing contractual obligations. It is to be reiterated that writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

....

7. In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-



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affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.”

9. The above decision is squarely applicable to the case on hand. In the present case also, as rightly contended by the learned Standing Counsel appearing for the respondent, the respondent has claimed that they have recovered the amount as the writ petitioner has breached the contract conditions. But according to the writ petitioner, the present writ petition came to be filed for recovery of security deposit and retention amount bills.

10. As already pointed out, the writ petitioner has taken a stand that curing tanks were not available, but according to the respondent, 25 curing



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tanks were available for the said work till the month of March-2016.

According to the respondent, though the writ petitioner has agreed to pay the amount within 15 days, he committed default and despite several reminders, has chosen to pay the amount after the delay of nearly 478 days. It is also the case of the respondent that though the writ petitioner has agreed to complete the work within 7 months, they have delayed it by nearly 3 months. As already pointed out, as per the Board Office Audit Branch Audit Slip, the writ petitioner was directed to pay the balance amount of Rs.1,31,111/- and that the writ petitioner's objection was not accepted by the Audit Officer on the ground that the writ petitioner has supplied poles with a delay of 3 years from the work award. As rightly contended by the learned Standing Counsel appearing for the respondent, these aspects cannot be gone into, as the same requires evidence.

11. The learned Standing Counsel appearing for the respondent would further submit that though the alternative and effective remedy of filing a civil case is very much available, the writ petitioner cannot be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India. I find much merit in the above said submission made on behalf of the respondent.



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12. Considering the above, this Court has no hesitation to hold that the writ petition is legally not maintainable and as such, the same is liable to be dismissed.

13. In the result, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

29.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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and
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Dated : 29.07.2024