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W.P.(MD)NO.15897 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2024

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.15897 of 2015 AND
M.P.(MD)Nos.1 to 3 of 2015

M.G.Pare

... Petitioner

Vs.

1. The Southern Railway,
Rep. by its Senior Divisional Engineer /
Coordination,
Southern Railway, Madurai.

2. The Divisional Engineer(Central),
Southern Railway, Madurai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in proceedings No.U/W149/MDU/365/10 dated 25.08.2015, quash the same and consequently direct the respondents herein to pay a sum of Rs.30,00,000/- with interest from the date of presentation of the bill till realization @ 18% along with EMD amount of Rs.5,01,821/-.

For Petitioner : Mr.Ram Sundar Vijayaraj
For Respondents : Mr.K.R.Laxman,
Standing counsel.

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ORDER

The petitioner was awarded with a contract for increasing the sleeper density between Madurai and Dindigul by an agreement dated 06.12.2010. The contract value of Rs.80,60,000/- was also increased to Rs.1,00,36,411/- The amount was also disbursed to the petitioner. Thereafter, on the report of the Central Vigilance Commission, Madurai, the Senior Divisional Engineer, Southern Railways, Madurai has issued the impugned communication dated 25.08.2015 that the petitioner has not executed the work as per the agreement though he has received the said amount of Rs.1,00,36,411/-. By deducting EMD amount of Rs.5,01,821/-, the petitioner was directed to remit the balance amount of Rs.95,34,590/- to the railways on or before 10.09.2015. Aggrieved by the same, the petitioner filed this writ petition.

2. The learned counsel appearing for the petitioner submitted that the impugned order has been passed without providing an opportunity of hearing to the petitioner. According to him, he has executed the work and there is no lapse on the execution of the work. He has also relied on the report of CBI before the learned II Additional District Judge for CBI Cases, Madurai in R.C.C.No.1 of 2014 and



submits that the CBI Judge has held that there is no lapse on the part of the contractor. However, the impugned order has been passed without providing an opportunity of hearing and without ascertaining whether there is an actual loss on the execution of the contract.

3. The learned counsel appearing for the respondents submits that the contract itself provides an arbitration clause. The petitioner can work out his remedy by invoking arbitration.

4. This Court considered the rival submissions and went through the materials on record.

5. The petitioner who is a contractor was permitted to execute the work in the year 2010. He was also paid the contract amount that he has executed the work. After five years, the respondents issued the impugned communication stating that the work has not been executed. They have referred to the report of CBI. Even a copy of the CBI report was not provided to the petitioner. Admittedly, without providing an opportunity of hearing to the petitioner, the impugned order has been passed. The learned counsel also relied on the report filed by CBI before the learned II Additional District Judge for CBI Cases, Madurai.

6. The order impugned in this writ petition is set aside. This writ petition stands allowed. The respondents to conduct fresh enquiry by



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providing an opportunity of hearing to the petitioner and also by considering the report filed by CBI. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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B.PUGALENDHI,J.

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