



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) Nos.19718 and 19719 of 2016
and
W.M.P.(MD) Nos.14227 and 14228 of 2016

S.Muthumari

... Petitioner in both W.Ps.,

/vs./

- 1.The General Manager,
Southern Railway,
Park Down,
Chennai.
- 2.The Divisional Railway Manager,
Divisional Office,
Southern Railway,
Madurai 625 016.
- 3.The Senior Divisional Engineer / Co-ordination,
Southern Railway,
Madurai 625 016.
- 4.The Senior Divisional Engineer (South),
Divisional Office,



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Southern Railway,
Madurai 625 016.

... Respondents in both W.Ps.,

The Senior Section Engineer (Works),
Southern Railway,
Tirunelveli

... 5th Respondent in W.P(MD) No.19719 of 2016

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the proceedings of the 3rd respondent in Nos.U/W.149/MDU/165/2011 and U/W. 149/MDU/170/2012 dated 04.02.2016 and 20.01.2016 quash the same as illegal and further direct the respondents to permit the petitioner to complete with the works allocated and to pay the agreed amount for the completed work and for the excess works done and rider works.

For Petitioner
in both W.Ps., : Mr.P.Pethu Rajesh

For Respondents
in both W.Ps., : Mr.K.R.Laxman

COMMON ORDER

These writ petitions have been filed challenging the order of notice of termination of contracts of the petitioner.



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2. The learned counsel for the petitioner would submit that the respondents had not followed the procedure of issuing the 7 days prior notice calling upon the petitioner to submit his explanation as to why the contract should not be terminated. He would submit that the respondents had *mala fidely* cancelled these contracts, as the petitioner had earlier successfully challenged such termination of contracts. In that context, he had relied upon a judgment of the Division Bench of this Court made in W.A.(MD) No.1022 of 2016 (***S.Muthumari Vs. The General Manager, Southern Railway, Chennai and others***) filed by the petitioner herein and contended that the Court considering the fact that there has been violation of Clause 62 of the standard general conditions of contract had set aside the order of cancellation and had given liberty to the respondents to proceed in the manner known to law.

3. It is to be noted that the Hon'ble Apex Court in the judgment reported in ***(2014) 1 Supreme Court Cases (Gail (India) Limited Vs. Gujarat State Petroleum Corporation Limited)*** had categorically held that when an efficacious alternative remedy is available, this Court cannot entertain a writ petition. Further,



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the Hon'ble Supreme Court in the judgment reported in **2021 SCC Online SC 884 (Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited)** had held that the writ petition can be entertained only in exceptional circumstances, namely a breach of fundamental rights, a violation of the principles of natural justice, an excess of jurisdiction or a challenge to the vires of the statute or delegated legislation.

4. The complaint of the petitioner does not fall in any of the categories. It is his claim that the general condition of contract has not been complied with. If that is so, he would always be entitled for damages in an appropriate arbitral proceedings. Without approaching the Arbitral Tribunal or invoking the Clause under the contract of which the same general conditions of contract relied upon by the petitioner also form part of, I am of the view that the present writ petition invoking Article 226 of the Constitution of India would not be maintainable.

5. The learned counsel for the petitioner at this juncture seeks liberty to invoke the Clause of arbitration available under the contract.



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6. Considering his request, if the petitioner chooses to invoke the said Clause, the period of pendency of this writ petition shall stand excluded while calculating the limitation for invoking the said Clause. The Writ Petitions stand dismissed with such liberty. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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