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W.P(MD)No.26244 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.07.2024

Pronounced on : 03.12.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26244 of 2023

and

W.M.P.(MD)Nos.22586, 22587 and 22588 of 2023

M/s.Jaya Lathe Works,
Represented by its Proprietor,
P.Pitchai Manickam.

... Petitioner

Vs.

1.The Chairman-cum-Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer,
Material Management,
4th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 2nd respondent in Lr. No.CE/MM/SE/MMI/EEI/AEE1/F.PO.No.98/D.82/2023 dated 21.10.2023, quash the same and further direct the respondents to return the Bank Guarantee towards Security Deposit of Rs.68,32,400/- in terms of the Force Majeure Clause (Clause 11.0) available in the Purchase Order issued by the



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2nd respondent in Lr. No.CE/MM/DE/MMI/EEI/AEEI/M.29/2019-20/PO. No. 98/D.440/20 dated 04.11.2020.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel,
For M/s.Isaac Chambers.

For Respondents : Mr.S.Deenadhayalan,
Standing Counsel.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned standing counsel for the respondents.

2.The writ petitioner is a small scale industry established in the year 1974. They are suppliers of materials to TANGEDO. The petitioner is also a registered MSME. On 04.11.2020, the petitioner was issued with purchase order for supply of 2480 MTs of RS Joists 200 x 100 mm of 5 lengths of UDAY Scheme and routine works in Electronic Devices and Circuits. The petitioner has submitted security deposit to the tune of Rs.68,32,400/-. The petitioner should have concluded its supply before 03.11.2021. The petitioner had supplied 1124.52 MTs out of 2480 MTs. The stand of the petitioner is that the balance supply could not be effected for two reasons (i) payments for the supplies already made was not effected immediately and (ii) the impact of



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second wave of Covid – 19. It was submitted that one of their major suppliers namely, M/s.Kanishk Steel Industries Limited informed the petitioner on 10.04.2021, 15.05.2021 and 30.08.2021 about the difficulties in making supplies. It is true that the TANGEDCO extended the time line but the petitioner could not come out of the covid impact.

3.It is well settled that force majeure is a good defence against the charge of breach of contract. The petitioner had written more than communication to the respondents seeking condonation of the inability to effect the balance supply and for short-closure of the purchase order.

4.The respondents without referring to the mitigating circumstances pleaded by the petitioner, had issued the impugned communication dated 21.10.2023 levying penalty on the petitioner. Not only the petitioner's security deposit had been forfeited but also penalty had been levied under other heads.

5.The respondent is a State instrumentality. The contract was entered into when covid pandemic was at its peak. One can take judicial notice of the fact that there was nation-wide lockdown and people were put to difficulties. The previous conduct of the petitioner also will have to be taken into account.



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The petitioner has been TANGEDCO supplier for several decades. In these circumstances, when force majeure has been pleaded as a defence, it was incumbent on the part of TANGEDCO to have considered the same. Without considering the defence putforth by the petitioner, a mechanical order has been passed. The respondents failed to take into account the relevant factors. Failure to consider relevant factors is certainly a vitiating circumstance.

6.In this view of the matter, the impugned communication is set aside. In normal circumstance, I would have remitted the matter to the file of the second respondent. Considering the special facts and circumstances, the matter is remitted to the file of the first respondent to pass an appropriate order on merits and in accordance with law. Before passing such an order, the first respondent will grant an opportunity of personal hearing to the petitioner. The merits of the matter have not been gone into.

7.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
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