



W.P.No.25959 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

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and

WMP.No.29198 of 2025

Annai Engineering Industries,
Rep. by its Proprietor,
C.Sukumaran,
No.246, 1st Floor,
Cuddalore Main Road,
Mudaliarpet,
Pondicherry-04.

.. Petitioner

VS

The Executive Engineer,
Building and Roads (South) Division,
Public works Department,
Pondicherry.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records from the file of the respondent made in No.541/PW/BRS/DB/D3/F.No.65-FLC(P)/2025-26 dated 09.07.2025 and quash the same and consequently directed the respondent to issue the



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Work Commencing order by accepting the Performance Guarantee (FDR) of the petitioner dated 14.05.2025.

For Petitioner : Ms.Vedavalli Kumar
for Mr.N.Stalin

For Respondent : Mr.Tamilvanan
Additional Government Pleader (Pondicherry)

ORDER

Heard Ms.Vedavalli Kumar for Mr.N.Stalin, learned counsel for the petitioner and Mr.Tamilvanan, learned Additional Government Pleader (Pondicherry) for the respondent.

2.The petitioner is an Engineering Contractor. The respondent issued a tender notification for the purpose of constructing Fish Landing Centres at Periyakalapet, Puducherry. The petitioner participated in the tender on 06.03.2025. Apart from the petitioner, there were five other tenderers. The petitioner was declared the lowest bidder amongst the six.

3.The respondent sent a communication dated 23.04.2025 to the petitioner, stating that his offer is accepted. He called upon the petitioner to deposit a performance bank guarantee to the tune of Rs.71,93,295/- within 14 days from the date of the issue of the letter of acceptance. Subsequently, the petitioner approached the respondent to extend the last day of paying the performance bank guarantee by 7 days, and the same



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was granted. The petitioner furnished the bank guarantee by way of a fixed deposit for the aforesaid sum, where the bank guarantee was issued on 14.05.2025 and is valid till 14.02.2027. It was drawn in FDR.No.147660742 and issued by the Federal Bank, Vadapalani Branch, Chennai. The petitioner handed over the fixed deposit receipt to the respondent on 15.05.2025. While handing over, the petitioner informed the respondent that as his wife had fallen ill, he could not immediately furnish the same. He pointed out that there is a delay of only one day, if one is to treat the date on which the tender was accepted (23.04.2025) as the date of commencement.

4.After having received the bank guarantee, by a communication dated 09.07.2025, the respondent rejected the same. To add insult to the injury, the respondent stated that the EMD furnished by the petitioner to the tune of Rs.23,21,446/- would stand forfeited. Aggrieved by the said order, the present writ petition.

5.This Court entertained the writ petition and further granted an interim order restraining the respondent from re-tendering the construction of Fish Landing Centres. This order was passed on 16.07.2025. At the time of admission, the respondent was put on notice through the Government Advocate (Puducherry).



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6.Pursuant to a mention made by Mr.Stalin, stating the pleadings are complete, the writ petition was listed for hearing. The aforesaid facts are not in dispute.

7.According to Mr.Tamilvanan, the period of 14 days for furnishing the bank guarantee should be construed from 23.04.2025 and not the date on which the petitioner received the said communication, namely, 30.04.2025. In addition, he invites my attention to the counter affidavit to urge that the petitioner had given a letter seeking extension of time on 06.05.2025, and the extension was also granted, which expires on 13.05.2025, and hence, furnishing the guarantee on 15.05.2025 is not in accordance with law.

8.I have carefully considered the submissions on both sides and I have gone through the records.

9.The dispute that I have to resolve is whether the date on which the petitioner signed the acceptance should be construed as the date for commencement of the 14 days period, or the date on which the writ petitioner had received the communication should be construed as the relevant date. An order that is passed by an authority and kept in the file is no order at all. An order gets vitality, not when it is signed, but when it is communicated.



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10.Mr.Tamilvanan is right in stating that the order was signed on 23.04.2025, and was sent by registered post with acknowledgement due on the very same day. It was sent from Pondicherry at 05.21 hours after the closure of business and, therefore, that date cannot be treated as the date for commencement of limitation.

11.A perusal of the tracking record that has been produced by Mr.Tamilvanan shows that on 24.04.2025, the Postman attached to the Mudaliyarpet S.O. had attempted to deliver the same, but the door was locked. An intimation was left and the same procedure was followed on 25.04.2025. It was only on 30.04.2025, that the item was delivered to the writ petitioner.

12.Section 4 of the Indian Contract Act deals with the manner in which communication of a contract is complete. Calling of tenders are treated as an invitation to offer, the submission of the tender constitutes an offer, and issuance of work order is the acceptance thereof. The communication of a proposal or offer is complete, as against the offerer, when it comes to the knowledge of the person to whom it is made; the communication of an acceptance is complete as against the acceptor, when it comes to the knowledge of the proposer.

13.I need not labour myself much on this point, as the Supreme



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Court has settled this issue in ***Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co., and others (AIR 1966 SC 543).***

Hence, the communication of acceptance as against the acceptor, namely, the respondent herein, was completed only when it came to the knowledge of the proposer, namely, the writ petitioner, when he received it. Admittedly, he received it on 30.04.2025. Hence, the time period to furnish the bank guarantee commences from 01.05.2025. If that is taken as the crucial date, then furnishing of the bank guarantee on 14.05.2025 is well within the terms stipulated by the respondent.

14.I will look at this issue from an other angle, viz., the petitioner having immediately approached the respondent on 06.05.2025, and having sought for extension of time, this was also well within the period of 14 days that the petitioner was entitled to. The respondent was convinced with the reason that the petitioner's wife was suffering from illness, and granted a further weeks' time to comply with the requirements. Extension does arise after the period fixed under the condition expires, which means that, even if 14.05.2025 is treated as the cut off date, the petitioner had one more week to submit the performance guarantee, which should have expired on 21.05.2025. Much before 21.05.2025, the petitioner has given the performance guarantee and it has



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been received by the respondent on 15.05.2025. Hence, the impugned order when looked at from any angle, cannot be sustained. Accordingly, the impugned order is quashed. The respondent shall issue the formal work order to the petitioner, enabling him to complete his contractual duties.

15.This writ petition is allowed. No costs. Connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Executive Engineer,
Building and Roads (South) Division,
Public works Department,
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V. LAKSHMINARAYANAN,J.

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