



W.P.(MD).No.6872 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2025

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.6872 of 2025

S.Jeyashankar

.. Petitioner

Vs.

1.The Senior Divisional Engineer,
Divisional Office, South,
Works Branch,
Southern Railway,
Madurai.

2.The Senior Section Engineer,
Works, Southern Railway,
Tirunelveli.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 1st respondent to refund deposits made by the petitioner as Security Deposit of Rs.2,03,640/- and the Performance Guarantee (Bank Guarantee) of Rs. 3,39,400/- to the petitioner, within a time limit stipulated by this Court.

For Petitioner : Mr.M.Dinesh Hari Sudarsan

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India



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ORDER

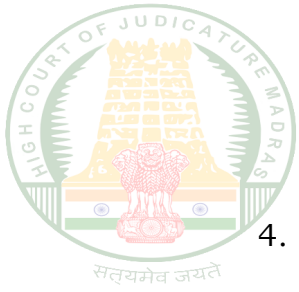
This Writ Petition is filed for Mandamus to direct the first respondent to refund deposits made by the petitioner as Security Deposit of Rs.2,03,640/- and the Performance Guarantee (Bank Guarantee) of Rs. 3,39,400/- to the petitioner, within a time limit stipulated by this Court.

2. It is the case of the petitioner that he was allotted “Zonal piece work contract” for the period from 01.07.2012 to 30.06.2019. As a security for the purpose of the contract, he had deposited the following sums:

- (i) Rs.1,35,760/- as Earnest Money Deposit (EMD);
- (ii) Rs.2,03,640/- as security deposit; and
- (iii) Rs.3,39,400/- as bank guarantee.

The total number of works involved were 28.

3. It is not in dispute that the petitioner had completed 22 out of 28 works. The remaining 6 works were cancelled by the SSE/Works/TEN, SSE/Pway/TN, and ADEN/TN. Certifying the completion of the work, a certificate was issued to the petitioner on 20.02.2023. The petitioner made a request to the Senior Divisional Engineer, Southern Railway, Madurai on 21.02.2023, seeking release of the aforesaid amounts deposited. It was followed up with another representation on 27.02.2025. As there was no response, he has come forward with the present Writ Petition.



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4. It is the stand of the respondents that though the Division had recommended cancellation of 6 works, it was not accepted by the first respondent. A detailed counter has been filed to that effect. According to the first respondent, the 6 works, which were left incomplete by the petitioner, had to be completed by the Railways utilizing the services of third parties and thereby, it has suffered damages. He pleads that they are awaiting the report of the Engineer to assess the damage that has been suffered by the respondents. Hence, they refused to accede to the request of the petitioner. It is also pointed out that the matter is arbitrable and the Writ Petition is not entertainable.

5. I heard Mr.M.Dinesh Hari Sudarsan for the petitioner and Mr.K.Govindarajan, learned Deputy Solicitor General of India for the respondents. The learned counsels took me through the contract and to their respective affidavits to substantiate their case.

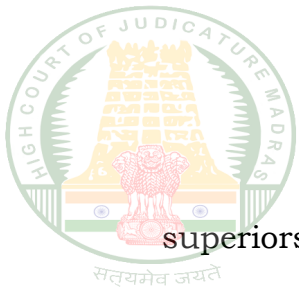
6. The plea, that the respondents are entitled to forfeit the entire security deposit for not having completed the work, cannot be accepted at its face value. This is on account of Clause 62(2)(b) of the Standard General Conditions of Contract issued by the respondents. In terms of the said clause, only when the contract is rescinded as a whole, the security deposit, already with the Railways under the contract, stands forfeited. In case the



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contract is rescinded in part or parts, the security deposit shall not be forfeited. Furthermore, under Clause 62(1), which falls under the Chapter 'Determination of Contract owing to Default of Contractor', the Engineer concerned must serve the contractor with a notice (Proforma at Annexure-IX), and still if the contractor does not make good his default, the Railways can proceed further to give a notice under (Proforma at Annexure-X or Annexure-XII). Only thereafter, a final termination notice under Annexure-XI and XIII is contemplated. The note appended to the said clause also state that the Engineer at his discretion may resort to a part termination of contract with notice (Proforma at Annexure – IX, XII and XIII), only in case where more than or equal to 80% of the original scope of the work has been completed. The contract also points out under Section Clause 63.1 that the General Manager should take a call on the request made by the Contractor for refund of the amount.

7. It is pertinent to point out here, a reading of Clause 63.1 makes it clear that matters, which fall under Clauses 61(1), 61(2), 62(1), 63(iv) and 63.2.11, are “excepted matters”. This shows that the dispute is not arbitrable. That being the position, Mr.Dinesh Hari Sudarsan urges that none of the procedures contemplated under Clauses 62(1) have been complied with in the present case. He points out that out of 28 works, the petitioner has completed 22 works and the refusal of the administrative



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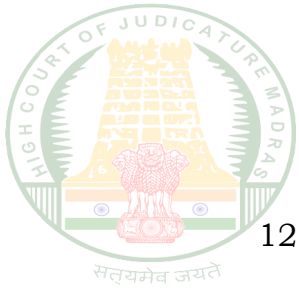
superiors of the authorities, who certified the completion of work on 20.02.2023, had not been communicated to the writ petitioner.

8. Per contra, Mr.K.Govindarajan, learned Deputy Solicitor General of India argues it is essentially a civil dispute and therefore, only a civil suit is entertainable. The Railways is still assessing the damages, it has suffered and therefore, it has not released the security deposit and the performance guarantees.

9. I have carefully considered the submissions of both sides. I have gone through the records.

10. Insofar as security deposit is concerned, the Railways themselves have accepted that where a contract is not terminated in full, then the question of forfeiting the security deposit does not arise. It is admitted in this case, out of 28 works, 22 works have been completed. That being the position, the issue of forfeiture of security deposit does not arise.

11. Secondly, the respondents have not acted in terms of Clause 62(1) or 63.1. The petitioner had made a demand as early as two years ago and unfortunately, the model employer, Union of India, is yet to pass orders on the same.



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12. In the light of the above discussion, the first respondent shall pass an order in terms of Clause 63.1 with respect to the performance guarantee within a period of two (2) weeks from the date of uploading of this order in the website of this Court. It is made clear that as this Court has concluded the liability of the railways with respect to the security deposit, that issue will not be reopened by the first respondent.

13. Accordingly, the Writ Petition is ordered. There shall be no order as to costs.

28.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Senior Divisional Engineer,
Divisional Office, South,
Works Branch,
Southern Railway,
Madurai.

2.The Senior Section Engineer,
Works, Southern Railway,
Tirunelveli.



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V.LAKSHMINARAYANAN,J.

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