



W.P.(MD)No.22738 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
19.11.2024

PRONOUNCED ON
06.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.22738 of 2016
and W.M.P.(MD).Nos.16260 & 16261 of 2016

N.Monikandan

... Petitioner

Vs

The Chief Medical Superintendent,
Southern Railway,
Thiruvananthapuram Division,
Railway Hospital, Pettah,
Thiruvananthapuram.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the respondent in Ref.No.V/MD. 52/Contracts dated 02.09.2016 refusing to release Earnest Money Deposit and Security Deposit, Quash the same, and further direct the respondent to release forthwith to the petitioner the Earnest Money Deposit and Security Deposit to a tune of Rs.8,62,788/- (Rupees Eight Lakhs Sixty Two Thousand Seven Hundred and Eighty Eight Only).

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.K.R.Laxman



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ORDER

WEB COPY The Challenge in the Writ Petition is to an order forfeiture of the security deposit and the Performance Guarantee given by the petitioner with a consequential direction to release the amounts forfeited.

2. Heard Mr.T.Cibi Chakraborty, learned counsel for the petitioner and Mr.K.R.Laxman, learned Standing Counsel appearing on behalf of the respondent.

3. The learned counsel for the petitioner would submit that the petitioner had undertaken the maintenance of sanitation at Kanyakumari Railway Station for a period of two years. While that being so, a notice inviting tenders was issued by the respondent on 10.07.2013, which indicated that intending tenderer should have completed atleast one similar single work done in Government/Public Sector Department and had completed the works for a maximum value of 35% of the advertised work. The petitioner having satisfied the eligibility condition had submitted his tender together with necessary enclosures. The respondent had also sought genuineness of the documents produced by the petitioner with regard to the



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eligibility and the Nagercoil Municipality had also certified that the documents furnished by the petitioner are genuine. The petitioner had successfully completed the similar work at Nagercoil Municipality. Thereafter, the tender was awarded in favour of the petitioner and the period of contract was between 04.11.2013 and 03.11.2015. The petitioner had also executed the Performance Guarantee in favour of the respondent. As per the tender, the terms of contract was to expire on 03.11.2015.

4. While that being so, the petitioner was served with a notice dated 02.06.2015, terminating the contract of the petitioner. A fresh tender was called for by notice, dated 25.05.2015, which came to be challenged by the petitioner in W.P.(MD).No.9346 of 2015, in which interim order was granted injuncting the respondent from proceeding with further tender process. The petitioner was also issued with an ante dated order of termination. In the interregnum, the petitioner had also completed his work as per the contract and contract period also had expired. When the said Writ Petition was listed for hearing before this Court on 01.03.2016, the respondent had submitted before this Court that since the tender period under challenge was already over and also made a statement that the



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pending dues to the petitioner will be released on receipt of such representation along with the bills from the petitioner and the Writ Petition was disposed of, with a direction to the respondent to consider the representation of the petitioner, within a period of four months and pass appropriate orders. The petitioner had also submitted his representation pursuant to the said order along with necessary bills. However, without releasing the Earnest Money Deposit, Security Deposit and the bonus payment had called upon the petitioner to produce the relevant documents for payment of the due for the work done from 01.11.2015 to 03.11.2015 and for the bonus amount paid to the contract labourers. He would submit that it is the case of the respondent that the petitioner had produced false document.

5. According to him, that inspite of the genuinenity certificate issued by the respective Commissioners at that relevant point of time, the respondent had been repeatedly approaching the Commissioner Municipality and had obtained a certificate behind the back of the petitioner to state that the certificate is a forged document. He would further submit that it is not the case of the respondent that the petitioner had failed to



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perform his part of the contract, as he had no experience in performing the contract. Even on that ground also, he would submit that the amount of Security Deposit and the Performance Guarantee amount encashed by the respondent should be returned to the petitioner.

6. Countering his argument, Mr.K.R.Laxman, learned Standing counsel appearing for the respondent would submit that the certificate submitted by the petitioner was a fake and forged certificate evidencing his experience at Nagercoil Municipality. He would further submit that on verification made by the respondent with the Nagercoil Municipality, the Commissioner of Nagercoil Municipality by his communication dated 20.05.2015 had indicated that the certificate submitted by the petitioner is fake, as the same had not been issued by the Municipality. A notice of termination was also issued by the respondent to the petitioner for submitting such forged documents and only thereafter, the impugned order had been passed. Hence, he would submit that there is no infirmity in the order of forfeiting the Earnest Money Deposit and the Performance Guarantee amount.



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7. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. The petitioner had been a successful bidder for the sanitation of Nagercoil Railway Station for the period between 2013 and 2015. It is the case of the respondent that the certificate of experience produced by the petitioner was found to be fake and therefore, the petitioner did not have a right to continue in the contract and the respondent was also entitled to forfeit the Security Deposit and the Performance Guarantee given by the petitioner. After issuance of notice of termination, a tender was also floated by the respondent which came to be challenged in the Writ Petition in W.P.(MD).No.9346 of 2014. An interim order was also granted by this Court on 10.06.2015 and in view of the said interim order, no further proceedings took place. The period of contract came to an end by efflux of time and when the said Writ Petition was listed on 01.03.2016, considering the claim made by the petitioner and also the fact that the representation for making payment due to the petitioner was pending with the respondent, this Court, to give quietus to the Writ Petition and had directed the respondent to consider the representation of the petitioner. Thereafter, the petitioner had



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also made further representations to the respondent. By an impugned communication dated 02.09.2016, the respondent had indicated that a sum of Rs.7,94,279/- had been paid for the period between August 2015 to October 2015 vide Cheque dated 14.06.2016 and had directed the petitioner to submit “no claim certificate” for making the payment for the remaining period from 01.11.2015 to 03.11.2015 and also produce documents evidencing the payment of bonus to the contract workers. However, Performance Guarantee and the Security Deposit paid by the petitioner stood forfeited, as he had obtained the contract by fraudulent ways. The petitioner had made an Earnest Money Deposit under Clause 5 of the General Terms and Conditions. Clause 5.10 indicates that if it is found that the contractor had produced false and fabricated documents, the entire Earnest Money Deposit would become forfeited. Apart from the same, the petitioner is also required to provide a Performance Guarantee as per the Annexure-B guaranteeing the performance of the contract. The said contract also provided for clause of arbitration for the dispute that arise between the parties. Clause 75 provides for resolution of the dispute between the parties.

9. It is to be noted that the petitioner as well as the respondent rely



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upon two sets of genuinenity certificate granted by the Commissioner of Nagercoil Municipality. The claim of the parties can only be decided after analysing the oral and documentary evidences submitted by either parties in that behalf. The same could not be gone into in the present Writ Petition.

10. For the aforesaid reasons, this Court without deciding the Writ Petition on merits, directs the parties to invoke Clause 75 of the Terms and Conditions of the Contract and resolve their dispute by referring themselves to arbitration. It is made clear that the period of pendency of this Writ Petition shall stand excluded while computing the period the limitation for invoking clause 75 of the contract.

11. With the aforesaid liberty, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

06.01.2025

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No



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K . KUMARESH BABU, J.

Gba

To

The Chief Medical Superintendent,
Southern Railway,
Thiruvananthapuram Division,
Railway Hospital, Pettah,
Thiruvananthapuram.

A Pre-Delivery Order in
W.P.(MD)No.22738 of 2016
and W.M.P.(MD).Nos.16260 & 16261 of 2016

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