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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18204 to 18206 of 2009
and
M.P.No.1 of 2009 [3 Mps]

W.P.No.18204 of 2009

M/s.Hindustan Heavy Electricals,
Represented by T.S.R.Kannaiyann.
Proprietor of the Firm,
P.B.No.2044
66, Avarampalayam Road,
K.R.Puram,
Coimbatore - 641 006.
Through the general power of attorney
M.K.Sekar

... Petitioner

Vs

- 1.The Tamil Nadu State Electricity Board,
Represented by its Chairman,
Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer,
The Tamil Nadu State Electricity Board
Materials Management
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.
- 3.Superintendent Engineer,
The Tamil Nadu State Electricity Board,
Materials Management,
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in his Lr.No.SE/M-II/EED/A4/S.543/P.O.136/27.09.04/D.615/08 dated 03.04.2008, quash the same and further direct the respondent to repay the sum of Rs.25,02, 357.00/- levied by the second



respondent towards the liquidated
supply of Distribution
P.O.No.136/27.09.2004 which amount
pending Bills of the petitioner.

damages in the matter of
Transformers against
was recovered from the

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W.P.No.18205 of 2009

M/s.Electromech Industries,
Represented by its Partners,
T.R.K.Saraswathi
45, Premier Industrial Estate,
K.R.Puram,
Coimbatore - 641 006
Through the General Power of Attorney
M.K.Sekar

... Petitioner

Vs

1.The Tamil Nadu State Electricity Board,
Represented by its Chairman,
Anna Salai,
Chennai - 600 002.

2.The Chief Engineer,
The Tamil Nadu State Electricity Board
Materials Management
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.

3.Superintendent Engineer,
The Tamil Nadu State Electricity Board,
Materials Management,
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the
Constitution of India, to issue a writ of Certiorarified
Mandamus, calling for the records of the second respondent in
his Lr.No.SE/M-II/EED/A4/S.543/P.O.137/27.09.04/D.613/08 dated
03.04.2008, quash the same and further, direct the respondent to
repay the sum of Rs.27,05,925.00/- levied by the second
respondent towards the liquidated damages in the matter of
supply of Distribution Transformers against
P.O.No.137/27.09.2004 which amount was recovered from the
pending Bills of the petitioner.



W.P.No.18206 of 2009

M/s.Industrial Heaters and Transformers,
Represented by its Partner,
T.S.R.Khannaiyann,
162/8, Balasundaram Nagar,
Coimbatore - 641 006
Through the general power of attorney
M.K.Sekar

... Petitioner

Vs

- 1.The Tamil Nadu State Electricity Board,
Represented by its Chairman,
Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer,
The Tamil Nadu State Electricity Board
Materials Management
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.
- 3.Superintendent Engineer,
The Tamil Nadu State Electricity Board,
Materials Management,
IV th Floor, NPKRR Maligai,
800, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in his Lr.No.SE/M-II/EED/A4/S.543/P.O.135/27.09.04/D.614/08 dated 15.04.2008, quash the same and further, direct the respondent to repay the sum of Rs.11,34,225/- levied by the second respondent towards the liquidated damages in the matter of supply of Distribution Transformers against P.O.No.135/27.09.2004 which amount was recovered from the pending Bills of the petitioner.

For Petitioners :Mr.A.Mohammed Ismail
[in all W.Ps]

For Respondents :Mr.L.Jai Venkatesh
Standing counsel for TANGEDCO
[For R1 to R3]
[in all W.Ps]



COMMON ORDER

The orders impugned dated 03.04.2008 and 15.04.2008, claiming liquidated damages for non supply of Transformers to the Tamil Nadu Electricity Board is under challenge in the present writ petitions.

2. The petitioners have not supplied the Distribution Transformers as per the supply orders placed by the Tamil Nadu Electricity Board. Thus, the Board invoked the terms and conditions of the agreement and claim liquidated damages from the petitioners.

3. It is further contended that the amount of liquidated damages shall be deducted from the pending bills and the difference in cost will be intimated separately in due course. The petitioners approached this Court and pursuant to the interim orders granted in the writ petitions, no further actions are taken by the Board.

4. The question arises, whether such contractual obligations between the parties can be adjudicated in a writ proceedings under Article 226 of the Constitution of India. The terms and conditions are stipulated in the contract between the parties. The claim for liquidated damages are also made available in the contract. 4 major clauses are contemplated and many other clauses are agreed between the parties. In respect of such contractual obligation between the parties, and if any one of the party commits breach, then an adjudication is imminent with reference to the documents and evidences to be produced before the competent authority or the competent Court of law. Such an elaborate adjudication cannot be undertaken by the High Court in a writ proceedings. Merely based on the affidavit, such disputes cannot be resolved and in the event of venturing into an adjudication of this nature, then there is a possibility of omission, commission or error in deciding the disputed facts. All such disputes are to be resolved by way of an elaborate adjudication. Even oral evidences may be required for the purpose of deciding the issues. Thus, the liquidated damages claimed by invoking the terms and conditions of the contract cannot be a ground for entertaining a writ petition under Article 226 of the Constitution of India.

5. The learned counsel for the petitioners made a submission that the parties may be allowed to negotiate the issues and the petitioners are ready to approach the competent authorities of the respondent Board.

6. This Court is of an opinion that the petitioners as well as the respondent Board are parties to the contract and it is



for them to negotiate or reconsider the issues, if there is a consensus or otherwise. However, this Court cannot offer any opinion on such matters as it is between the contracted parties.

7. As far as the impugned orders are concerned, it is for the petitioners to initiate appropriate steps for effective adjudication of the disputes for the purpose of redressing their grievances in the manner known to law. The petitioners if chosen to approach the competent Court of law for resolving the issues, the Court shall consider the period in which the writ petition was pending before the High Court for the purpose of condoning the delay, if any petition to condone the delay is filed by the petitioners.

8. With these observations, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Chairman,
The Tamil Nadu State Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer,
The Tamil Nadu State Electricity Board
Materials Management
IV th Floor, NPKRR Maligai,
800, Anna Salai, Chennai - 600 002.
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The Tamil Nadu State Electricity Board,
Materials Management,
IV th Floor, NPKRR Maligai,
800, Anna Salai, Chennai - 600 002

+3ccs to Mr.A.Mohammed Ismail, Advocate S.R.No.62850,62851,62852

W.P.Nos.18204 to 18206 of 2009

SSV(CO)
CT 10/12/2021