

GAHC010210252024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. I.A.(Civil)/3141/2024

M/S RM FABRICATION AND TRADERS
ADDRESS OF PRINCIPAL PLACE OF BUSINESS IS ADITRI SERVICE
CHIRUKANDI ROAD
RAMNAGAR
CACHAR
ASSAM REPRESENTED BY ITS PROPRIETOR SMT. MIRA CHAKRABARTY
AGE ABOUT 76 YRS
W/O. ASHOK CHAKRAVARTY
R/O. KALIBARI
WARD NO. VI
P/O. AND P/S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN-788151

VERSUS

ASSAM UNIVERSITY
A CENTRAL UNIVERSITY CREATED UNDER ASSAM (CENTRAL)
UNIVERSITY ACT
1989
SITUATED AT SILCHAR-788011
ASSAM BEING REPRESENTED BY- VICE CHANCELLOR
ASSAM UNIVERSITY
SILCHAR-788011
CACHAR
ASSAM.

2:THE REGISTRAR
ASSAM
UNIVERSITY

SILCHAR-788011
CACHAR
ASSAM

Advocate for : MR KAN KALITA

Advocate for : SC

ASSAM UNIVERSITY appearing for ASSAM UNIVERSITY

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 04.10.2024

- 1.** Heard Mr. Z. Mukit, learned counsel for the applicant. Also heard Mr. S. C. Keyal, learned Standing Counsel, respondent.
- 2.** This application under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the applicant M/s R.M. Fabrication & Traders seeking interim relief in the nature of injunction till appointment of arbitrator for resolution of dispute between the parties with regard to contract of hiring of buses by the respondent University.
- 3.** The applicant has preferred a connected Arbitration Appeal No. 7/2024 under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 impugning the order dated 17.09.2024 passed by the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar in Misc. (Arb.) Case No. 11/2024, whereby the interim relief of injunction sought by the applicant under Section 9 of the Arbitration and Conciliation Act, 1996 was denied.
- 4.** The facts relevant for consideration of the instant interlocutory application, in brief, are that the opposite party, namely, Assam University, Silchar, issued a notice inviting tender for hiring 20 numbers of 36 seated new

buses for conveyance of students of Silchar, Udharbond and Hailakandi. The petitioner participated in the tender process and was awarded the contract by the opposite party by issuing Work Order No. AU/ESTATE/TC-14/2014 dated 09.02.2021. The initial work order was issued for hiring 6 numbers of 36 seated buses and the period of contract was fixed for three years. It was provided in the work order that the contract may be extended for further period of 2 years to the requirement and satisfactory performance and also by mutual agreement. Thereafter, in phased manner, the opposite party hired 20 numbers of buses from the petitioner in pursuant to the contract executed between the parties.

5. The learned counsel for the petitioner submitted that the petitioner took a loan of Rs.364.00 Lakhs from the Canara Bank for procuring new buses with a legitimate expectation and bona fide belief as well as assurance from the opposite party that the petitioner would be allowed to provide the services for further term of five years i.e., three years of the agreed period and two years of the extended period as per the provision of the contract.

6. At the end of the period of three years, the petitioner by letter dated 02.05.2024 requested the opposite parties for extension of contract for a further period of two years as provided in the contract itself. However, the opposite party No. 2 by letter No. AU/ESTATE/TC-14/2014 dated 04.06.2024 extended the contract for a period of six months only w.e.f. 10.04.2024.

7. The petitioner being dissatisfied with the extension for only six months submitted a representation on 06.06.2024 before the opposite party stating therein if the contract is not extended for the period of two years, it would cripple the financial base of the petitioner.

8. However, by letter dated 09.07.2027, the opposite party No. 2 informed the petitioner that the extension has been made only for six months and further informed that a fresh tender would be floated in the Government e-Portal very soon and that the petitioner could participate in the fresh tender process.

9. The learned counsel for the petitioner has submitted that the Clause 29 of the contract between the parties contained an arbitration clause and as a dispute has arisen between the parties regarding extension of the term of contract the petitioner issued a letter on 20.07.2024 under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. However, as the opposite party were also intending to float fresh tender, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking a restraining order against the opposite parties from floating any tender with regard to the hiring of buses to take the students to university and from inducting any other contractor from providing buses to carry the students. The said application was registered as Misc. (Arb.) Case No. 11/2024 before the learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar.

10. However, by order dated 17.09.2024 passed in Misc. (Arb.) Case No. 11/2024, the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar rejected the prayer for interim relief of the petitioner on the ground that the petitioner failed to show any *prima facie* case and balance of convenience as well as irreparable loss in its favor so as to justify grant of any interim relief.

11. The learned counsel for the petitioner has submitted that the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar had erred in holding that the petitioner does not have a *prima facie* case after considering the facts

regarding a different contract between the parties which was in respect of providing cars and cabs to the respondent university by the present petitioner. It is submitted by the learned counsel for the petitioner that refusal of the petitioner to provide cars and cabs to the university with regard to another contract does not have any bearing on the contract in dispute which is with regard to providing buses only.

12. The learned counsel for the petitioner has also submitted that as Clause 26 of the contract between the parties clearly stipulated that the contract may be extended for two years, subject to the requirement and satisfactory performance and mutual consent of both the parties. It appears that the university requires buses and, therefore, new contract has been floated and as regards satisfactory performance of the petitioner with regard to the buses which were already hired by the university, there is nothing on record to suggest that the performance of the petitioner was not satisfactory and, therefore, the counsel for the petitioner submits that the finding of the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar in rejecting the interim relief prayed for by the petitioner was perverse.

13. The learned counsel for the petitioner has submitted that the contract of the petitioner was not extended by the University only because of him refusing to enter into another contract for providing cabs and cars to the University at a low rate and the said contract does not have any bearing on the present contract. Hence, it is submitted that the legitimate expectation of the petitioner is intended to be defeated by the irrational, perverse and unreasonable decision of the University for floating a new contract for hiring buses.

14. As regards the appointment of the arbitrator is concerned, the learned counsel for the petitioner has submitted that after filing of his application under Section 11, the petitioner received a letter dated 12.08.2024 from the respondent appointing one Palash Das, Advocate, District Bar Association, Silchar as sole arbitrator and the petitioner was requested to give his consent within a week from the date of receipt of the said letter. However, it is submitted by the learned counsel for the petitioner that the petitioner objected to the appointment of Palash Das by his letter dated 27.08.2024 and no reply to the said letter has been received by the petitioner till date. Hence, he was compelled to approach the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.

15. On the other hand, Mr. S. C. Keyal, learned Standing Counsel for the respondent has submitted that the Court of learned Civil Judge, (Sr. Division) No. 1, Cachar, Silchar has rightly rejected the prayer for interim relief as sought for by the petitioner, as it was clear from the Clause-26 of the contract that it was not mandatory for the university to extend the contract for further two years and it was only an enabling provision which enabled the parties to extend the contract for two years on mutual consent. However, as both parties were not in agreement regarding extension of the contract, hence, the contract was not extended.

16. The learned Standing Counsel for the respondent has also submitted that in the meanwhile, the respondent has already floated fresh tender for hiring new buses for the university as the present contract between the parties is going to end on 10.10.2024. He submits that the last date of receiving the

bids in the contract which has been already floated has already closed on 16.09.2024 and it would be against public interest to put any halt to the process of hiring new buses by the University.

17. The learned Standing counsel for the respondent has also submitted that the doctrine of legitimate expectation cannot come in way of public interest and indisputably public interest has to prevail over private interest. In support of his submission, he has cited a ruling of the Apex Court in the case of ***Union of India –Vs- International Trading Company and another*** reported in ***(2003) 5 SCC 437***. He has also submitted that another writ petition being WP(C) No. 4667/2024 was also filed challenging the tender process of the fresh tender issued by the respondent for hiring buses and in the said case, no interim stay was granted and only notices were issued, returnable after four weeks.

18. The learned Standing Counsel for the respondent has also submitted that as already the arbitrator has been appointed, the petitioner may approach the appointed arbitrator and seek any interim relief under Section 17 of the Arbitration and Conciliation Act, 1996, if so required. He also submits that in the meanwhile on 28.09.2024, the appointed arbitrator has notified 06.10.2024 as the date of hearing. He further submits that Section 9(3) of the Arbitration and Conciliation Act, 1996 puts a bar to the entertainment of an application under Section 9(1) of the Act after appointment of the arbitrator as Section 17 provides for an efficacious remedy before the arbitrator itself.

19. I have considered the submissions made by the learned counsel for both the sides and have perused the materials on record.

20. On perusal of the Clause 26 of the contract regarding the extension of

period of contract between the parties, it appears that initially the period of contract was three years which may be extended to two years, subject to requirement and satisfactory performance on mutual consent of the parties from what has been discussed in the forgoing paragraph, it appears that the University is in requirement of buses and presently the petitioner has provided 20 buses for conveyance of students and the term of the contract is going to expire on 10.10.2024. It also appears that apart from the fact that the petitioner failed to supply cabs and cars to the University in respect of a different contract, no other materials could be shown by the respondent to show that the performance of petitioner in providing the services in respect of 20 buses hired by the respondent University was not satisfactory.

21. Thus, the dispute comes down to not having mutual consent for extending the contract. For the settlement of the said dispute as there is an arbitration clause, the petitioner has prayed for appointment of an arbitrator and the respondent has appointed one Palash Das as an Arbitrator seeking consent of the petitioner to such an appointment. As the petitioner has not consented to the sole arbitrator appointed by the respondent, the relief is available under Section 11 of the Arbitration and Conciliation Act, 1996. However, as the Misc. (Arb.) Case No. 11/2024 was filed by the petitioner before getting any reply to the letter dated 27.08.2024 filed by the petitioner objecting the appointment of the Palash Das as sole arbitrator, it appears that the petitioner was not having any appropriate forum where he would have filed an application under Section 17 of the Arbitration and Conciliation Act, 1996. Therefore, it appears that the bar of Section 9(3) of the Arbitration and Conciliation Act, 1996 does not appear to be applicable at this stage.

22. As regards notice dated 28.09.2024 is concerned, the learned counsel for the petitioner has submitted that the petitioner has not yet received the said notice wherein a date of hearing by arbitration has been notified. Moreover, the same was issued without addressing to the objection raised by the petitioner against the appointment of the arbitrator.

23. Presently, the buses hired by the respondent from the petitioner are being used for conveyance of the students, hence, they would face no inconvenience in their conveyance even if an interim stay granted in this case. Moreover, as the connected Arbitration Appeal No. 7/2024 has already been admitted by this Court and has been fixed for final hearing on 30.10.2024. Hence, considering all the aspects of the matter this Interlocutory Application is disposed of by directing both the parties here to main the *status quo* with regard to the contract under dispute between the parties till the next returnable date i.e., 30.10.2024.

24. The respondent is also restrained from issuing any work order in respect of the fresh notice inviting tender issued by it on 16.08.2024 vide Bid No. GEM/2024/B/5290330 till the next returnable date i.e., on 30.10.2024.

25. This interlocutory application is accordingly disposed of.

JUDGE

Comparing Assistant