

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 12 OF 2015

M/S ENAS UNITED SERVICES,.

... Petitioner

Versus

FLAG OFFICER COMMANDING
HEADQUARTERS AND 5 ORS,.

... Respondent

Mr. M. S. Khandeparkar, Advocate for the petitioner.

Mr. M. Amonkar, Central Government Standing Counsel for the respondents.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 8th July, 2015

P.C.

Heard Mr. Khandeparkar, learned counsel appearing for the petitioner and Mr. M. Amonkar, learned Central Government Standing Counsel appearing for the respondents.

2. The above petition inter-alia prays for a declaration that the decision of the respondent nos. 1 to 5 to suspend all dealings with the petitioner is arbitrary and illegal and further to restrain the respondent nos. 1 to 5 from placing supply orders or floating fresh tenders in all such cases.

3. Mr. Khandeparkar, learned counsel appearing for the petitioner has vehemently argued to point out that the directions issued by the respondents suspending the contract between the

petitioner and the respondents is arbitrary and without any justification. The learned counsel further points out that the contract for supplying oil to the respondents has been duly performed after the respondents were duly satisfied with the quality of OM-15 supplied by the petitioner. The learned counsel thereafter has taken us through the report produced on record to point out that there is no breach committed by the petitioner with regard to the performance of the terms of such agreement. The learned counsel further submits that on erroneous consideration that there is a doubt with regard to the quality of the oil supplied by the petitioner and the respondents have issued a blanket order suspending all the contracts entered into between the petitioner and the respondents. The learned counsel further submits that admittedly the petitioner have not black listed nor any proceedings were initiated with that regard and consequently, such action on the part of the respondents is without any support in law and deserves to be quashed and set aside. The learned counsel has thereafter taken us through the material on record to point out that the respondents were always satisfied with the performance of the contract assigned to the petitioner.

4. On the other hand, Mr. M. Amonkar, learned counsel appearing for the respondents has pointed out that only after the payments were effected to the petitioner, the respondents realised about the sub-standard oil supplied by the petitioner. The learned counsel further submits that on account of such deficient supply of

oil, the respondents have suffered heavy losses which the respondents are entitled to recover from the petitioner. The learned counsel further pointed out upon instructions that the effect of the impugned direction does not in any way disclose that the other agreements entered with the petitioner have been suspended but only the payments to be made based on the supply of the subject contract have been withheld in terms of clause 10(c) of the Navy order. The learned counsel further pointed out that as some substantial amount are recoverable from the petitioner, the respondents are entitled to exercise such right as guaranteed under the said clause. The learned counsel also brought to our notice that the petitioner have already filed proceedings to appoint an Arbitrator to adjudicate on the alleged dispute raised by the petitioner and consequently, the question of entertaining the above petition would not be justified.

5. Mr. Khandeparkar, learned counsel appearing for the petitioner in reply to the said submission has pointed out that the clauses in the Navy order are not applicable to the petitioner.

6. We have given our thoughtful consideration to the rival contentions and with their assistance we have also gone through the records. The apprehension of Mr. Khandeparkar, learned counsel appearing for the petitioner that all the agreements between the petitioner and the respondents have been suspended would not survive in view of the contention of Mr. M. Amonkar, learned

counsel appearing for the respondents upon instruction of the concerned official of the respondents who is present in the Court.

7. With regard to the remaining contentions which have been raised by the petitioner, we find that it is well settled that this Court normally cannot entertain a Writ Petition on contractual dispute especially as it is not disputed that the petitioner have already availed of a remedy under the Arbitration and Conciliation Act, 1996. As all the contentions are based on the contractual dispute between the parties which are disputed questions of facts, we find that the question of entertaining the above Writ Petition under Article 226 of the Constitution of India would not be justified. The petition stands accordingly rejected.

K. L. WADANE, J.

F. M. REIS, J.

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