

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.10056 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.CDP Sign Solution Pvt.Ltd.,
rep.by its Director K.Neela Murali
No.1, Triplicane High Road,
Triplicane, Chennai-600 005

... Petitioner

vs.

M/s.Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
rep.by its Managing Director,
No.37, Mettupalayam Road,
Coimbatore-641 043

... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records on the file of the respondent in his impugned letter No.24084/DM(Civil)/TNSTC(Coimbatore/2015, dated 27.3.2015, issued by the respondent and quash the same.

For petitioner : Mr.T.R.Rajagopalan, Sr.counsel
Asst.by Mr.T.S.Venkatesan
for B.S.G.Firm
For Respondent : Mr.P.Kannankumar

ORDER

By consent the writ petition itself is taken up for final disposal.

2. The petitioner claims that they engaged in the business of display of advertisement in Government buses for the last 10 years and they are one of the leading advertisement companies, which exhibits advertisement in the buses on the rear side of the bus body, panel on the back side of the driver partition and the passenger view

glass by fixing stickers of all types. The petitioner became the successful bidder in the tender Notification floated by the respondent/Tamil Nadu State Transport Corporation (Coimbatore) Ltd. On negotiation by the respondent, the licence fee was fixed at Rs.668/- per month for one bus and an agreement to that effect was also executed on 24.09.2014.

3. The petitioner would further state that it commenced the display of advertisement within 31 days and the licence fee for the first month will commence between 8.10.2014 and 7.11.2014. The petitioner paid three months Security Deposit and the License Fee as per the condition. The amount also was paid in three instalments, which was accepted by the respondent. The licence fee of Rs.22,38,935/- with security deposit for three months, in all aggregating to Rs.88,13,447/-, was paid in nine instalments within that month and the balance of Rs.3,00,000/- was paid in the next month. A condition is also stipulated in the above said agreement that late payment will be permitted for one or two times and the maximum period of one month with 18% penal interest.

4. The petitioner would further state that there are several issues raised by them with the respondent Corporation, which prevented the petitioner to exploit the tender awarded in its favour and it has also paid 18% interest on late payment and that the same has been accepted by the respondent without any murmur or objection. The petitioner also made a request, vide letter dated 6.11.2014 seeking exemption of the licence fee for the buses which were not utilized and several reminders were also sent praying for exemption of licence fee. But the petitioner has not favoured with any response and to the petitioner's shock and surprise, the impugned order dated 27.03.2015 came to be issued, cancelling the agreement. Aggrieved by the same, the petitioner has come up with this writ petition.

5. Heard the submissions of Mr.T.R.Rajagopalan, the learned Senior counsel for the petitioner, who has drawn the attention of this Court to the typed set of documents and would submit that the impugned order is per se unsustainable for the reason that though the petitioner has brought several issues pertaining to the execution of tender to the knowledge of the respondent, the petitioner has not been favoured with any response and without due and proper application of mind, the impugned order came to be issued.

6. Per contra, the learned Standing counsel appearing for the respondent, on instructions, would submit that in the agreement dated 24.09.2014 Arbitration clause is provided under Clause 20 and

as per the said clause, the disputes/differences between the Tamil Nadu State Transport Corporation and the licensee shall be referred to the Sole Arbitrator, the Managing Director of Tamil Nadu State Transport Corporation (Coimbatore) Limited and the proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996. The venue of Arbitration hearings shall be at Coimbatore and the Arbitrator's decision/order shall be final and binding on both the parties. In case of any dispute, the Courts within the city of Coimbatore jurisdiction shall be the appropriate forum for redressal and in the light of the said clause, the writ petition is not maintainable.

7. During the course of argument, it was suggested to the respective learned counsel appearing for the parties that in the light of the Arbitration Clause, the writ petition cannot be maintainable, but at the same time, since the Tamil Nadu State Transport Corporation (Coimbatore) Limited is also one of the parties to the Arbitration, the Managing Director of the Tamil Nadu State Transport Corporation (Coimbatore) Limited cannot act as the Sole Arbitrator. In this regard, the respective learned counsel for the parties sought time to get instructions.

8. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the petitioner would submit that the Security Deposit paid by the petitioner is lying with the respondent Corporation and further amount was also paid in instalments. He would further add that as of today, the advertisement of the petitioner are displayed in the back panel and side panel of the buses owned by the respondent Corporation and in view of the same, the learned counsel prays for an order of status quo as it exists today.

9. This Court, taking into consideration the rival submissions of the learned counsel on either side, is of the view that in order to resolve the disputes between the parties, appointment of Arbitrator, in terms of Clause 20 of the agreement, is necessary.

10. In the result, the writ petition is disposed of and Shri S.Shanmugham, retired District Judge, District Consumer Forum, No.61, 3rd Cross Street, Thirumurugan Nagar, Vadavalli, Coimbatore-641 041 (Ph.0422-2426588) is appointed as the Sole Arbitrator to decide the disputes between the parties and the learned Arbitrator is at liberty to fix the date, procedure and fees for conducting the arbitration proceedings and also shall make every endeavour to complete the arbitration and pronounce the award within a period of four weeks from the date of commencement of the arbitration

proceedings. Both the parties shall extend their maximum cooperation to the learned Arbitrator.

11. This Court, taking into consideration the averments made in paragraph No. 3 of the affidavit filed in support of the Writ Petition and also the fact that as of today, the advertisements of the petitioner are displayed in the back panel and side panel of the buses owned by the respondent Corporation, is inclined to grant the following order:-

i. Status quo as it exists today shall be maintained by both the parties till the learned Arbitrator enters reference.

ii. It is open to the petitioner to move the learned Arbitrator by invoking Section 17 of the Arbitration and Conciliation Act 1996, for continuation or extension of the interim order of status quo granted today.

12. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msh
To

1. M/s.Tamil Nadu State Transport Corporation (Coimbatore) Ltd., rep.by its Managing Director, No.37, Mettupalayam Road, Coimbatore-641 043
2. Shri.S.Shanmugham, retired District Judge, District Consumer Forum, No.61, 3rd Cross Street, Thirumurugan Nagar, Vadavalli, Coimbatore-641 041

+1cc to Mr.P.Kannankumar, Advocate, S.R.No.20483
+1cc to M/s.B.S.G.Firm, Advocate, S.R.No.20499

W.P.No.10056 of 2015

TM(CO)
CA(24/04/2015)