IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.26901 of 2014

I.Jeyarajhan ...Petitioner

Vs.

1. The Chairman cum Managing Director,
   Tamil Nadu Magnesite Limited,
   5/53, Omalur Main Road,
   Jahir Ammapalayam Post,
   Salem - 636 302.

2. The Board of Directors,
   Tamil Nadu Magnesite Limited,
   5/53, Omalur Main Road,
   Jahir Ammapalayam Post,
   Salem - 636 302. ...Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent dated 22.09.2014 in Ref.A-8(8)/2011-12/6407 confirming the order of the first respondent dated 02.07.2013 made in Lr.Ref.No.A-8(8)-2010-11, quash the same and direct the respondents to fully refund the security deposit of Rs.5,13,940/- and the entire transport charges of Rs.3,89,075/- and in total Rs.9,03,915/-.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.M.R.Raghavan for R1

R2 - No appearance

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ORDER

The petitioner was awarded with a contract by the first respondent for the period from 01.06.2010 to 31.05.2011 and show cause notice was issued on 25.01.2011 to show cause as to why the contract shall not be terminated for the alleged contamination of oil. On a reconsideration of the reply given by the petitioner, an order of termination was passed on 02.02.2011, against which, the petitioner raised a dispute before the arbitrator as provided under the arbitration clause, which form part of the agreement entered into between the parties. The award was passed on 03.03.2011 in the following manner:

> "1.The case was examined carefully and the plea of the contractor was considered to continue the contract with the following terms and conditions.
>
> 2.M/s.Raaj Transport should transport & deliver furnace oil without any contamination and ensure that the condition of the furnace oil delivered by oil companies are properly handed over to TANMAG factories for the remaining period.
>
> 3.Any contamination found in the supply of furnace oil will be dealt with severely and necessary legal action will be taken against the contractor without any notice with the contractor besides recovering the cost of materials, apart from forfeiture of security deposit."

2.After the expiry of the contract, the petitioner sought for return of security deposit and it was not considered on the ground that he was involved in adulteration. As the appeal filed was also rejected, the present writ petition is filed.

3.Learned counsel for the petitioner submitted that though there was a notice issued earlier, on the explanation of the petitioner, the contract was continued. Insofar as the subsequent notice is concerned, the same culminated into the arbitral award. Thereafter, the petitioner continued his supply. As the order of termination passed by the first respondent culminated into award, which was also accepted and given effect to, it is not open to the respondents to go back and rely upon it to deny the demand of security deposit.

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4.Mr.M.R.Raghavan, learned counsel for the first respondent submitted that what the petitioner seeks to adjudicate is a contract between the parties, for which, the remedy would lie elsewhere instead of invoking the extraordinary jurisdiction of this Court. The orders have been passed in view of the adulteration done by the petitioner and therefore, the relevant clause was rightly invoked. Reliance has been made on the decision of the Apex Court in Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others (AIR 1976 SC 2216).

5.As rightly submitted by the learned counsel for the petitioner, the respondents did not proceed after the issuance of first notice. Therefore, the same cannot be the basis to withhold the security deposit. If that is the case, they should have done it at the relevant point of time, which they have not chosen to do. Thus, they cannot place reliance upon the same subsequently after giving effect to the award.

6.Coming to the termination notice issued, admittedly, it culminated into the award. The award has become final and implemented between the parties. The petitioner was also permitted to continue the contract. Therefore, the respondents cannot place reliance upon the order of termination subsequent to the award.

7.On the question of maintainability raised, this Court is not inclined to accept the same as the law is quite settled that what is required from the instrumentality of State is an element of fairness in action. The decision relied upon does not have any application to the facts of the present case. In the case on hand, there is no dispute on facts. The question is, in terms of the admitted fact, can the respondents withhold the security deposit, in the absence of any basis for doing so?. Thus, this Court is of the view that this is a fit case where the respondents can be directed to repay the amount of Rs,5,13,940/- to the petitioner. Accordingly, the orders impugned are hereby set aside and a direction is issued to the respondents to return the security deposit of Rs.5,13,940/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, 50% of transport charge of Rs.1,61,815/-, which was forfeited, is also directed to be returned to the petitioner within the said period.

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8.The writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Chairman cum Managing Director,
   Tamil Nadu Magnesite Limited,
   5/53, Omalur Main Road,
   Jahir Ammapalayam Post,
   Salem - 636 302.

2. The Board of Directors,
   Tamil Nadu Magnesite Limited,
   5/53, Omalur Main Road,
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   Salem - 636 302.

1 CC to Mr.M.R.Raghavan, Advocate SR.No. 42467

2 CCs to Mr.K.Rajasekaran, Advocate SR.No. 42832, 42363

W.P.No.26901 of 2014

SV (CO)
PSI (14.08.2015)

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