

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.35184 of 2015

M/s. Sujatha Roadways

Rep. by its Proprietor D.Srinivasan No.8

Driver Colony Kathivakkam High Road

Korukkupet Chennai-21.

...Petitioner

-Vs-

1 The Chief Transport Manager
Retail South Bharat Petroleum Corporation
Ltd. No.1 Ranganathan Gardens 11th Main
Road Anna Nagar Chennai-40.

2 The Branch Manager
Vijaya Bank Tondiarpet Branch No.108 G.A.
Road Chennai-21. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari Calling for the records of the 1st Respondent herein pertaining to the impugned order seeking for invoking the Bank Guarantee No. 3021IBGIS100002 passed against the petitioner in and by order bearing No. SR.CDM.T.4 dated 16.07.2015 and to quash the same as illegal and arbitrary

For Petitioner : Mr.V.Meenakshi Sundaram

O R D E R

Petitioner, who is a road transport contractor of the first respondent Petroleum corporation has filed this writ petition to forbear the second respondent from enforcing the bank guarantee given by the petitioner pursuant to the contract. Admittedly, the contract given in favour of the petitioner was terminated on account of certain illegality committed by the petitioner vide order dated 30.12.2014.

2. The learned counsel for the petitioner submitted that the petitioner has not questioned the cancellation of the contract made by the 1st respondent. The learned counsel for the

petitioner further submitted that already the amount which is now sought to be recovered by invoking the bank guarantee has been recovered and there, cannot be any unjust enrichment.

3. Petitioner is now aggrieved by the communication sent by the first respondent to second respondent on 16.07.2015 invoking the bank guarantee. There is no explanation as to why the petitioner did not approach the Court immediately and nearly 3 months have elapsed since the communication was issued and it is not known as to the present state of affairs. The bank guarantee was furnished pursuant to the Road Transport Agreement which was entered into by the petitioner in which the respondent, Oil Corporation was entitled to recover the amount guaranteed which is in effect the security deposit.

4. Therefore, if the petitioner is aggrieved by the action of the first respondent corporation in invoking the bank guarantee, then the petitioner has to invoke the remedies available under the provisions of the agreement. It is not in dispute that the agreement provides for arbitration in the event of any dispute or difference between the parties.

5. Therefore, if the petitioner was aggrieved, he should have initiated arbitration proceedings. In the interregnum, if the petitioner wanted any protection, then his remedy should have been to invoke the jurisdiction of this Court by filing an application under Section 9 of Arbitration and Conciliation Act, 1996. The petitioner has done neither of the two.

6. Hence, the Writ Petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.
kua

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1 The Chief Transport Manager
Retail South Bharat Petroleum Corporation
Ltd. No.1 Ranganathan Gardens 11th Main
Road Anna Nagar Chennai-40.

2 The Branch Manager
Vijaya Bank Tondiarpet Branch No.108 G.A.
Road Chennai-21.

+ 1 cc to Mr.V.Meenakshi Sundaram, Advocate SR 60222
vgi(co)
prk17/11

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