

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.10532 of 2016
and
WMP.Nos.9232 and 9233 of 2016

M/s.Kongu Transport
No.2, Thiruveethi Amman Koil Street,
1st Floor, Gandhi Road,
Velachery, Chennai-42
Rep.by its Proprietor,V.S.Thamilan... Petitioner

Versus

1.Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102
Rep.by its Station Director
2.Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102
Rep.by its Engineer-in-charge (Transport) ... Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in No.NPC/MAPS/TPT/ET75/2016 dated 22.02.2016 and quash the same and forbearing the respondents from interfering with the petitioner's operation of the Work Order Ref.No.MAPS/CTC/TPT/PUBLIC/ET175/2014 dated 09.10.2014.

For Petitioner : Mr.P.Gunaraj

For Respondents : Mr.V.Vijay Shankar

O R D E R

This Writ Petition has been filed seeking for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in No.NPC/MAPS/TPT/ET75/2016 dated 22.02.2016 and quash the same and forbearing the respondents from interfering with the petitioner's operation of the Work Order Ref.No.MAPS/CTC/TPT/PUBLIC/ET175 dated 09.10.2014.

2. The case of the petitioner is that he was a contractor in a Transport industry and having rich experience in hiring vehicles. While so, the first respondent issued a tender notification dated 14.07.2014 calling upon tenders for hiring 7 Nos. of vehicles to facilitate the movement of their officers from township to plant site vice versa for a period of three years from the date of commencement of the operation. The petitioner was declared as the successful bidder and a work order dated 09.10.2014 was issued to him. The petitioner thereafter commenced the plying of the vehicles from 1st November 2014. While so, on 03.11.2015, there was scuffle between the driver of the respondents/Corporation and that of the driver of the vehicle owned by the petitioner in front of the CISF security personnel. According to the petitioner, there is no fault on the part of the driver engaged by him and it was the driver belonged to the respondents corporation who was responsible for the scuffle. Notwithstanding the same, even though the respondents did not take any action on the incident, the petitioner on his own had sorted out the difference emanated between the drivers, engaged new drivers and re-commenced the operation with effect from 30.11.2015 in respect of two vehicles alone since the respondents have given vehicle passes only for two vehicles.

3. As regards the contractual amount payable, the petitioner had periodically enquired about the release of payment for the vehicles operated so far, however, the respondents did not release the payment. While so, the the second respondent passed the impugned order dated 22.02.2016, imposing a penalty of Rs.13,34,400/- for not making available the vehicles from 04.11.2015 to 28.11.2015. Challenging the same, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner would contend that the impugned order has been passed without affording an opportunity to the petitioner. The petitioner could not ply the vehicles in view of the scuffle between the driver of the petitioner and the respondents. In fact, it is the petitioner who has sorted out the difference between the two drivers and ensured that the vehicles are plied at the earliest. On the other hand, even though the respondents are aware about the incident, they did not provide any security to the vehicles operated by the petitioner nor taken any action in relation to the aforesaid incident. In any event, the impugned order has been passed in violation of the principles of natural justice. The respondent did not conduct any enquiry prior to passing the impugned order and the amount of Rs.13,34,400/- arrived at towards penalty is untenable.

5. A counter affidavit has been filed by the respondents stating that the petitioner is expected to raise the dispute

before the Engineer in charge of the respondents corporation and he cannot unilaterally take any decision which would affect the transportation of the officers of the corporation. In fact, the terms and conditions of the contract specifically provides that if for any reason the vehicle is not provided, the petitioner has to make good the loss by paying penalty. Even if the vehicle breaks down due to technical snag or defect, then the petitioner is liable to pay penalty of Rs.500/- per vehicle for the total number of days of not making available the vehicle. The petitioner, having agreed for such terms and conditions, is estopped from contending that he is not liable to pay any amount towards penalty. Even otherwise, clause 17.8 of the agreement provides for resolution of the dispute before an arbitrator. Prior to passing the order levying penalty, the respondents sent several communications which clearly show that the petitioner was given adequate opportunity to explain his position. The learned counsel for the respondents therefore justify the passing of the impugned order and prayed for dismissal of the writ petition.

6. Heard both sides. Perused the materials available on record. It is stated that the petitioner was employed as a Software Engineer in a Software company and after resigning his job, he has taken the contract awarded by the respondents. The non-plying of the vehicles from 04.11.2015 to 28.11.2015 cannot be attributed on his part inasmuch the respondents did not provide proper security to the drivers of the vehicle owned by him after the scuffle between two drivers took place on 03.11.2015.

7. The grievance of the petitioner is that the respondents are liable to pay a huge amount of Rs.25,00,000/- to him for having hired the vehicles as per the terms and conditions of the work order, however, by citing the incident that took place on 03.11.2015, the respondents are refusing to release the payment. Further, the respondents levied penalty for not making available the vehicles, which is beyond his control.

8. Notwithstanding the above, the learned counsel for the petitioner has produced a Demand Draft drawn on 19.09.2016, for Rs.5,00,000/- to show his bonafide towards the alleged penalty amount. He would contend that as on date he is continuing the contract and the respondents are liable to pay huge amount of Rs.25,00,000/-. If such huge amount is withheld, the petitioner could not continue to ply the vehicles. Therefore, if ultimately the respondents succeed in the arbitration, they can withhold the sum of Rs.5,00,000/- to be deposited by the petitioner. However, the respondents are not justified in withholding the entire amount of Rs.25,00,000/-.

9. Having regard to the above submissions of the counsel

for the petitioner and the voluntary offer made by the petitioner to deposit a sum of Rs.5,00,000/- to show his bonafide, this Court directs the petitioner to deposit a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) to the respondents within a period of two weeks from the date of receipt of a copy of this order or preferably before that date towards penalty. On receipt of such amount, the respondents are directed to release the payment to be made by the petitioner within a period of two weeks thereafter. It is also open to the petitioner and the respondents to invoke the terms and conditions of the contract for appointment of an arbitrator to resolve the dispute.

In view of the above, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Station Director,
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102
- 2.The Engineer- in -charge (Transport)
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102.

1 cc to Mr.P.Gunaraj, Advocate, sr.56739

1 cc to Mr.V.Vijay Shankar, Advocate, sr.57000

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svi co
kra 04.10.2016