

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2016

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.25762 of 2015
and MP.Nos.1 to 3 of 2015

- 1 Tamilnadu Civil Supplies Corporation
Rep. by its Managing Director
12 Thambu Samy Road Kilpauk
Chennai-10

... Petitioner

Vs

- 1 GAIL (India) Ltd.
Rep. by its Zonal Deputy Manager & OIC
7A Kences Towers
1 Ramakrishna Street
North Usman Road T.Nagar Chennai-17
- 2 The Authorised Signatory
GAIL (India) Ltd. Adiyakkamangalam
GCS 36 Alivalam Village
Thiruvavur District

... 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 2nd respondent relating to the Invoice No.0214000215 generated on 7.8.2015 and quash the same.

For Petitioner : Mr.D.Krishna Kumar
For Respondents : Mr.Sai Srujan Taji for
M/s.Giridhar & Sai

ORDER

By consent, this writ petition is taken up for final disposal. The writ petitioner as well as the respondents are statutory bodies coming under the

definition of Article 12 of the Constitution of India. The only difference is that the petitioner is a State Government undertaking and the respondents are Central Government undertaking. An agreement was entered into on 23.12.2010 between the parties for the sale and purchase/transmission of natural gas. As per the terms and conditions of the agreement, the petitioner is required to pay for the nominated quantity as per clause 5[2] which speaks about Take or Pay quantity obligation. Thus, the impugned demand has been raised by way of an Invoice by invoking the said clause. Challenging the same, this petitioner has come forward to file this writ petition.

2. While the learned counsel appearing for the petitioner primarily contended that the order having civil consequences is liable to be set aside due to violation of principles of natural justice, learned counsel appearing for the respondents submitted that the demand has been raised as per the terms and conditions, which would be binding on the parties. As there exists an arbitration clause, the petitioner will have to work out their remedy, in stead of approaching this Court by resorting to the discretionary relief.

3. Learned counsel for respondents also submitted that all other purchasers have been issued with similar invoices and they have invoked the arbitration clause. They also invoked Section 9 of the Arbitration and Conciliation Act, 1996 by filing an application before this Court, in which, common order has been passed in OA.Nos.833, 834 of 2015, etc. on 09.09.2015.

4. Learned counsel appearing for the petitioner has made reliance upon the following judgments for maintainability of the writ petition.

- i. HARBANSLAL SAHNIA AND ANOTHER Vs INDIAN OIL CORPN. LTD. AND OTHERS reported in [2003] 2 SCC 107.
- ii. JOSHI TECHNOLOGIES INTERNATIONAL INC. Vs UNION OF INDIA AND OTHERS reported in CDJ 2015 SC 453.
- iii. UNION OF INDIA AND OTHERS Vs TANTIA CONSTRUCTION PVT. LTD. reported in [2011] 5 SCC 697.
- iv. ZONAL MANAGER, CENTRAL BANK OF INDIA Vs M/s.DEVI ISPAT LTD. AND OTHERS reported in CDJ 2010 SC 644.

5. Admittedly, the contract is a commercial one. Thus, there is no element of public law involved. The interpretation is with respect to the terms of the agreement and there is also existence of arbitration clause. The other similarly placed persons like the petitioner have approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996 and the arbitration proceedings are pending. When an action involved is within the contract, there is no question of violation of principles of natural justice, which in turn gives the jurisdiction of this Court to entertain the writ petition. Law is settled that extraordinary jurisdiction of this Court cannot be exercised in a given case. Thus, when all other similarly placed persons like that of the petitioner have exercised the other alternative remedy, which is the normal way to resolve the dispute between the parties, no exception can be made to the case of the petitioner.

6. Learned counsel appearing for the petitioner submitted that considering the facts and circumstances of the case, particularly, the petitioner is a State

Government undertaking and there is a subsequent renewal, some more time may be granted. The learned counsel also submitted that till the Arbitral Tribunal initiated the arbitration process, the *status quo* as on date will have to be maintained insofar as the invocation of bank guarantee is concerned.

7. Considering the submissions made and taking note of the fact that this Court has already dealt with the applications under Section 9 of the Arbitration and Conciliation Act, 1996, and renewal having been granted, the writ petition stands disposed of giving liberty to the petitioner to file an application under Section 9 of the Arbitration and Conciliation Act, 1996, within a period of four weeks from the date of receipt of a copy of this order. Till such time, there shall be an order of *status quo* as on today insofar as the invocation of bank guarantee is concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.01.2016

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Index : Yes/No

Internet : Yes/No

M.M.SUNDRESH, J.
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