

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 9TH DAY OF AUGUST 2016

THE HON'BLE MR. JUSTICE RAJIV SHAKDHER

O.A.No.621 of 2016

In the matter of Arbitration
and Conciliation Act, 1996
and

In the matter of disputes and differences between M/s.Vishwa Infrastructure & Services Pvt.Ltd.,and M/s.Chennai Metropolitan Water Supply & Sewerage Board rep.by its Chief Engineer

M/s.Vishwa Infrastructure & Services Pvt.Ltd
rep.by its Authorised Signatory,
Mr.A.Anil Kumar,
Old No.16-B, New No.3,
3rd West Cross Street,
Shenoy Nagar, Chennai - 600 030 ..Claimant

Vs सत्यमेव जयते

M/s.Chennai Metropolitan Water Supply
& Sewerage Board,
rep.by its Chief Engineer,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002 ..Respondent

Original application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondent herein from entrusting the contract "Proving Sewerage Facilities to Ambattur Municipality - Phase III/Contract No.CNT/SEW/NCB/JNNURM/103A/2009-10" to any third parties pending disposal of the arbitral proceedings contemplated as

per clause 25.2 of the conditions of contract dated 28.06.2010.

This Original application coming on this day before this Court for hearing the court made the following order:

1. In this application, injunction is sought by the applicant against the respondent from awarding the contract, i.e. "providing sewerage facilities to Ambattur Municipality- Phase III/Contract No.CNT/SEW/NCB/JNNURM/103A/2009-10" to any third parties, pending disposal of the arbitral proceedings.

2. It is conceded by the learned counsel for the applicant that on 10.6.2016, the respondent has already terminated the agreement. The letter of termination has also been issued by the Principal Secretary/Managing Director of the Chennai Metropolitan Water Supply and Sewerage Board (in short, CMWSSB), the respondent herein.

3. It appears that the applicant was awarded the work, which is described in the contract, as "providing sewerage facilities to Ambattur Municipality - Phase III Package-II". The contract was of a value equivalent to Rs.74.32 crores. The tenure of the contract was for 24 months.

4. According to the respondent, the applicant had commenced the contract on 13.07.2010 and therefore, was

required to complete the same by 12.07.2012. Admittedly, extensions were granted to the applicant.

5. According to the applicant, extensions were granted because of infractions attributable to the respondent. It is the say of the learned counsel for the applicant that under the terms of the contract, any dispute arising between the parties had to be, in the first instance, referred to an adjudicator.

5.1 The learned counsel for the applicant says that only after a decision was rendered by the adjudicator, could the matter be referred to an Arbitrator. For this purpose, learned counsel for the applicant has drawn my attention to Clause 24 and 25 of the Conditions of Contract.

5.2 Furthermore, the learned counsel for the applicant has also drawn my attention to the petition presented before the named adjudicator, one, Shri V.Rajagopal. My attention was also drawn to Clause 36 of the Instructions to Bidders (ITB). It is further submitted by the learned counsel for the applicant that the said adjudicator has refused to entertain applicant's petition, since, he had retired from service of the respondent.

5.3 Learned counsel for the applicant says that in view of this situation, a communication was sent by the applicant, which is dated 1.7.2016 to the Superintending Engineer (C & M) of the respondent, seeking the details of new adjudicator to pursue the dispute.

5.4 Therefore, it is in these circumstances, that the learned counsel for the applicant seeks injunction.

6.I have heard the learned counsel for the applicant.

7. Clause 24 and 25 of the Conditions of Contract, on which, reliance is placed upon, are extracted herein below, for the sake of convenience.

"24. Disputes

24.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

"25. Procedure for Disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of the

Contract.”

8. Furthermore, one also requires to take note of Clause 3 of the Special Conditions of Contract, which contains the provision qua arbitration. The relevant part of Clause 3 reads as under:

“3. Arbitration

The procedure for arbitration will be as follows:

(a) In case of Dispute or difference arising between the Employer and Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties, shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment, this shall be done in accordance with the Arbitration and Conciliation Act, 1996.

(b)

(c)

(d) Arbitration proceedings shall be held at Chennai, (India) and the languages of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(e) to (g)”

9. A perusal of Clause 24 would show that the contractor (i.e., the applicant) has been given the liberty to refer the matter to the adjudicator if, he believes that the decision taken by the "Engineer" was either outside the authority given to the Engineer by the Contract or, that the decision was wrongly taken.

10. The aforementioned facts would show that the applicant, in fact, is aggrieved by the termination letter dated 10.6.2016. The burden of the said letter is that the applicant had not been able to complete the work. This decision is not a decision of the Engineer.

10.1. Therefore, the submission of the applicant that the respondent had to, in the first instance, give an opportunity to the applicant to approach the Arbitrator, is misconceived.

11. The aforesaid circumstances, however, do show that the applicant can invoke arbitration clause in terms of Clause 3 (extracted hereinabove), and appoint its own nominee.

12. I must also note that even otherwise, this is not a fit case, in which, I would grant the relief, as prayed for. The reason being the nature of the relief sought by the applicant. The applicant seeks to restrain the respondent from entrusting the subject works to a third party.

Admittedly, the respondent is executing the subject works in the larger public interest. The applicant, if, ultimately

found to be wronged can always be compensated monetarily.

12.1 Therefore, to my mind no such injunction as sought can be granted to the applicant.

13. The application is, accordingly, dismissed.

sd/.R.S.A.J

09.08.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/01.12.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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