

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5879 of 2016

Sri Chelliamman Transport
Rep by its Proprietor R.Vetriveeran
No.48/17, Cross Road,
New Washermanpet,
Chennai-81.

... Petitioner

Vs.

Container Corporation of India Ltd.,
Rep by its Chief General Manager
Southern Regional Office
8th Floor, CAO.Cn Office, Southern Railway
EVR Periyar Salai,
Opp. Dina Thanthi,
Egmore, Chennai-8.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondent to forthwith consider and pass a reasonable and speaking order on the representation of the petitioner dated 15.06.2015 after affording an opportunity of hearing to the petitioner.

For Petitioner : Mr.K.Selvaraj.
For Respondent : Mr.V.G.Suresh Kumar.

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O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come forward with the present Writ Petition seeking for issuance of mandamus to direct the respondent to forthwith consider and pass a reasonable and speaking order on the representation of the petitioner dated 15.06.2015 after affording an opportunity of hearing to the petitioner.

3.The petitioner herein has been awarded the contract for road transportation of Domestic Containers including terminal transportation (Inter carting) at TNPM and PSCT/HOM for a period of four years from 01.08.2011 to 31.07.2015. In fact, the petitioner has been awarded the same contract during the previous years and the petitioner has completed the same to the fullest satisfaction of the respondent.

4.The petitioner submit that the provisions of Clause 3 of the Chapter III of the Tender conditions provide that 50% of the trailers (Vehicles contracted with Concor) should be on non-encumbered basis. Therefore, Clause No.3(c) of the terms and conditions of the contract clearly permits the contractor to use 50% of the contracted vehicles when there is no work at the terminal. In fact, the petitioner has never failed to do the work of Concor or failed to transport the containers of Concor and the petitioner has not been given any memo for any unsatisfactory work or for misuse of the vehicle by the Concor, at any point of time during the period of contract.

5.Further, the said Clause 3(c) of the contract, has allowed the petitioner's vehicle to carry the private parties containers from the terminals, only when there was no work from the Concor and the petitioner has not caused any loss to Concor by engaging their vehicles to transport the containers from the terminal. However, the Terminal Manager of Concor by order dated 22.05.2015 have imposed a damages of Rs.1,500/- each for 2038 movements from 01.08.2011 to 31.01.2014 totalling to Rs.31,24,500/- (Rs.1500 x 2083 cases = Rs.31,24,500/-). The petitioner was not given any notice or opportunity of hearing before imposing the huge damage of Rs.31,24,500/-, which brings civil consequences and huge monetary loss and no opportunity has been given to put forth the defence and to establish that the petitioner has not violated any terms and conditions of the contract.

6.Therefore, the petitioner submitted his representation dated 15.06.2015 to the respondent to fully waive the penalty charges of Rs.31,24,500/- and to cancel the order of damages dated 22.05.2015 and to return the said amount encashed from the security deposit in the Bank Guarantee of the petitioner. Notwithstanding anything contained in the Clause 23 of the terms and conditions of the contract, the Chief General Manager (CGM) shall be the authority to consider the claim of any damages imposed under the Contract by the Terminal Manager/incharge in part or full at his sole discretion. After the receipt of representation dated 15.06.2015, the respondent has not conducted any enquiry, hence, the petitioner filed the present writ petition.

7.The respondent has filed the counter stating that the petitioner was awarded the contract for road transportation of domestic containers including terminal transportation for a period of 48months i.e from 01.08.2011 to 31.07.2015. During the preventive check conducted on the road transport contracts, it was ascertained that the trailers engaged for transportation by the Concor from the petitioner under the subject contract has been used for various private transportations. Clause 8.6 of Chapter III of the contract stipulates as follows :-

"The contractor shall not carry out any direct business dealing with any customer of Concor without prior approval of Concor. The contractor shall not receive, transport any container/cargo within the terminal for any customer of Concor directly, without prior approval of Concor in writing."

8.Further in the counter, it is stated that the petitioner has to invoke Clause 21 of the Contract which provides for arbitration, if aggrieved so, the petitioner has to invoke the said clause and raise any disputes following the procedure stipulated thereunder. The contention of the petitioner placing reliance of Clause 3(c) of Chapter III cannot be sustained and prayed for dismissal of the writ petition.

9. When the matter was taken into consideration, the learned counsel for petitioner made his submission reiterating the averments made in the affidavit filed in support of writ petition and thus sought for a direction to Chief General Manager to consider his representation which was given by him to waive the penalty charges of Rs.31,24,500/- and redeem the said amount which was encashed by the respondent, from the security deposit in the Bank guarantee of the petitioner. But, the learned counsel for the respondent submitted that the Chief General Manager (CGM) only directed the authorities/Sr.General Manager to recover the damages of Rs.31,48,000/- in respect of EXIM and DSO transportation contracts from the BG and other pending payments to the contractor, the same was informed to the contractor. The learned counsel for the petitioner has also produced a copy of the order passed by the Chief General Manager.

10.In view of forgoing paragraphs, I am of the opinion when recovery of penalty charges itself was made pursuant to the direction given by Chief General Manager, there is no need to give a direction to consider the petitioner's representation. Hence, the petitioner has to work out his remedy only by invoking the arbitration clause as stipulated under the terms and conditions of the Contract.

11.In the result, the writ petition is dismissed. No costs.

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s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

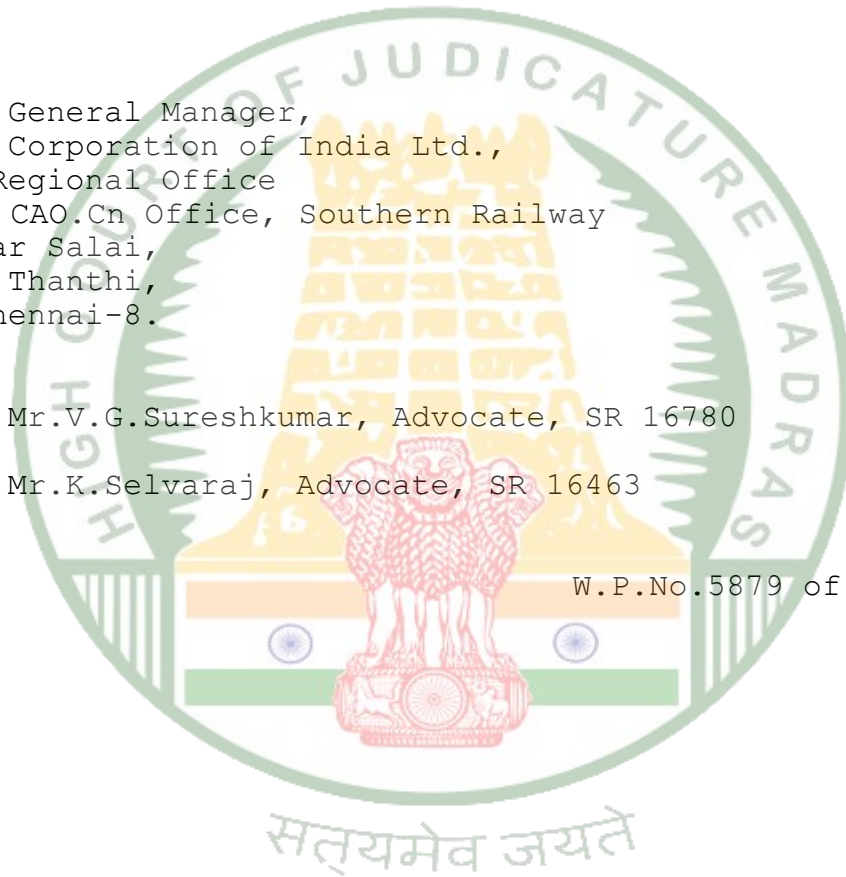
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+ 1 cc to Mr.V.G.Sureshkumar, Advocate, SR 16780

+ 1 cc to Mr.K.Selvaraj, Advocate, SR 16463

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