

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

W.P. No.7134 OF 2014 and
M.P.NO.1 OF 2014

Sri Venkatesh Enterprises,
Rep. by its Proprietor,
V.Kumar,
No.9/1, Rajavelu Street,
Kasimedu, Royapuram,
Chennai-600 013.

... Petitioner

Vs

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

2. The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai, Chennai-600 001.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in No.MEE/GB1/429/2010. Dy.CME(OP) dated 30.04.2013 insofar as the forfeiture of the security deposit of Rs.3,45,208/- is concerned, quash the same and to direct the respondents to refund the entire Security Deposit of Rs.3,45,208/- (Rupees Three Lakhs Forty Five Thousand Two Hundred and Eight Only) with interest at rate of 24% per annum from the date of suspension of the operation of the bus services i.e. 01.09.2011.

For Petitioner : Mr. S.Sathish Rajan
For Respondents: Mr.Krishnan Ravindran

O R D E R

The petitioner has filed the above writ petition seeking for an issuance of writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent dated 30.04.2013 insofar as the forfeiture of the

security deposit of Rs.3,45,208/- is concerned and quash the same and direct the respondents to refund the entire security deposit of Rs.3,45,208/- with interest at the rate of 24% p.a. from the date of suspension of the operation of the bus services i.e. 01.09.2011.

2.It is the case of the petitioner that they are carrying a transport services of Lorry, Trailer, Crane and Bus Services and the respondents called for Tender for supply, maintenance and Operation of two numbers of regular bus services inside the Chennai Port Premises for a period of two years. The petitioner was a successful bidder by the proceedings, dated 02.09.2011, on certain terms and conditions. The total contract value for two buses for two years was Rs.34,46,400/-. As per the contract, the petitioner paid a sum of Rs.3,44,640/- towards security deposit being the 10% of the total contract value by way of a Demand Draft. The period of contract was from 24.09.2010 to 24.09.2012. The petitioner was operating the buses inside the Port premises from 24.09.2010. On 19.03.2011, the second respondent sent a letter calling upon the petitioner to replace the two buses immediately for the reason that the age of both the buses is more than eight years. As per clause 2.5 of the agreement, dated 27.12.2010, the age of the bus should not be more than eight years with Fitness Certificate duly signed by RTO Authorities for the bus every year during the contract period. The petitioner sent a reply on 20.08.2011 to permit them to operate the buses stating that as per the clause 2.5, the age of the buses should not be more than eight years at the time of awarding the contract and not after the Contract. Thereafter, by proceedings dated 30.04.2013, the second respondent terminated the contract and forfeited the security deposit amount of Rs.3,45,208/- as per the clause 9 of the agreement, dated 27.12.2010.

3.It is also the case of the petitioner that as per clause 9 of the agreement, the contract can be terminated by giving three months notice in writing and the second respondent has got power to terminate the contract for violating the terms and conditions by giving an advance notice of 15 days time. The security deposit can be forfeited if there is a break in service for more than 15 days in any particular month.

4.On a perusal of the impugned order and the agreement dated 27.12.2010, it is clear that there is no contract in service for more than 15 days during the relevant period. In fact, by the communication dated 24.08.2011, the second respondent called upon the petitioner to stop the bus services and only based on such communication, the petitioner stopped the bus services. When the second respondent themselves have asked the petitioner to stop the services, the petitioner cannot be found fault in suspending the service for more than 15 days as contemplated in clause 9 of the agreement. Only at the instance

of the second respondent, the bus service was stopped by the petitioner.

5. In these circumstances, I am of the considered view that the provisions of the clause 9 of the agreement do not apply to the case of the respondents for forfeiting the security deposit. Therefore, the impugned order, dated 30.04.2013, is liable to be set aside and accordingly, the same is set aside. The petitioner has claimed a sum of Rs.3,45,208/- together with interest at the rate of 24% p.a. from the date of suspension of operation of bus service i.e. 01.09.2011. Since the rate of interest is on the higher side, I am of the view that the petitioner can be awarded the interest at the rate of 8% p.a.. Accordingly, I direct the respondents to pay a sum of Rs.3,45,208/- together with interest at the rate of 8% p.a. from the date of suspension of operation of bus services i.e. 01.09.2011 till the date of actual payment.

6. With the above observations, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

2. The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai, Chennai-600 001.

+1 CC to Mr.S. Sathishrajan, Advocate sr 43294

W.P.No.7134 of 2014
and
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SCD(CO)
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