IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A. No.192 of 2014
and
M.P.No.1 of 2014

1. Hindustan Petroleum Corporation Ltd.,
   Rep. by its Chief Installation Manager,
   Chennai terminal,
   98/99, Elaiya Mudali Street,
   Post Box No.1170,
   Washermanpet Post,
   Chennai - 600 021. ... 1st Appellant

2. Hindustan Petroleum Corporation Ltd.,
   Rep. by its General Manager,
   South Zone, Thalamuthu Natarajan Building,
   8, Gandhi Irwin Road,
   PB No.3045,
   Egmore, Chennai - 600 008. ... 2nd Appellant

Versus

Geetha Transport,
Rep.by its Proprietor,
N.Vedapuri. ... Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 21.11.2013 made in W.P. No.8280 of 2012.

For Appellants : Mr.M.Vijayan
for M/s.King and Patridge.
For Respondent : Mr.K.Sathiamurthy

J U D G M E N T

[Judgment of the Court was made by P.Velmurugan, J.]

This Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 21.11.2013 made in W.P. No.8280 of 2012.

2. The facts of the case are as follows :-

(i) The respondent herein was working as a Contractor under the appellant corporation to transport their petroleum products to various destinations through the respondent's vehicle. An agreement dated 20.11.2007, has been entered into between the respondent and the appellant Corporation. The respondent is having 7 Tanker Lorries to perform the work of the appellant Corporation. The respondent has also suffered loss due to the fire accident in which one of his tankers was involved. Anyhow, the respondent has been managing because of the fact that the contracts are in existence. While so, the appellant Corporation has terminated the contract dated 15.05.2010 stating that in the Tollgate, excess amount has been paid and the same was transferred to the respondent's account. Further, the appellant Corporation has informed that there are some financial irregularities in his toll tax bills reimbursed in Chennai Terminal. In this regard, the respondent has sent a letter dated 01.06.2010 requesting the appellant Corporation to furnish the details regarding the alleged irregularities.

(ii) On 02.07.2010, the appellants Corporation issued a Show Cause Notice stating that the respondent has inflated some bills by colluding with their Clerk one Asokan and hence, they have paid a sum of Rs.27,090/- in excess. The respondent/petitioner has sent his explanation in his reply dated 10.07.2010.

(iii) According to the respondent, whenever their tankers carrying the load of the respondent crosses various toll gates, toll charges have to be paid. The receipts issued by toll gate authorities at every toll gate will be retained by the tankers and at the end of every trip, the same will be submitted to the appellants Corporation in original and after verification with the department only, the amount will be credited into the respondent's bank account periodically.

(iv) According to the respondent/petitioner, since he has no control over the officers of the appellants Corporation, there is no question of receiving excess amount in their account and he cannot be penalized for the same. Further, for the month of July 2009 to March 2010, the appellants had issued Show Cause Notice in the month of July 2010 and the total amount of bill is enclosed separately in words and figures for the appellants, to verify and approve the same. Firstly, the toll bills are verified with the vouchers pasted thereon and the amounts are also scruitnised and sent for approval to M/s.Nimmy Thomas, Accounts Officer and after her approval, it will be sent for further approval to Mr.Thirunatha Rao and the final approval authority for the said bills is the Terminal Manager of the Company. Hence, the impugned order dated 29.12.2011, terminating the contract is wholly without jurisdiction.

3. The learned Single Judge after hearing the rival submissions made on either side and upon perusing the materials placed on records, set aside the impugned order passed by the authority on 29.12.2011. Aggrieved against the said order passed by the learned single judge, the appellants/Corporation filed the present appeal before this Court.

4. In the order passed by the learned single Judge, it is stated that the alteration could not have done by the respondent, while presenting the bills, which has not been established and the responsibilities will not be fixed upon the respondent. It is also mentioned that when the appellants admit that their Clerk Asokan has given evidence, he used to get some percentage of amount for claiming the excess bill amount, hence, the said Asokan is the responsible person for all the irregularities alleged by the appellants Corporation.

5. The learned counsel for the appellants would submit that the respondent/petitioner has colluded with Asokan by raising some inflated bills and received a sum of Rs.27,090/- in excess. The excess bill amount said to have been received by the respondent was adjusted by the appellant Corporation in their future bills, which has been done by the respondent with the connivance of one Asokan, Clerk working in the appellants Corporation. The said Asokan himself admitted in his evidence that for claiming excess amount, he will get 80% of share from the respondent / petitioner.

6. According to the learned counsel for the appellants / Corporation, after expiry of the agreement dated 20.11.2007, another agreement was entered into between the respondent and appellants/HPCL on 15.05.2010. On 28.05.2010, the same was brought to the notice of HPCL that while getting reimbursement of the toll taxes, the respondent and the other two transport contractors, inflated the claim amount by changing the figures and words and also resubmitted the bills which were already claimed by the respondent. After issuing show cause notice to the respondent, the appellants/Coporation has passed the order of termination on 19.02.2011.

7. The learned counsel for the respondent would submit that issuance of show cause notice and enquiry conduced by the appellants and passing of termination order are not in accordance with Clauses of agreement dated

15.05.2010. The respondent / transport agency had stated that they never resubmitted the bills already claimed by them. Further, he has stated that the respondent had never colluded with one Asokan, Clerk, working in appellants Corporation. The statement given by one Asokan, Clerk in the appellants corporation is false allegation and it is only to escape himself from further action at their end. After considering all the circumstantial evidences and the available records, the learned single judge has rightly set aisde the impugned order dated 29.12.2011. Hence, the lerned counsel prays for dismissal of the writ appeal.

8. Heard the rival submissions made on either side and also perused the materials available on records.

9. Perused the impunged order of the learned single Judge and the other materials filed with the typed set of papers. According to the appellants / Corporation the respondent with the connivance of one Asokan Clerk of their Corporation, who himself has admitted in his evidence that for claiming excess amount, he will get 80 to 85% shares from the transporters. But, he has not explained from whom he has collected the excess amount neither in in his chief examination nor in his cross examination. It is not clear that from whom the respondent has collected the excess amount or appellant Clerk has done this mischief activities. No enquiry has been conduced against the staff

of the appellants / Corporation and on his evidence only, the appelllants have arrived at the conclusion that the respondent is responsible for the alleged loss caused to the appellants Corporation. There is no evidence available to show that when the bills were presented by the respondent and no exact details are available to show how much amount has been claimed by the respondent, except the statement given by one Asokan.

10. Considering the above said aspects, the learned Single Judge has found that the appellants Corporation have not clearly proved their case, except the evidence of Asokan and it is clear that some bills have been inflated and received a sum of Rs.27,090/- in excess.

11. There is nothing on record to show the identity of the alleged representative of the respondent. The appellants failed to prove that the employee by name Asokan and the management of the respondent company entered into an agreement to inflate the bill and to share the excess amount. The evidence on record would not prove the complicity of the respondent in the matter. We, therefore, concur with the findings recorded by the learned Single Judge.

12. The Transport agreement was suspended for a period of two years. The period expired by 28 May 2012. We therefore do not find any reason to

set aside the punishment at this point of time.

13. The learned counsel for the respondent submitted that the Corporation must be directed to permit the respondent to bid in the ensuing tender for transportation. According to the learned counsel for the appellants, in the impugned order, the Corporation made it clear that though the factual matrix warrants blacklisting, a lenient view was taken to suspend the license for two years. We make it clear that the order passed by the appellants dated 29 December 2011 would not stand in the way of awarding contract to the respondent in case the respondent is otherwise eligible. In short, the order suspending the contract by order dated 29 December 2011 would not amount to blacklisting the respondent as a contractor for the future contracts.

14. The writ appeal is disposed of with the above observation. No costs.

[K.K.S.J.,] **[P.V.J.,]**

27.10.2017

Index :Yes/No
Internet: Yes/No
Speaking / Non Speaking

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