

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.12388 of 2017
and WMP Nos.13139, 14544 & 14545 of 2017

M/s.Vithayathil Cements,
represented by its Proprietor Tony Thamas,
represented by his Power Agent K.P.Venugopal,
S/o.Parameswarakurup,
1870 A4, Abhilash Apartments,
35, Palarivattam, Kochi Corporation,
Kerala State. ... Petitioner

v.

1. Principal Secretary/ The Managing Director,
M/s.Tamil Nadu Cements Corporation Ltd.,
735, L.L.A. Buildings, 2nd Floor,
Anna Salai, Chennai - 600 002.
2. The General Manager (Marketing),
M/s.Tamil Nadu Cements Corporation Ltd.,
735, L.L.A. Buildings, 2nd Floor,
Anna Salai, Chennai - 600 002. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus to call for records of the cancellation of agreement in Letter TANCEM/CO/MKG/C.A./ South/Kerala/2017 dated 03.05.2017 passed by the 1st respondent and quash the same and consequently direct the first respondent to restore the supply of Arasu Cements to the petitioner till the agreement period i.e.,03.03.2017 to 02.03.2019.

For Petitioner : Mr.R.Karunagaran

For Respondents: Mr.K.Venkatramani

Additional Advocate General - VII

Assisted by Mr.P.Sanjay Gandhi

Addl. Govt. Pleader

O R D E R

What is put into challenge is cancellation of agreement entered into between parties. The learned counsel appearing for the petitioner would submit that pursuant to the impugned order the business has come to a grinding halt.

2. The learned Additional Advocate General, based on the counter affidavit filed and by relying upon the agreement submitted that Clause Nos.43 & 44 of the agreement itself would show that, writ petition is not maintainable.

3. This court is afraid that the discretion jurisdiction under Article 226 of the Constitution of India, is not liable to be invoked in this case. Firstly, the agreement says that jurisdiction lies before the Madurai High Court. Secondly, any dispute will have to be referred to be resolved by way of arbitration. These are the relevant clauses.

"43. All disputes will be subject to the jurisdiction of the courts having jurisdiction in Madurai High Court, to the exclusion of all other courts.

44. In the event of any dispute, parties shall endeavour to settle such disputes by mutual discussion, mediation or conciliation. In spite of this, if the parties do not agree for any settlement, the party may issue a notice of arbitration seeking appointment of an arbitrator to settle the disputes. The Company shall nominate the sole arbitrator within 2 weeks of receipt of any notice of arbitration. The venue of arbitration shall be at TANCEM, Alangulam, Virudhunagar District. All arbitral proceedings shall be in consonance of the Arbitration and Conciliation Act 1996, or any statutory modifications there under. Both parties shall equally share the arbitrator fees and other costs for the arbitration proceedings such as arbitral hall, secretarial assistance etc.

4. Further, in view of the submission made by the learned counsel that the petitioner is willing to show his bonafides by paying a sum of Rs.50,00,000/-, this Court is of the view that impugned order itself is consequence of the dispute, which has arisen and therefore, even on that ground, the writ petition has not to be entertained by this Court. Hence, the writ petition is dismissed. However, liberty is granted to the writ petitioner to proceed as per Clause 43 and 44 of the agreement, as the case may be, if so advised. It is made clear that in the meanwhile as per Clause 44, it is open to the petitioner to resort to negotiation as well. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar/VO

//True Copy//

Sub Assistant Registrar

To

1. Principal Secretary/ The Managing Director,
M/s.Tamil Nadu Cements Corporation Ltd.,
735, L.L.A. Buildings, 2nd Floor,
Anna Salai, Chennai - 600 002.
2. The General Manager (Marketing),
M/s.Tamil Nadu Cements Corporation Ltd.,
735, L.L.A. Buildings, 2nd Floor,
Anna Salai, Chennai - 600 002.

+1 CC to Mr.R. Karunagaran, Advocate sr 37989

W.P.No.12388 of 2017

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