

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

Writ Appeal No.759 of 2010
M.P.No.1 of 2010

Tamil Nadu Electricity Board,
800, Anna Salai, Rep by its Chairman,
Chennai 600 002. Petitioner

Vs.

1. M/s.SICAL Logistics Ltd.,
Rep by its Managing Director,
[Formerly South India Corporation
(Agencies) Ltd.,]
Armenian Street,
Chennai 600 001.
2. The Secretary to Government,
Energy Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009. Respondents

Writ Appeal is filed, under Clause 15 of the Letters Patent,
against the order made in W.P.No.23838 of 2008, dated 30.07.2009.

Petition filed Under Article 226 of the Constitution of India
to issue a Writ of Mandamus to direct the second
respondent to nominate their member to the expert committee
constituted as per their letter dated 03/11/2004 and
consequently direct the so constituted expert committee to
proceed with the matter within time fixed by this Hon'ble Court.

For Petitioner ... Mr.R.Muthukumarasamy,
Advocate General
for Mr.S.K.Ramoshwer

For 1st Respondent ... Mrs.Umameshwari Ganesh

For 2nd Respondent ... Mr.Zakir Hussain,
Government Advocate

O R D E R

(Order of the Court was made by S. Manikumar, J)

Writ Appeal is directed against the order made in W.P.No.23838 of 2008, dated 30.07.2009, by which, the Writ Court directed all the parties, viz., the appellant and respondents 1 and 2 herein, to appoint their representative nominees to constitute an expert committee, within a period of one month, from the date of passing of the order.

2. Perusal of the order impugned, shows that there was exchange of correspondences, between the parties, for constituting an independent expert committee, consisting of one member each, totally three members, nominated by the respective parties. However, the Tamil Nadu Electricity Board has contended that the purchase order does not provide for an arbitral tribunal, and therefore, intended to proceed, as per the terms and conditions of the purchase order. Tamil Nadu Electricity Board did not want an expert committee. Adverting to the submissions, the writ Court declined to accept the submissions of the Tamil Nadu Electricity Board and directed nomination, as stated supra.

3. On this day, when the writ appeal came up for further hearing, based on the letter, dated 03.01.2017 of M/s.Sical Logistics Ltd., South Indian House, Chennai, 1st respondent herein, Mr.R.Muthukumarasamy, learned Advocate General, representing the appellant-Tamil Nadu Electricity Board, submitted that M/s.Sical Logistics Ltd., 1st respondent herein, has come forward to amicably settle the disputes, between the parties, as per the terms and conditions of the purchase order. On instructions, he further submitted that the Tamil Nadu Electricity Board is agreeable to the proposal of M/s.Sical Logistics Ltd., 1st respondent herein and TANGEDCO.

4. Mrs.Umameshwari Ganesh, learned counsel appearing for the 1st respondent submitted that appropriate orders be passed in the light of what is agreed by the Tamil Nadu Electricity Board, the appellant herein.

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. By order, dated 30.07.2009, this Court in W.P.No.23838 of 2008, directed the parties therein to nominate their representatives, for constitution of an expert committee. Record of proceedings shows that after hearing the learned counsel appearing for the parties, on 21.04.2010, a Hon'ble Division Bench of this Court has granted stay of the order, dated 30.07.2009, till the hearing and disposal of the appeal.

6. Letter of M/s.Sical Logistics Ltd., Chennai, dated 03.01.2017, is extracted hereunder:

"We thank you for the courtesy extended to us, during our visit to your office on 02.01.2017.

We also extend our sincere thanks to TANGEDCO for giving us an opportunity to serve the organisation for all these years.

With reference to the subject cited P.O.No.39, dated 03.01.1998, we would like to state that we were able to successfully execute the contract with due cooperation and support of your team and we could minimise the shortage of coal to a great extent due to our efficient handling. The contract period came to close on 31.01.2001.

While so, as regards certain issues in calculating the shortage cover under the clause no.5.3 of P.A.39, dated 03.01.1998, we had been corresponding with our interpretation whereby we had claims seeking refund of certain amount. Upon due consideration of all the aspects concerning the contract and upon revisiting the terms thereof, we feel that it would be pragmatic and prudent to clear the issue without prolonging and thereby put a full stop to the ever running litigation. Further, considering the long standing cordial relationship we have with TANGEDCO for several decades, we do not wish to seek our claim on the shortage cover, as per the clause 5.3 of P.O.39, dated 03.01.1998 and thus, would go by the terms of the P.O. and complete the process of closing the contract.

In connection with the closure of P.O.39, dated 03.01.1988 a sum of Rs.5,85,42,412/- is held by TANGEDCO the details whereof are:

S.No.	Description	Amount
1	Amount retained for embedded coal at Haldia port	Rs.2,95,51,198
2	Amount retained for no due certificate at Vizag Port	Rs.1,00,00,000
3	Provision for recoveries in respect of Chennai Port	Rs.1,00,00,000
4	Amount payable from load port bills	Rs.72,44,665
5	Amount payable from disport bills	Rs.17,46,549
	Total	Rs.5,85,42,412

We wish to inform you that we had already provided necessary documents as regards the above. Hence, upon finalizing the above, we would humbly place our request for release of the above payments.

In addition to the above, a sum of Rs.6 Crores, which has been deposited as Security Deposit, may also be kindly released.

Hence, we wish to propose that pending litigation under W.A.No.759 of 2010 can be closed amicably by both Sical and TANGEDCO and P.O.39, dated 03.01.1998 may be closed as per the terms and conditions of P.O.

We will render all our assistance and cooperation for finalizing the closure of P.O.39, dated 03.01.1998 at the earliest.

We would greatly appreciate if our proposal as above may be considered positively to enable the closure of W.A.No.759 of 2010 and P.O.39, dated 03.01.1998 and refund of Rs.11.85 Crores at the earliest."

7. Reading of the same shows that M/s.Sical Logistics Ltd., Chennai, 1st respondent herein, is agreeable for settlement of disputes, amicably, as per the purchase order, dated 03.01.1998. As rightly contended by the learned Advocate General, when M/s.Sical Logistics Ltd., Chennai, 1st respondent herein, has come forward to amicably settle the disputes, in terms of the Purchase Order, which according to the appellant, does not provide for any arbitral tribunal, the effect of the letter, dated 03.01.2017, amounts to accepting the stand of the appellant and therefore, constitution of an expert committee, as directed, deserves to be interfered with. Accordingly, the order made in W.P.No.23838 of 2008, dated 30.07.2009, is set aside. As agreed, M/s.Sical Logistics Ltd., Chennai, 1st respondent herein and TANGEDCO, are directed to proceed further, as per the terms

and conditions of the Purchase Order and settle the disputes, as expeditiously as possible.

8. In the result, the writ appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
Energy Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.

+1 cc to M/S.S.K.Rameshuwar, Advocate Sr.4941
+1 cc to the Government Pleader, Sr.5289

W.A.No.759 of 2010

mp[co]
srg 10/2/2017

सत्यमेव जयते
WEB COPY