

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37135 of 2003

M/s Aarthi Transports,,
Rep by its Proprietor,
Mr.T.Marappan,
S/o Thirumalai Gounder,
No.45, Bungalow Street,
Thiruchengode Taluk,
Namakkal District.

... Petitioner

Vs.

- 1) The Managing Director,
Tamil Nadu Co-operative Milk
Producers' Federation Ltd.,
Aavin House, Ambattur,
Chennai 600 098
- 2) The General Manager,
Tamil Nadu Co-operative Milk producers'
Federation Ltd.,
Nos.29 & 30, Industrial Estate,
Ambattur, Chennai 600 098

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent passed in and by its proceedings in K.No.5810/G 2/97, dated 31.05.2001 and the consequential order passed by the second respondent in its Proc.Ref.No.1610/G3/02, dated 19.05.2003.

For Petitioner : Ms.P.T.Ramadevi

For RR 1 & 2 : Mr.P.Narayanamoorthi

ORDER

The petitioner has come forward with this Writ Petition challenging the order of the second respondent passed in the proceedings in K.No.5810/G 2/97, dated 31.05.2001 and the consequential order passed by the second respondent in its Proc.Ref.No.1610/G3/02, dated 19.05.2003.

2. Learned counsel for the petitioner submitted that the petitioner-company is engaged in running public carriers for transporting goods and also milk tankers. The respondents have been engaging the petitioner-company for hiring milk tankers to transport milk from Salem Union Dairy to various Metro dairies situated in Ambattur, Madhavaram and Solinganallur Dairy centres. The hiring of milk tankers was by means of a contract between the respondents and petitioner-company. In general, the period of contract is one year. After expiry of the contract, fresh contract needs to be entered. The contract is renewed regularly depending upon the execution of work by the person to whom the contract is awarded/ entered.

3. According to the learned counsel for the petitioner, the petitioner-company has been running milk tankers since 1995 and regular payment has been received based on the kilometer rate. Learned counsel for the petitioner submitted that suddenly, in the year 2001, the second respondent sent an order in K.No.5810/G 2/97 dated 31.05.2001 stating that the petitioner had claimed excess amount by showing more kilometers for the year 1997-98 and as a result, the second respondent has deducted Rs.64,615/- from the amount payable for the current year. According to the petitioner, at no point of time, such excess claim was made. For the variation in the year 1997-98, deducting the amount in the year 2001, by neither issuing appropriate notice nor by conducting proper enquiry or providing an opportunity to the petitioner to explain, is arbitrary and illegal. The respondents regularly deducted the amount and the same has got to be returned with 25% interest.

4. Learned counsel for the petitioner submitted that the petitioner has made several representations, but are of no avail and therefore, the petitioner has earlier approached this Court by filing W.P.No.8267 of 2003 for issuing a Writ of Mandamus, directing the respondents to consider the representation of the petitioner and this Court passed an order on 17.03.2003 and the same reads as follows:-

"..... 3. There will be a direction to the third respondent to consider and pass orders on the notice of the writ petitioner dated 04.02.2002, if it is in order, within a

period of 12 weeks from the date of receipt or production of the copy of the order. The petitioner shall also furnish copies of the said notice to the third respondent."

5. Learned counsel appearing for the respondents would contend that the petitioner was not running the milk tankers from the year 1995 and that a contract was entered into with effect from the year 1997-98 only between the petitioner and respondents. It is incorrect to state that there was a deduction of Rs.64,615/-, though the impugned order is dated 19.05.2003 in Ref No.1610/G3/02. As per Clause 2 of the contract, transport charges are deducted on kilometre basis along the shortest route at the rate approved by the Federation. Clause 85 also states that the kilometre will be determined by the Federation. It varies from route to route and that the petitioner has agreed to accept the amount for the kilometre rate, as prescribed by the Federation. Since different places have got to be covered and different destinations have got to be reached, there is no mentioning about the kilometre in the agreement and that the contractor is bound to carry milk in the routes prescribed and agreed upon. The respondents cannot sanction higher charges in the absence of clause in the agreement. But when the contractor demanded for payment of higher charges, the Federation, with a good intention, paid their claim, pending verification of distance in terms of kilometre. The claim was made by the contractor on a clear understanding that, when specific kilometre is done as per the contract, the difference may be approved when calculated with reference to specified kilometres, which could be adjusted. Without mentioning these facts, the petitioner with incorrect information, has approached this Court.

6. Learned counsel for the respondents further submitted that if any excess payment is made, it may be adjusted or recovered in future and the respondents have acted well within the terms of contract and there is no violation. In general principle, excess amount paid already may be recovered or adjusted, if anything is found wrong. The direction is well within the terms of the contract and there is no violation. The Federation has fixed the kilometres only on 12.03.1999, but higher charges have been claimed by the contractor on wrong calculation of kilometres, and higher amount had been paid by the federation. The Federation has given a reply setting out the actual position and pursuant to the orders of this Court, in W.P.No.8166 of 2003, a detailed order has been passed by the federation on 14.05.2003, which is impugned in the writ petition.

7. The Senior Manager of the respondent Federation was

asked to scientifically arrive at a distance calculating from the starting point to the destination point of different routes. Since it is stated that the claim of the Contractor was not kept pending, due to urgency and pressure given by the Contractor and based on the assessment of distance received from the Contractor, the amount had been disbursed, with an agreement that the amount would be adjusted, if any excess amount is claimed. The Bills have been scrutinized and when it was found that the Contractor has hidden the distance in the bills in order to claim more amount, the distance was calculated and the excess amount was recovered from the Contractor. The petitioner ought to have filed an appeal for his grievance, which he has not done and the agreement categorically states 'the shortest route' and not the route selected by the petitioner, according to his choice.

8. The contract for the year 1997-98 got expired on 31.03.1998 and was extended till 30.06.1998. When there is an erroneous calculation and amount has been paid, the excess payment made is entitled to be recovered. The petitioner at no point of time, has questioned the measurement of distance in a scientific way and that nowhere he has stated that the tankers ran in the shortest route. The Federation has got every right to check the distance and correct the same, as there is shortest route maintained, so that the excess amount can be recovered.

9. Heard both parties.

10. The facts mentioned supra are not in dispute. It is also not in dispute that if there is any problem with regard to the transportation of milk to the dairies for settlement of bills, the same may be sorted out with the Manager-Transport and the General Manager at Ambattur. Though there was no response to the representations of the petitioner, dated 14.06.2001 and 23.07.2001, the petitioner never chose to approach this Court to challenge the order dated 31.01.2001 earlier. Only after passing of the impugned order, which is the subject matter of the writ petition, that was passed after the directions of this Court dated 17.03.2003, the petitioner has come forward challenging both the orders. The contention of the respondents that the earlier order dated 31.05.2001 was not challenged at the earliest point of time, may not be correct. After disposal of the representations, both the orders have been questioned now. Asking the petitioner to approach the Civil Court as contended by the respondents, may not be accepted, more particularly, when the present writ petition is pending for nearly 14 years. The petitioner Company has taken a stand that no opportunity was given to them. It was the stand taken in the earlier writ petition also. A reading of the impugned order

dated 19.05.2003 is very clear that the petitioner was not given any opportunity. The petitioner has got a right of appeal and there is also a provision for arbitration as per paragraph 31 of the said contract. Since, the petitioner was not given any opportunity before the impugned order was passed, instead of remanding the matter to the original authority or directing the petitioner to approach the appellate authority, this Court feels it appropriate to appoint a third party Arbitrator in terms of paragraph 31 of the contract, so that the entire issue is given a quietus to, as otherwise, after an order is passed by the original authority, there is a possibility of an appeal by the petitioner, in case there is an adverse order, and thereafter, he may have to approach the Arbitrator or approach this Court. Instead of driving the petitioner to various forums, taking note of the fact that 20 years have already gone by, this Court expects the respondents to appoint an independent Arbitrator to decide the issue at the earliest point of time. The writ petition is disposed of accordingly. No costs.

11. This Court posed a question to the Government Advocates present in the Court as to why the representations are disposed of by the Government Officials in a dishonest and slipshod manner, to which, all the Government Advocates, in one voice, stated that it cannot be stated that the Government Officials are executing their work in a perfunctory manner. However, this observation of the Court may be applicable to the authority under Section 80-A of the Town and Country Planning Act, who is holding office as on the date of passing of this order.

12. Before parting with the case, this Court likes to express its anxiety on the way representations are being disposed of by Government officers. In many cases, the officials of the Government are trying to safeguard the illegal interest. Purposely, they are passing an order without giving an opportunity, in order to enable the violator to approach the Court and get an interim order from the Court and keep the matter pending for decades and get a remand like the present one, thereby stalling genuine claims. That apart, the Government officials are purposely avoiding to hear complainants, who will be the right person to bring to the attention of the Authorities and this Court, the illegal act of other persons. Since it is inconvenient for the Government officials to hear the complainant, as they may not be in a position to pass any orders in favour of the violators, since the complainant would bring to the attention of the authority about the illegal act or violation. Whether there are observations in the order or not, an opportunity of being heard should be given not only to the person who approaches the authorities, but also to the complainants, who are likely to be affected / interested and all

of them should be heard. No one shall be deprived of being heard.

13. This Court expects that at least from now onwards, proper instructions are given by the Government Departments to the administrative and quasi judicial authorities, so as to follow the basic principles of natural justice of being heard and opportunity should not only be given to the person who is seeking redressal, but also to others including the complainant, if any, who would bring to the attention of the authority, orders or decision to be taken thereafter. In many cases, the Writ Petition(s) is/are filed without making the person(s) who is/are likely to be affected or the person(s) who made the complaint as parties and the prayer sought for is only for a direction to dispose of the representation / appeal, etc. The authority, on the basis of the order passed in the Writ Petition, in some cases, after hearing only the petitioner, passes an order, and even though the order of this Court on the Writ Petition is silent regarding hearing the parties, there is no harm for the authority concerned to hear the person(s) who has/have given the complaint and the person(s) who is/are likely to be affected. That will be full compliance of the basic principles of natural justice. The authority must hear the petitioner/ applicant and pose a question as to whether there is any complainant and interested party and obtain the signature of the applicant. Such proceedings are to be recorded and if the statement of the applicant is found to be incorrect, at that point of time, the relief sought by the person can be rejected at the threshold, as the Apex Court, in a number of cases has held that the person approaching the Court should come with clean hands, otherwise no relief can be granted and this principle has been reiterated by the Supreme Court in the following decisions:- (i) 1993 (1) MLJ 26 = 1992 Writ L.R. 716 (Madras High Court) (V.Tamil Selvan Vs. The State of Tamil Nadu): (ii) 1983 (3) SCC 333 = AIR 1983 SC 622 = MANU/SC/0054/1983 (Dr.Vijay Kumar Kathuria and another Vs. State of Haryana and others) and (iii) 1994 (1) LW 21 (SC) = 1994 (1) SCC 1 (S.P.Chengalvaraya Naidu Vs. Jagannath). The same principles/ yardstick shall be applicable in all situations.

14. Registry is directed to mark a copy of this Order to the Chief Secretary to Government, Government of Tamil Nadu, Secretariat, Chennai who shall issue a circular to be circulated to the Departments concerned.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

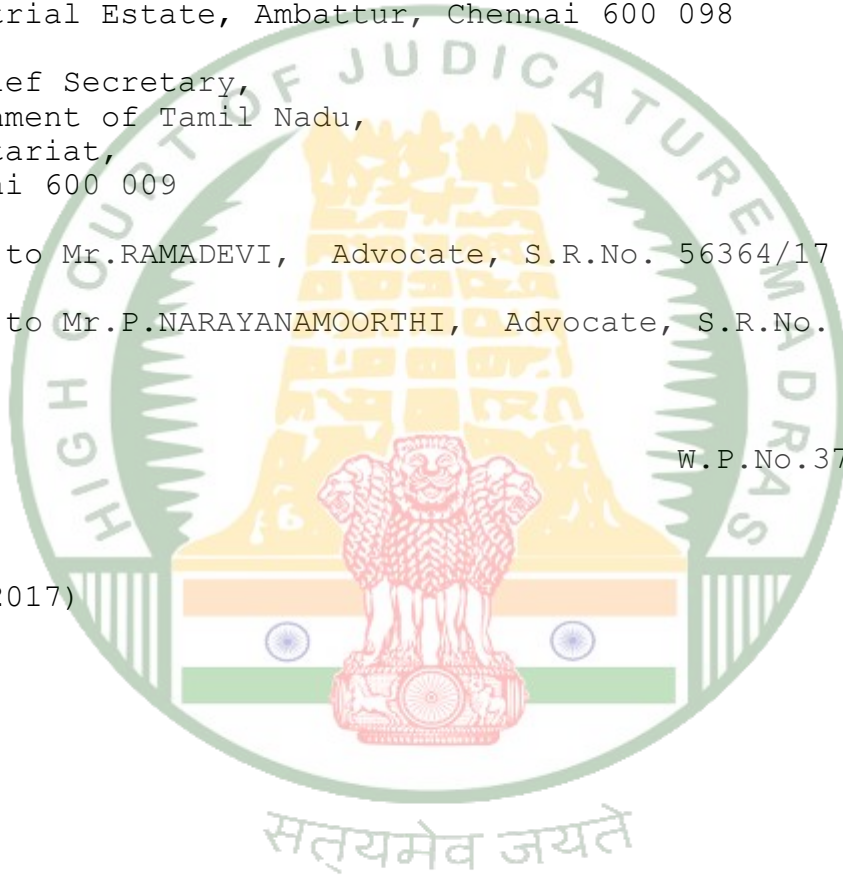
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- 2) The General Manager,
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Federation Ltd., Nos.29 & 30,
Industrial Estate, Ambattur, Chennai 600 098
- 3) The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai 600 009

+1cc to Mr.RAMADEVI, Advocate, S.R.No. 56364/17

+1cc to Mr.P.NARAYANAMOORTHY, Advocate, S.R.No. 56334/17

Order in
W.P.No.37135 of 2003

BR (CO)
TR(27/11/2017)



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