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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.02.2017

DELIVERED ON: 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A. (MD) No. 4 of 2017
and
C.M.P. (MD) .Nos. 87, 88 & 165 of 2017

A.Jana .. Appellant/Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Tourism Development
Corporation Limited,
Tamil Nadu Tourism Complex,
No.2, Vallajiah Road,
Chennai -2.

2. The General Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Chennai.

3. The Regional Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Madurai.

.. Respondents/ Respondents

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 19.12.2016, made in W.P.(MD). No.22321 of 2016 by a learned Single Judge of this Court.

Prayer in WP(MD). 22321/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records on the file of the 1st respondent pertaining to its order bearing letter No.1214/H3/2015 dated 15.11.2016 and to quash the same and consequence direct the respondent to remove the



seal put up at the Toilet Blocks at the 3rd Respondent premises and permit the petitioner to continue the lease as per the agreement dated 21.10.2015.

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For appellant : Mr.M.Vallinayagam,
Senior Counsel for
Mr.S.C.Herold Singh

For respondents : Mr.B.Pugalendhi,
Addl. Advocate General
asst. by Mr.R.Murali

JUDGMENT

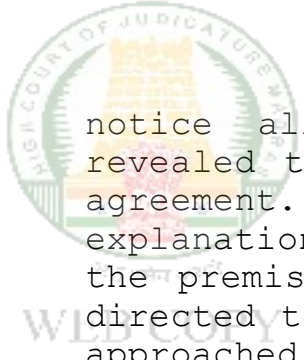
(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

The writ petitioner is the appellant herein. She has filed this appeal as against the order passed by a learned Single Judge of this Court in W.P.(MD).No.22321 of 2016, whereby and whereunder the learned Single Judge, without going into the merits of the case, directed the respondents to initiate an arbitration proceeding as contemplated under clause 27 of the agreement within a period of three weeks and conclude the same within a period of six weeks thereafter.

2.The brief facts which are necessary to decide the present writ appeal are as follows;

(a) The respondents called for tender notification on 01.06.2015 for granting license for the operation and maintenance of toilet blocks at Hotel, Tamil Nadu, Kanyakumari District, for three years. As the appellant had made a highest offer i.e., Rs.8,75,000/- per annum, he was called for negotiation, wherein it was agreed to confirm the same with 10% annual escalation on compounding basis for three years. As per such agreement, the appellant has to pay Rs.8,75,000/- for the first year, Rs.9,62,500/- for the second year and Rs.10,58,750/- for the third year. The first respondent has also issued confirmation order on 13.10.2015. On 21.10.2015 an agreement was entered between the appellant and the second respondent with some terms and conditions. As directed by the second respondent, the appellant has also furnished bank guarantee to the tune of Rs.5,20,000/- to the second respondent.

(b) After completion of the first year period, the appellant has drawn a demand draft for a sum of Rs.9,62,500/- and Rs.1,34,750/- in favour of the first respondent for the second year period i.e., from 21.10.2016 to 20.10.2017 and sent the same by registered post. While so, the respondents issued termination

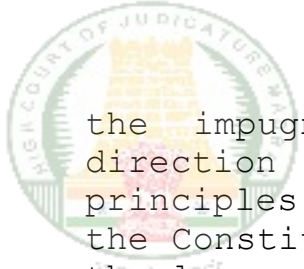


notice alleging that the inspection report dated 05.10.2016 revealed that there is violation of clauses 4, 29 and 30 of the agreement. Though the appellant was given 15 days time to offer explanation, the 2nd respondent insisted the appellant to vacate the premises and hand over possession. Since the appellant was directed to vacate without even affording an opportunity, he has approached this Court in W.P.(MD).No.20629 of 2016. This Court, by order dated 25.10.2016, directed the appellant to give his reply to the said notice within two weeks and also directed the second respondent herein to consider the same and pass appropriate orders, after giving sufficient opportunity to the appellant as expeditiously as possible.

(c) In pursuant to the same, the appellant offered his explanation on 11.11.2016. However, without providing an opportunity to the appellant as directed by this Court in W.P. (MD).No.20629 of 2016, the first respondent has passed the impugned order dated 15.11.2016 terminating the contract. The said order was communicated to the appellant only on 19.11.2016. On the same day, the respondents sealed the premises with ulterior motive. Hence, the appellant has filed the writ petition challenging the impugned order dated 15.11.2016 and also for a consequential direction to the respondents to remove the seal put up at the toilet blocks of the third respondent premises and permit the appellant to continue the lease as per the agreement dated 21.10.2015.

(d) The learned Single Judge, without going into the merits of the case, as the agreement between them contains arbitration clause, directed the respondents to initiate an arbitration proceeding as contemplated under clause 27 of the agreement within a period of three weeks and conclude the same within a period of six weeks thereafter.

3.The learned senior counsel appearing for the appellant submitted that the appellant is the successful bidder for the operation and maintenance of toilets at Hotel Tamil Nadu, Kanyakumari, for three years. The appellant has paid franchise fee of Rs.8,75,000/- for the first year period. After completion of the first year period, the appellant has also paid franchise fee for the second year period covering from 21.10.2016 to 20.10.2017 with a legitimate expectation that they will continue the license as per the agreement. While so, the first respondent had terminated the license by order dated 08.10.2016. When the same was questioned by the appellant before this Court in W.P. (MD).No.20629 of 2016, this Court directed the appellant to submit his reply by treating the said order as show cause notice and also directed the respondents to pass orders on the said reply after giving sufficient opportunity to the appellant. Accordingly, the appellant has submitted his reply. But, the first respondent, without providing an opportunity of personal hearing, has passed

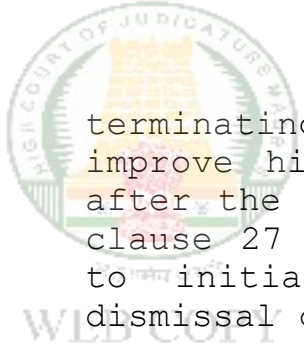


the impugned order. When there is a violation of specific direction given by this Court and when there is a violation of principles of natural justice, this Court, invoking Article 226 of the Constitution of India, can set aside the impugned order. But, the learned Single Judge has, without taking into consideration of the said aspect, has directed the respondents to initiate arbitration proceedings as per clause 27 of the agreement. Hence, this Court may set aside the impugned order and remit the matter back to the file of the respondents with a direction to pass orders after giving an opportunity of personal hearing to the appellant.

4. In this regard, the learned senior counsel appearing for the appellant relied upon the judgment of the Hon'ble Supreme Court of India in **Harbanslal Sahnia and another Vs. Indian Oil Corporation Limited and others, reported in (2003) 2 SCC 107**, wherein the Hon'ble Supreme Court in paragraph No.7 has held as follows;

"7. So far as the view taken by the High Court that the remedy by way of recourse of arbitration clause was available to the appellants and therefore, the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

5. Countering the above submissions made by the learned senior counsel for the appellant, the learned Additional Advocate General would submit that the transaction between the parties is contractual in nature and the terms and conditions are binding on both of them. In clause 29 of the agreement, it has been specifically stated that the respondents are having right to terminate franchise agreement, in case the appellant did not properly maintain the toilet. The appellant had not maintained toilets properly and the 1st respondent himself by inspection found the same on 05.10.2016. Therefore, a show cause notice was issued by the 2nd respondent on 08.10.2016 seeking explanation from the appellant. After properly considering the explanation and the terms of contract, the impugned order dated 15.11.2016 was passed



terminating the contract. The appellant is now attempting to improve his case by relying on the documents which are created after the inspection. The learned Single Judge, after considering clause 27 of the agreement, has rightly directed the respondents to initiate arbitration proceedings. Thus, he prayed for dismissal of the appeal.

6. In support of the above contentions, the learned Additional Advocate General relied on the latest decision of the Hon'ble Supreme Court in **Joshi Technologies International Inc. Vs. Union of India and others**, reported in (2015) 7 SCC 728, wherein the Hon'ble Supreme Court has held in paragraph No.69.2 as follows;

"69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when the settlement of disputes is to be resorted to through the means of arbitration."

7. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

8. The main submission of the learned counsel for the appellant is that even though there is no violation of any of the conditions in the agreement and there is a direction of this Court in W.P. (MD).No.20629 of 2016 to the second respondent to provide an opportunity to the appellant before passing an order, the first respondent has passed the impugned order in violation of the order passed in W.P.(MD).No.20629 of 2016 and also in violation of the principles of natural justice. The main submission of the learned Additional Advocate General is that since the appellant has violated the conditions of contract, the respondents issued show cause notice and after receipt of reply and after considering the explanation, the first respondent passed the impugned order against the appellants and hence, there is no violation of principles of natural justice.

9. Admittedly, it is a contractual matter. Due to violations of terms and conditions in the contract, the respondents, after issuing show cause notice, cancelled the contract. But, the respondents failed to initiate arbitration proceedings by appointing an arbitrator. The learned Single Judge, without going into the merits of the case, has directed the first respondent to initiate an arbitration proceedings as contemplated under clause 27 of the agreement within a period of three weeks and conclude the arbitration proceedings within a period of six weeks thereafter. The Hon'ble Supreme Court in the recent decision in **Joshi Technologies**



case, cited supra, after analysing various decisions, has segregated the issue with regard to the exercise of the jurisdiction by the High Court under Article 226 of the Constitution of India in the contractual matters and held that whenever a particular mode of settlement of dispute is provided in the contract, the High Court should refuse to exercise its discretion under Article 226 of the Constitution of India and relegate the party to the said mode of settlement. In view of the above, the appellant can very well work out her remedy in the arbitration proceedings by raising all her grievances. Thus, we do not find any infirmity or illegality in the order passed by the learned Single Judge. Hence, this writ appeal is liable to be dismissed.

10. In the result, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu Tourism Development
Corporation Limited,
Tamil Nadu Tourism Complex,
No.2, Vallajiah Road,
Chennai -2.

2. The General Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Chennai.

3. The Regional Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Madurai.

+1cc to Mr.S.C.Herold Singh, Advocate Sr.No.51397

+1cc to Mr.R.Murali, Advocate Sr.No.51297

gcg

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