

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

O.P. No.665 OF 2011

Gurumoorthy, Director,
M/s.Priyadarshini Salt Work (P) Ltd. ..Petitioner

Vs.

1. Deputy Salt Commissioner
Shastri Bhawan,
No.26, Haddows Road, Chennai- 6
2. Shri. P.M. Chougale,
Arbitrator ..Respondents

The Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed to set aside the Award passed by the second respondent in Arbitration O.P. No.1/2010 dated 19.05.2011.

For Petitioner : Mr. V.Perumal

For Respondent-1 : Mr.K. Raju
(Central Govt. Standing Counsel)

O R D E R

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award in Arbitration O.P. No.1/2010 dated 19.05.2011 passed by the second respondent.

2. The learned counsel for the petitioner would submit that the award passed by the Arbitrator/Second respondent herein is liable to be set aside on the ground that the first respondent has no jurisdiction to increase the assignment fee during the currency of the lease. According to the learned counsel for the petitioner, The Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, New Delhi, is only competent authority for effecting the assignment fee whereas on 19.02.2019, the first respondent without jurisdiction has enhanced the assignment fee from Rs.10 to Rs.38/-per M.T with effect from 07.07.2008 for having changed Directors of the petitioner company and subsequently by proceeding dated 27.04.2009, the first respondent, suo moto, accepted the assignment fee for a sum of Rs.1,28,128/- at old rate of Rs.10/-per M.T. Thereafter, the first respondent has preferred claim petition for enhancing the assignment fee at Rs.38/-per M.T whereby the arbitrator/second respondent has allowed the claim petition by award dated 19.05.2011 without considering the subsequent proceeding dated 27.04.2009 of the first

respondent. Hence, this Original petition has been filed to set aside the same.

3. It is an admitted fact that the lease period commenced from 18.08.1995 and was in force till 17.08.2015 and now, the lease period has expired. Hence, there is nothing survives in the said Original Petition for adjudication. However, the learned counsel for the petitioner convince the Court that the first respondent has no jurisdiction to enhance the assignment fee.

4. The learned counsel for the first respondent would submit that the Deputy commissioner, suo moto, by proceeding 27.04.2009 had accepted assignment fee for a sum of Rs.1,28,128/- at old rate and the first respondent had collected the same without demur towards dues of assignment fee. Therefore, now, the question of the competency of the Deputy Salt Commissioner would not arise at this stage.

5. The learned counsel for the petitioner himself has stated that since the lease period has been expired, there is no necessity to decide the matter at this stage. Hence, the relief sought for in the original petition became infructuous.

D. KRISHNA KUMAR, J.

lbm

6. In view of the above, it is admitted fact that the lease period expired in the year 2015 and the due assignment fee has been collected by the first respondent at old rate in pursuance of the order dated 27.04.2009 and thereafter, the first respondent had made claim before the arbitrator, the same has been decided by the arbitrator taking into consideration the dispute arose between the parties. But, as on today, nothing survives to adjudicate the matter in the present original petition.

7. In the light of the submission and having considered the above said facts, this original petition is dismissed as infructuous, however, legal issues involved in the Original Petition are left open.

सत्यमेव जयते

WEB COPY 23.10.2018

lbm

O.P. No.665 OF 2011