

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM

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

O.P. No.453 OF 2018
and
A. 4272 of 2018

1. The Managing Director,
The Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauk, Chennai - 600 010.
 2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation
Thanjavur Region.
- ..Petitioners

Vs.

M/s. Kannan Lorry Service,
Rep. by Its Sole Proprietor,
Mr. R. Nagarajan, having its Registered Office at
No.90, Sarangapani South Street, (1st Floor)
Kumbakonam- 612 001.

..Respondent

The Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed to set aside the Arbitration Award dated 08.02.2018 passed by the Arbitrator.

For Petitioners : Dr. Gowri

For Respondent : Mr. C.D. Sugumar

O R D E R

The Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed to set aside the Arbitration Award dated 08.02.2018 passed by the Arbitrator.

2. The respondent herein is a Transport contractor, who was the claimant before the Arbitrator and the petitioners herein are Tamil Nadu Civil Supplies Corporation Limited, (hereinafter referred to as "Corporation") who were the respondents before the Arbitrator.

3. The brief facts of the case as follows:

The petitioner corporation has proposed to award transport contract for internal movement (other than "FCI") for the period of one year starting from 01.07.2012 to 30.06.2013. The Managing Director/first petitioner herein has issued an order on 18.07.2012 in proceeding No.MT10/47008/2012 permitting the second petitioner/ The Senior Regional Manager, to award contract to the claimant/respondent herein as Transport Contractor (L1) for internal movement for the year 2012-2013 pursuant to which the second

petitioner immediately issued an order on 20.07.2012 in proceeding No.G3/10838/2012 awarding contract to the claimant/respondent as Transport Contractor (L1) for internal movement for the year 2012-2013 in respect of Thanjavur Region.

(3.1) Based on the order passed by the first petitioner, the second petitioner issued movement order to the claimant/respondent to comply with the tender conditions to deposit 2.5% of the total contract as security deposit (50% Cash + 50% Bank Guarantee) as per Clause 7(a) of tender conditions. The claimant/respondent being transport contractor ought to have remitted 2.5% of the transport charges as security deposit.

(3.2) The claimant/respondent had not remitted security deposit, therefore, the second petitioner by proceedings No.Proc.MT10/7292/2013 dated 11.08.2014 had directed the claimant/respondent to remit the amount of Rs.1,62,436/- (Rupees One Lakh Sixty Two Thousand and Four Hundred and Thirty Six Only) towards the loss of interest for the insufficient security deposit, remitted by the claimant/respondent. The second petitioner had also sent a notice to the claimant/respondent in RC. No.G3/12898/2014 dated 18.08.2014 . Being not satisfied with the reply, submitted by

the claimant/respondent, the second petitioner has passed an order in proceeding No.Proc.G3/12898/2014 dated 19.11.2014 by stating that a sum of Rs.1,62,436/- (Rupees One Lakh Sixty Two Thousand Four Hundred and Thirty Six Only) payable by the claimant/first respondent is adjusted from the transport charges payable to the claimant/respondent herein. Further, the balance amount of Rs.96,160/- (Rupees Ninety Six Thousand One Hundred and Sixty Only) paid to the claimant/respondent by way of cheque, which was received by the claimant on 12.12.2014. Being aggrieved, the respondent has filed a claim petition before the Arbitral Tribunal against the impugned order, dated 19.11.2014 passed by the second petitioner.

(3.3) The learned Arbitrator has passed an award dated 08.02.2018 allowing the claim petition filed by the claimant/respondent and directed the corporation to refund the recovered interest amount of Rs.1,62,436/- (Rupees One Lakh Sixty Two Thousand and Four Hundred and Thirty Six Only) to the claimant/respondent herein.

4. Challenging the aforesaid award, the present Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has

been filed by the Petitioners/Corporation praying to set aside the award dated 08.02.2018 passed by the Arbitrator.

5. The learned Counsel for the petitioners/Corporation would submit that even though the Corporation has filed a detailed counter affidavit, before the Arbitrator, the learned Arbitrator, without considering the submission made by the corporation, has passed an erroneous award, in favour of the claimant/respondent. Hence, the award passed by the Arbitrator is liable to be set aside as devoid of merits.

6. The learned counsel for the petitioners/corporation would submit that the petitioner corporation mainly relying upon the terms and conditions stipulated in Clause 7(c) stating that the Corporation can deduct from the Security deposit or any other outstanding amount any sum that may be fixed by Tamil Nadu Civil Supplies Corporation as being the amount of loss or damages suffered by it, due to delay in performance or non-performance of any of the conditions stipulated in the tender.

7. According to the learned Counsel for the petitioners/Corporation, the claimant/respondent ought to have

remitted a sum of Rs.25,82,976/- (Rupees Twenty Five Lakhs Eighty Two Thousand Nine Hundred and Seventy Six Only) as Security deposit being 2.5% of transport charges of Rs.10,33,19,056.35 (Rupees Ten Crores Thirty Three Laksh Ninety Thousand and Fifty Six Only and Paise Thirty Five Only) paid in the previous year i.e.2011-2012. However, the claimant/respondent has remitted only Rs.3,00,000/- (Rupees Three Lakhs only) and the same was adjusted, at the request of the claimant/respondent, towards Security deposit as the said amount was already in the credit of Corporation payable to the claimant/respondent herein.

8. The learned Counsel for the petitioners/Corporation would further submit that on the basis of the previous year bill, the tender floated for a sum of Rs.10,33,19,056.35 (Rupees Ten Crores Thirty Three Laksh Ninety Thousand and Fifty Six Only and Paise Thirty Five Only) towards transport charges and the claimant/respondent ought to have deposited a sum of Rs.25,82,976/- (Rupees Twenty Five Lakhs Eighty Two Thousand Nine Hundred and Seventy Six Only) as Security deposit for the year 2012-2013, as per clause 7(a) of the tender conditions. However, the claimant/respondent has not deposited the aforesaid Security deposit. But the second petitioner confirmed the tender in favour of the claimant/respondent even though the

claimant/respondent has not complied with the tender conditions. In view of non-compliance of the tender condition, the first petitioner has issued proceedings on 14.02.2013 by awarding contract to L2 contractors for the year 2012-2013. Accordingly, the Second petitioner has issued separate orders awarding contract to 10 contractors (L2) on payment of security deposit for internal movement for the year 2012-2013 in respect of Thanjavur Region. Thus, the total amount of Rs.25,82,976/- (Rupees Twenty Five Lakhs Eighty Two Thousand Nine Hundred and Seventy Six Only) has been collected towards security deposits from 11 contractors (i.e.Claimant/Respondent/L1-1 and Additional Transport Contractors/L2- 10 Nos. totally 11 contractors.), since the claimant/respondent has deposited a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) only as Security deposit. The claimant/respondent has remitted security deposit for Rs.3,00,000/- (Rupees Three Lakhs Only) on 18.07.2012 and on 14.2.2013, a sum of Rs.2,34,816/- (Rupees Two Lakhs Thirty Four Thousand Eight Hundred and Sixteen Only) was collected from each of the 10 contractors (L2) to adjust the aforesaid amount of Rs.25,82,976/- (Rupees Twenty Five Lakhs Eighty Two Thousand Nine Hundred and Seventy Six Only) as security deposit. The second petitioner has sent a demand notice on 18.08.2014 calling upon the claimant/respondent to remit a sum of Rs.1,62,435.31 (Rupees One Lakhs Sixty Two Thousand Four Hundred

and Thirty Five and Paise Thirty One Only) towards loss of interest on the insufficient security deposit after deducting Rs.3,00,000/- (Rupees Three Lakhs only) which was already in the credit of the petitioner corporation. Being not satisfied with the reply made by the claimant/respondent, the second petitioner has passed an order on 19.11.2014 to adjust a sum of Rs.1,62,435.31 (Rupees One Lakhs Sixty Two Thousand Four Hundred and Thirty Five and Paise Thirty One Only) from the transport charges payable to the claimant/respondent herein. Accordingly, the aforesaid amount was deducted from the outstanding bill amount payable to the Claimant/respondent. After deducting the aforesaid amount from the credit, the petitioner/corporation paid balance amount of Rs.96,160/- (Rupees Ninety Six Thousand One Hundred and Sixty Only) to the claimant/respondent by way of Cheque and the same was received by the claimant/respondent on 12.12.2014. Being aggrieved by the action of the petitioner/corporation, the claimant/respondent herein has approached the Arbitral proceedings, for setting aside the order passed by the second petitioner herein.

9. The Arbitrator passed an award by allowing the claim petition filed by the claimant/respondent herein and also directed the petitioners/Corporation to refund the deducted amount of

Rs.1,62,436.35 (Rupees One Lakhs Sixty Two Thousand Four Hundred and Thirty Five and Thirty One Paise Only) to the claimant/respondent herein.

10. Heard, the learned counsel for both parties and perused the available material on record.

11. It is useful to extract the relevant clauses 7(a)(b)(c)(f) and 22 of the agreement hereunder:

7(a): The successful tenderer must deposit 2.5% of the total contract value by rounding off to nearest thousand as Security Deposit out of which 50% in the form of Demand Draft subject to a minimum of Rs.2.0 lakhs drawn in favour of Tamil Nadu Civil Supplies Corporation in any Nationalized / Scheduled Bank Payable at Headquarters of the region concerned and 50% in Bank Guarantee from Nationalized / Scheduled Bank in favour of Tamil Nadu Civil Supplies Corporation of the region concerned within 7 days from the date of order as per the proforma in (Annexure-IV) towards the security deposit, failing which, the earnest money deposit will be forfeit without any further notice.

7(b): The Security Deposit shall be liable to be forfeited wholly or partly at the sole discretion of Tamil Nadu Civil Supplies Corporation of the successful tender either fails to transport as per the schedule specified by

the Corporation or to fulfil his contractual obligations or to settle in full his dues to Tamil Nadu Civil Supplies Corporations. This will be in addition to Tamil Nadu Civil Supplies Corporation's right to make alternative arrangement at the risk and cost of the successful tenderer.

7(c). Tamil Nadu Civil Supplies Corporation is empowered to deduct from the Security deposit or any other outstanding amount any sum that may be fixed by Tamil Nadu Civil Supplies Corporation as being the amount of losses or damages suffered by it, due to the delay in performance or non-performance on any of the condition of the tender/contractor.

7(f): The successful tenderer should submit an agreement in a non-judicial stamp paper of a minimum value of Rs.20/- as per the law in force along with "Security Deposit".

Clause 22:

"After the Contractor performs and completes the contract duly in all respects and claims to have completed the performance of the contract and after due audit of accounts of the particular contract period, Corporation shall refund the Security Deposit to the Contractor after deducting the dues if any brought out by the Audit of Regional heads including losses and damages which the corporation may have to incur and is entitled to recover from the contractor."

12. The learned counsel for the petitioner would further submit that as per Clause 7(a), the claimant/respondent has to comply with the tender condition within 7 days from the date of order as proforma in Annexure-IV towards security deposit failing which, the earnest money deposit will be forfeited without any further notice. In view of the aforesaid clause, the petitioners can forfeit the security deposit and reject the tender. Hence, as per the clause 7(a)(b)(c)(f) and 22, the claimant/respondent is liable to pay the loss/damages suffered by the petitioner corporation.

13. The learned counsel for the petitioner also brought to the notice of this Court that the disciplinary proceedings has been initiated against one Murugesan, who was the then Superintendent as well as the Senior Regional Manager concerned in the Corporation for violation of the tender conditions for not having received adequate security deposit. Hence, the Arbitrator, without considering the terms and conditions stipulated in the aforesaid clauses, passed an erroneous award which is liable to be quashed as null and void.

14. The petitioner corporation awarded a contract to the claimant/respondent(L1), for internal movement for the year

2012-2013 vide proceedings No.G3/Thanjavur 10838/2012 dated 20.07.2012, after adjusting a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) already remitted by the claimant/respondent towards Security deposit. Therefore, the claimant/respondent was informed that by splitting the contract from L1, awarded to L2 contractors and collected towards security deposit from them. Therefore, the claimant/respondent was directed to deposit balance amount of Rs.35,000/- (Rupees Thirty Five thousand only) to the petitioner corporation. In reply, by letter dated 14.03.2013, the respondent requested the first petitioner to adjust the above amount from and out of Rs.1,00,000/- (Rupees One Lakhs Only) E.M.D. deposited and refund the balance amount of Rs.65,000/- (Rupees Sixty Five Thousand only) to the claimant/respondent. Accordingly, the first petitioner, by letter dated 15.04.2013 refunded Rs.65,000/-(Rupees Sixty Five Thousand only) to the claimant/respondent payable by the Corporation to the claimant/respondent herein. Thereafter, the claimant/respondent was awarded contract by the second petitioner vide proceedings No.G3/Thanjavur-10838/2012 dated 20.07.2012. Further, the claimant/respondent has performed the contract successfully by following terms and conditions of the Corporation. After completion of the contract to the satisfaction of the Corporation, the demand of interest, made by the petitioner Corporation for the

insufficient security deposit for the delayed period was rightly rejected by the Arbitrator.

15. Admittedly, as per the terms and conditions stipulated in Clauses 7(b), the Security Deposit shall be liable to be forfeited wholly or partly at the sole discretion of Tamil Nadu Civil Supplies Corporation if the successful tenderer either failed to complete the work as per the schedule specified in the contract or to fulfil its contractual obligations or fail to settle dues to Tamil Nadu Civil Supplies Corporations. Further, Tamil Nadu Civil Supplies Corporation reserved right to make alternative arrangement at the risk and cost of the successful tenderer. However, in the present case on hand, the work order issued by the second petitioner in favour of the claimant/respondent, vide proceedings No.G3/10838/12 dated 20.07.2012 as transport contractor (L1) after accepting the security deposit made by the claimant/respondent. Even at the time of issuing work order, the Corporation has not made any objection or reference, regarding the difference amount, which ought to have been paid by the claimant/respondent, as per the terms and conditions, stipulated in the aforesaid clauses. The difference amount of Rs.22,82,976/-(Rupees Twenty Two Lakhs Eighty Two Thousand Nine Hundred and Seventy Six Only) payable by the claimant/respondent towards security

deposit, was collected from the other transport contractors/L2 tenderers. On the basis of the audit objection, the petitioner corporation sent a notice, dated 13.08.2014 by directing the claimant/respondent to remit a sum of Rs.1,62,435.35 (Rupees One Lakhs Sixty Two Thousand Four Hundred and Thirty Five and Paise Thirty Five Only) towards interest for the insufficient deposit. On perusal of the tender conditions, it is clear that the Corporation have to refund the security deposit, after deduction of dues, if any, brought by audit department including losses or damages, during the contract period. In this case no loss has been reported on the services rendered by the claimant/respondent during the contract period. Therefore, the learned arbitrator has rightly allowed the claim petition by setting aside the proceedings No.G3/12898/2014 dated 19.11.2014 passed by the second petitioner.

16. The Division Bench of this Court in the case of "Project Director, Tamil Nadu Road Sector Project II Vs. M/s.RNS Infrastructure Ltd- GPL (JC) and Others (O.S.A No.301 of 2017 and C.M.P. No.18730 of 2017) held as follows:

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20. The scope for interference to an Arbitration award is very limited. Unless and until the

applicant satisfies the requirements of Section 34 of the Act, the Arbitration Award cannot be set aside by this Court.

21. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, to an Arbitral Award is covered by the decision of Hon'ble Supreme Court in

(a) Oil & Natural Gas Corporation Ltd., Vs. Saw Pipes Limited reported in (2003) 5 SCC 705, wherein it was held that the Court can set aside the award, if -

1) It is contrary to:-

(a) fundamental policy of Indian Law; (or)

(b) Interest of India; (or)

(c) Justice and morality.

2) It is patently illegal

3) It is so unfair and unreasonable that it shocks the conscience of the Court.

17. The petitioner has not satisfied the requirements of Section 34 of the Arbitration and Conciliation Act, 1996. Hence, the Original Petition is liable to be dismissed.

18. In the light of the decisions cited supra, the award has been passed upon scrutinizing the documentary evidence submitted before the arbitrator and after correctly analysing the clauses contained in the

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tender agreement. Therefore, this Court does not find any ground to interfere with the award passed by the learned arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996.

19. In the facts and circumstances of the case and the decision cited supra, the original petition shall stand dismissed. Consequently, Application No.4272 of 2018 is closed. There shall be no order as to costs.

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Index: Yes

Internet: Yes

Speaking/Non-Speaking order

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