

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.Nos.114 & 115 of 2018 & CMP.Nos.7190 & 7191 of 2018

1.The Tamil Nadu Civil Supplies Corporation,
rep.by its Managing Director,
Having its Registered Office at
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

2.The Regional Manager,
Thiruvallur Region,
Tamil Nadu Civil Supplies Corporation,
Periyakuppam, Thiruvallur.

3.The Senior Regional Manager,
Chennai North Region,
Tamil Nadu Civil Supplies Corporation,
Chennai-600 086.

... Appellants in both appeals/Respondents
Vs

M/s.Saravana Transport
rep.by its Proprietor
S.Prabhakaran

Respondent in both appeals/Applicant

Prayer in O.S.A.No.114 of 2018:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent to set aside the order and decreetal order dated 06.12.2017 passed in Application No.8043 of 2017 in Original Application No.1199/2017 on the file of this Hon'ble Court.

A.No.8043 of 2017: Application praying that this Hon'ble Court be pleased to grant of order of ad interim stay of the operation of the proceedings in Proc.No.B4/864/17, dated 25.11.2017 on the file of the 2nd Respondent pending award pursuant to arbitral proceedings initiated vide arbitration notice dated 04.12.2017.

O.A.No.1199 of 2017: Original Application praying that this Hon'ble court be pleased to grant an order of ad - interim

injunction restraining the respondents from in any way encashing adjusting or invoking the security deposit of Rs.14,76,000/- held by the respondents under the Agreement dated 01.09.2017 pending award pursuant to arbitral proceedings initiated vide arbitration notice dated 04.12.2017.

Prayer in O.S.A.No.115 of 2018:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent to set aside the order and decreetal order dated 07.12.2017 passed in Application No.8044 of 2017 in Original Application No.1199/2017 on the file of Original Side of this Court.

A.No.8044 of 2017: Application praying that this Hon'ble Court be pleased to grant of order of ad interim stay of the operation of the proceedings in Na.ka.No.M4/007326/2017 dated 27.11.2017 on the file of the 3rd Respondent pending award pursuant to arbitral proceedings initiated vide arbitration notice dated 04.12.2017.

For Petitioner in both appeals: Mr.C.P.Sivamohan

For respondents in both appeals: Mr.P.Wilson, Senior Counsel
for Mr.Richadson Wilson

COMMON JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

By consent, these Original Side Appeals are disposed of by this common judgment.

2. The respondent/applicant filed O.A.No.1199 under Section 9 of the Arbitration and Conciliation Act, 1996 against the appellant herein praying for an order of ad-interim injunction restraining the appellants herein from in anyway encashing, adjusting or invoking the security deposit of Rs.14,76,000/- held by them under the Agreement dated 01.09.2017 pending arbitration proceedings initiated, vide Arbitration notice dated 04.12.2017. The respondent also took out A.No.8043 of 2017 under the said provision for an order of ad-interim stay to stay the operation of the proceedings dated 25.11.2017 on the file of the 2nd appellant, pending initiation of the arbitration proceedings, vide notice dated 04.12.2017 and also stayed the operation of the proceedings of the 3rd appellant dated 25.11.2017 pending commencement of the arbitration proceedings. The sum and substance of the case of the respondent is that the appellants had entered into a movement agreement dated 01.09.2017 with the 2nd appellant for Thiruvallur Region to transport stocks from the Depots of the Food Corporation of India to the Godown of the appellant and yet another agreement dated 21.08.2017 to move the goods of Food Corporation of India

to the regional Godowns in the Chennai North Region and yet another agreement dated 28.09.2017 to move non-Food Corporation of India goods within the Chennai North Region. The respondent also paid an amount of Rs.14,76,000/- towards security deposit in respect of the agreement dated 01.09.2017, which is valid for the period 2017-18 and similarly, the appellant held a sum of Rs.16,61,000/- and Rs.10,22,850/- in respect of the agreement dated 28.09.2017.

3. It is the case of the respondent that on 23.11.2017, a Lorry bearing Registration No.TN 21 H 9099 belonging to one Mrs.Kavery who is a member of the Arakonam Lorry Owner's Welfare Association, has to move the goods from the Food Corporation of India Godown at Arakonam to Tamil Nadu Civil Supplies Corporation Godown at Pallipattu and the driver was one Mr.Babu. It is the case of the respondent that without his knowledge, Mr.Babu/Driver of the said vehicle had handed over the lorry during mid-way to one Mr.Suresh, who is known to him and Mr.Suresh, instead of driving the lorry to Godown, TNCSC, had diverted the lorry carrying 550 bags of rice to a private rice Godown at Ameerpettai, Tiruttani and it had come to his knowledge. Subsequently in this regard, criminal prosecution was also lodged and a First Information Report came to be registered by CBCID (Civil Supplies) bearing C.C.No.207 of 2017 dated 23.11.2017 against Thaivasigamani and five others in which they have been arrayed as accused. It is the further case of the respondent that immediately he has also submitted his explanation dated 24.11.2017 and it was also sent through E.Mail on 24.11.2017. However, the 2nd respondent, vide proceedings dated 25.11.2017, has proceeded to blacklist him and terminated the agreement dated 01.09.2017. Therefore, he came forward to file the said application for appropriate interim orders.

4. The appellants, who are arrayed as respondents in the applications, have filed their counter affidavit and took a stand that on account of registration of the criminal case and to avoid smuggling of Food grains in Public Distribution System, the agreement entered into between them with the respondents was cancelled and his name was also included in the Black List Order, vide proceedings dated 25.11.2017 passed by the 2nd appellant and however further directed to handover the Global Positioning System (GPS) machines fixed in the lorries immediately and it is also followed by the order of the 3rd appellant dated 27.11.2017 terminating the contract and therefore, it cannot be faulted with.

5. The learned Judge, vide impugned order dated 05.12.2017 in O.A.No.1199 of 2017, has granted interim stay of the order of the 2nd appellant dated 25.11.2017 on the ground that it prima facie be appears that the order of termination and blacklisting dated 25.11.2017 has been issued without giving notice of 15

days, as provided under Clause 25 of Agreement dated 01.09.2017. Insofar as the prayer for interim stay of the order dated 25.11.2017 is concerned, in the light of the submission made by the respondent in his letter dated 24.11.2017, did not grant any relief and however, made it clear that the appellants shall use the lorries owned by the respondent herein / applicant under their control and supervision. The respondents in the applications, challenging the legality of the orders passed in A.Nos.8043 and 8044 of 2017, came forward to file these appeals.

6. The learned counsel appearing for the appellants would submit that admittedly in violation of the Clauses of the Agreement, the lorry with essential commodities has been unauthorisely handed over to one Mr.Suresh, who has diverted the stocks to a private godown and in this regard, a case in Crime No.207/2017 has also been registered by CBCID (Civil Supplies) and taking into consideration the over all facts and circumstances, the impugned order of blacklisting and termination came to be passed rightly and the learned Judge, without appreciating the relevant materials, had granted interim orders and therefore, prays for interference.

7. Per contra, Mr.P.Wilson, learned Senior counsel assisted by Mr.Richard Wilson, learned counsel appearing for the respondent has invited the attention of this Court to the terms of the agreement and would submit that the orders of termination and blacklisting had visited the respondent/applicant with grave civil consequences and the learned Judge, having found that necessary Clauses have been adhered to, has rightly granted interim orders and prays for dismissal of these appeals with costs.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Clause No.25 of the agreement / FCI termination dated 01.09.2017.

The Corporation (i.e) SRM/RM reserves right to terminate the contract and to black list the contractor on reasonable cause after giving fifteen days notice to the contractor, in case the performance of the contractor is found to be unsatisfactory and it shall be lawful for the Corporation to get the work done by other sources and to adjust in full or part, the extra expenditure and damages if any suffered by the Corporation as consequences of the breach of contract on the part of the contractor from out of the Security Deposit furnished by the contractor and other amounts due to the contractor from the Corporation besides legal remedy. The decision of the Managing Director Senior Regional Manager/Regional Manager in this regard, will

be final and binding on the contractor.

10. A perusal of the proceedings of the second appellant dated 25.11.2017 would disclose that on account of registration of the case in C.C.No.207/2017 and by invoking Clause No.9, the Contract came to be terminated and also blacklisted the respondent. The learned Judge in the impugned order has placed reliance upon the decision reported in 2014 [9] SCC 105 [Gorkha Security Services Vs. Government of NCT of Delhi] and granted interim orders.

11. Clause 25 of the Agreement mandates the issuance of fifteen days notice to the contractor before terminating the contract and blacklisting and admittedly, no such notice has been issued to the respondents. The second appellants has invoked Clause No.9 of the agreement and it should be read along with Clause No.25 of the agreement which contemplate that prior notice granting fifteen days time before termination and blacklisting the contract and since, it has not been done so, the learned Judge has rightly granted interim orders.

12. It is a well settled position of law that the applicability of principle of natural justice can be excluded by specific clause or provision and in the absence of same, it is mandate cast upon the concerned person to adhere to the principles of natural justice. Clause No.25 of the agreement also provides issuance of fifteen days notice before blacklisting and terminating the contract and admittedly it has not been done so.

13. In the considered opinion of this Court, the learned Judge has properly appreciated the materials placed before this Court and exercised the discretion properly and therefore, no interference is warranted in the hands of this Court in exercise of appellate jurisdiction. Therefore, both these appeals are dismissed, confirming the orders dated 06.12.2017 and 07.12.2017 passed in Application Nos.8043 and 8044 of 2017 respectively. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

sk

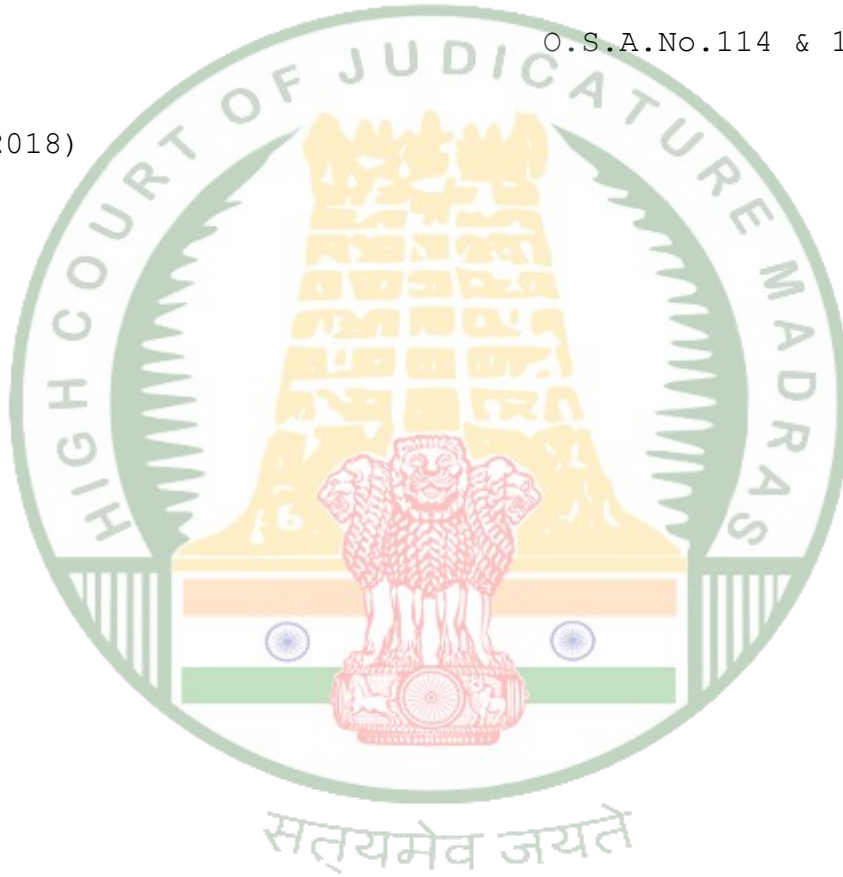
To

1. The Sub Assistant Registrar(O.S)
High Court, Madras 104.

+2 CC to Mr.C.P. Sivamohan, Advocate sr 30973, 30974
+1 cC to Mr.P. Wilson Association sr 30416.

O.S.A.No.114 & 115 of 2018.

TM(CO)
SP(28/04/2018)



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