IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM

THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.156 of 2010

N.Saravanan, Sole Proprietor,
NSM Transport, Ex. HTC, CW, Trichy,
71/18A, Nandavanam Stores,
Palakkarai, Trichy-1. ..Petitioner

Vs.

1.Central Warehousing Corporation,
4/1 SIRI Institutional Area,
Hauz Khas, New Delhi-16.

2.Shri S.P.Singha,
Sole Arbitrator,
Q-505 Anupam Apartments,
East Arjun Nagar, Sahadra,
New Delhi-32. .. Respondents

Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned Award passed by the Arbitrator on 13.09.2003 insofar as the allowance of the claims made by the first respondent against the petitioner.

For Petitioner : Mr.S.Vijayakumar
For 1st respondent : Mr.A.J.Abdul Razak

ORDER

The petitioner entered into a contract with the first respondent being the contract of handling and transport of food grains, fertilizers etc. In fact, the petitioner was supposed to store and transport the food grains on behalf of the first respondent. Accordingly, the contract was awarded on 02.05.2001 in the nature of Adhoc H & T contract. It was followed by an agreement executed on 11.05.2001. Clause IX of the tender deals with period of contract in the following manner.

> **"Clause IX – Period of Contract**
>
> The contract shall remain in force for a period of three months from the date of award or an alternative H & T contract comes into operation whichever is earlier or such later day as may be decided by the Regional Manager but the Regional Manager reserves the right to:-
>
> (i) to extend the period of contract for a further period upto 3 months on the same rates, terms and conditions;
> (ii) to terminate the contract at any time................"

2. The agreement signed between the parties provides as follows:

> " I assure the said Corporation that I will undertake the said work to the best of my ability at all stages, during the tenure of the contract. The agreement will remain in force for a period of three months with effect from 02.05.2001 or an alternate H &T contract comes into operation whichever is earlier. The contract is extendable for a further period beyond the initial period of three months if occasion so arises, on same rate, terms & conditions at the discretion of the Corporation."

3. From the above, it can be seen that though the period of contract is only for a period of three months, the first respondent can extend it for the three months on the same rates, terms and conditions. Thus, Clause IX was also incorporated into the agreement between the parties. This is for the reason that the commodities being perishable and involving public interest, as the food grains are to be distributed to the general public, the work cannot be left in the midway.

4. After the expiry of three months, the petitioner has informed the first respondent that he did not want extension of contract. The request was rejected by asking the petitioner to go on. The petitioner was not inclined to do the work. Thereafter, a new contractor was engaged, resulting in the termination of the contract with the petitioner. The first respondent also incurred loss towards the excess payment made to the new contractor by name M/s VISTAS Advertising Services. This loss was claimed on the basis of both risk and costs. Thus, the first respondent, being the claimant, sought for several claims among other.

5. The petitioner made a counter claim, which is inclusive of the adjustment made by the first respondent towards earnest money deposit and security deposit.

6. The learned Arbitrator allowed the counter claim while allowing the claim of the first respondent only for a sum of Rs.12,25,287/- being the claim No.1 towards the risk and costs, as a third party contract was engaged on the refusal of the petitioner. This has been challenged in this present original petition.

7. The learned counsel appearing for the petitioner would submit that the objection on maintainability has to be seen contextually inasmuch as the agreement and the work were within the jurisdiction of this Court. Though the work was done within the jurisdiction of the Trichy District, the contract was signed within the jurisdiction of this Court. However, the arbitration was done at Delhi and therefore, this Court has got jurisdiction. There cannot be an unilateral extension of contract. The petitioner did not agree to the extension. The contract has been forced on the petitioner by using the unequal bargaining power. Therefore, Section 23 of the Indian Contract Act, 1872, would come into play. Hence, the petition will have to be allowed.

8. The learned counsel appearing for the first respondent would submit that the petition itself is not maintainable. Both the seat and venue of arbitration were at New Delhi. Even if the work was done at Trichy, the petition would have been filed before the District Court at Trichy. Merely because, the contract was signed within the jurisdiction of this Court, the petition cannot be made maintainable. On merits, it is submitted that Clause IX and the covenants of the agreement being binding, the learned Arbitrator has rightly passed an award. The same was quantified

based upon the costs and risk amount claimed on several headings. There is no serious dispute made on the quantum. Ex.C-48 has been taken into consideration by the Court for the aforesaid purpose. Thus, no interference is required.

9. This Court is inclined to go into the merits of the case. However, even on the question of jurisdiction, this Court is of the view that the petition deserves to be rejected. A perusal of the tender form, through which, the arbitration clause was invoked, would show that the Managing Director, Central Warehousing Corporation, New Delhi, was appointed as sole Arbitrator. There was no objection to this clause. Clause XIX, which deals with arbitration also gives a discretion to the Arbitrator to fix the venue. Therefore, both the seat and venue of the arbitration is at New Delhi. Sections 16 and 20 of the Civil Procedure Code would not have an application to the jurisdiction exercisable under the Original Side of this Court as this Court. Clause IX of the tender condition and the covenant in the agreement clearly state that the contract is extensionable on the discretion of the first respondent. We are not dealing with the renewal of the contract, but an extension of the same terms. Once such an option is exercised, then the original term of three months would get extended

automatically. Having agreed with the terms, it is not open to the petitioner to contend to the contrary.

10.The learned Arbitrator has rightly interpreted the aforesaid provisions and held it against the petitioner. Hence, such an interpretation cannot be interfered with as having been made on the agreement entered into between the parties. The learned Arbitrator took into consideration of the document produced in writing and awarded the claim of Rs.12,25,287/- in favour of the first respondent. There is no serious challenge to the quantum arrived at by the first respondent. Even otherwise, the finding arrived at being factual on the document produced by the first respondent and in the absence of any other contra material, this Court does not find any need to interfere with it. There is no application of Section 23 of the Indian Contract Act, 1872 to the case on hand. The power was granted to the first respondent to tide over the factual situation, as transport and storage involve public function. Therefore, the contract has to be seen as a whole. It is a mere extension to get the job done. It is the petitioner, who did not produce any materials to show his inability to do the work. He was made to know that such a discretion would be exercised by the first respondent. Therefore, having made known the terms of the contract, it is not open to the petitioner to wriggle out of it subsequently. Thus, this Court does not find any reason to interfere with the award passed. Accordingly, the original petition stands dismissed. No costs.

28.02.2018

raa

M.M.SUNDRESH,J.

raa

O.P.No156 of 2010

28.02.2018