

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.08.2018
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30936 of 2016 and
W.M.P.No.26803 of 2016

M/s. Purple Infotech Ltd,,

Represented through The Manager (Sales)
Mr. A.Robinson,S/o. Late A.Abraham Paulraj,
No. 1666,2nd Floor,I Block, 6th Avenue,
Anna Nagar, Chennai - 600 040

.. Petitioner

Vs

- 1.The Director General of Police,
Tamilnadu, Chennai - 600 004
- 2.The Additional Director General of Police,
Technical Services, Chennai - 600 004
- 3.The Inspector General of Police,
Technical Services, Chennai - 600 004
4. The Inspector General of Police,
Modernisation, Chennai - 600 004.
5. The Assistant Inspector General of Police,
Head Quarters, Chennai - 600 004
6. The Commissioner of Police,
Trichi City, Tiruchirapalli.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the 1st respondent in Rc. No. 47940/SA. II(1)/2013 dated 29.04.2016 quash the same and consequentially direct the 1st respondent to refund the bank guarantee amount of Rs.29,58,972/-, encashed by the 1st respondent.

For Petitioner : Mr.S. Udaya Bharathi
For Mr.Ahmad Associates

For Respondents : Mr.D.Raghu
Government Advocate

ORDER

The order passed by the Director General of Police, Tamil Nadu, Chennai in his proceedings dated 28.04.2016 directing to pay the penalty amount of Rs. 18,29,056/- by way of demand draft in favour of Assistant Inspector General of Police, Chennai is under challenge in this Writ petition.

2.The Grievances of the Writ petitioner is that he entered into a contract agreement with the respondent Police department. The said agreement was signed by the respective parties concerned on 20.05.2009. The allegation of the writ petitioner is that the impugned order impugned has been passed in violation of the terms and conditions of the contract.

3. Learned counsel appearing on behalf of the respondent relying on the typed set of papers filed on behalf of the respondents contended that the contract agreement contains separate clauses for settlement of disputes. Clause 29 of the agreement, which deals with settlement of disputes reads as under:

" Clause 29 : Settlement of disputes

I.All disputes or differences of any kind whatever, arising out of or in connection with contract whether during the progress of the supply or after the completion and whether before or after the determination of the contract shall be referred to the purchaser who shall within reasonable time notify his decisions thereon in writing. The decisions, directions and certificates issued by the purchaser on any matter shall be final and binding on the contractor, except and until modified under Arbitration proceedings as set out below:

II. If the Contractor is dissatisfied with the decision of the purchaser of any matter in question, disputes or differences, or if the purchaser fails to make a decision within reasonable time, the contractor shall within 10 days on receipt of the communication of such decision or after expiry of reasonable time as the case may be, demand in Writing that such matters in question, dispute or differences be referred to Arbitration.

III. Supply Under the contract shall continue during the arbitration proceedings and payment due or payable by the purchaser shall be withheld on account of such proceedings provided however it shall be open for the

arbitrator to consider and decide whether or not such supply / withheld payment should continue / withheld during arbitration proceedings.

IV. The Arbitrators shall have power to call for such evidence by way of affidavits or otherwise as he shall think proper, and it shall be the duty of the party to do or cause to be done all things as may be necessary to enable the arbitrator to make the award without any delay.

V. It will be no objection that the person appointed as arbitrator is a Government servant and that in the course of duties as a Government he has expressed views on all or any of the matters in dispute.

VI. Subject as aforesaid, the Arbitration Act 1848 and the Rules there under and any statutory modifications thereof, shall apply to the arbitration proceedings under this clause."

4. This Court is of an opinion that in respect of the penalty amount which is under challenge in this writ petition, the writ petitioner has to establish his case before the competent forum to be constituted under the contract agreement. This apart, such disputed and complex question of fact and circumstances can never be adjudicated in proceedings under Article 226 of the Constitution of India. Such disputed facts are to be adjudicated by filing necessary documents and by adducing evidences. This apart, the contract agreement provides a clause for settlement of disputes and accordingly that an arbitrator is to be appointed for the purpose of resolving all such complex facts and circumstances arising on account of the contract agreement. This court cannot adjudicate the grounds raised in this writ petition on merit which all are in relation to the transactions between the parties to the contract agreement.

5. In this view of the matter, it is left upon to the writ petitioner to invoke clause 29 of the contract agreement and redress his remedy in the manner known to law. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

kst/kmm

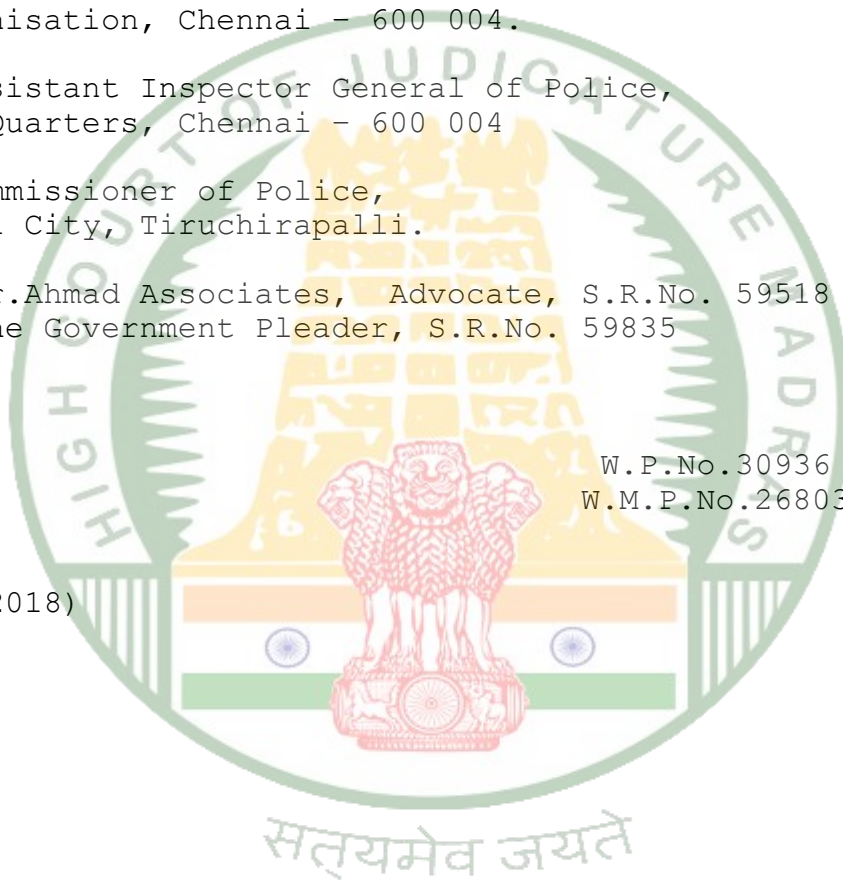
To

- 1.The Director General of Police,
Tamilnadu, Chennai - 600 004
- 2.The Additional Director General of Police,
Technical Services, Chennai - 600 004
- 3.The Inspector General of Police,
Technical Services, Chennai - 600 004
4. The Inspector General of Police,
Modernisation, Chennai - 600 004.
5. The Assistant Inspector General of Police,
Head Quarters, Chennai - 600 004
6. The Commissioner of Police,
Trichi City, Tiruchirapalli.

+1cc to Mr.Ahmad Associates, Advocate, S.R.No. 59518
+1cc to the Government Pleader, S.R.No. 59835

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SPD(CO)
GN(12/09/2018)



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