

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2745 of 2019

and

W.M.P.Nos.3010,3012 & 5304 of 2019

Jugnu Jayant

...Petitioner

Vs.

1. The Deputy Chief Commercial Manager
& FM,
Headquarters Office, Commercial Branch,
Freight Marketing, Southern Railway,
Chennai - 600 003.

2. Union of India,
Rep. by its Secretary to Government,
Ministry of Railways,
256-A, Raisina Road, Rajpath Area,
Central Secretariat,
New Delhi - 110 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Letter No.C.206/86/40/38/ VPH/T.49/T.No.16031/16032 dated 20.01.2015 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to refund the security and Earnest money deposit withheld by the 1st respondent in the name of the petitioner or his firm, Jai Balaji Leasing with respect to other completed contracts as well as new contracts.

For Petitioner : Mrs.R.Maheswari
For Respondents : Mr.P.T.Ramkumar
Standing Counsel

ORDER

This writ petition is filed seeking for the following relief:

To issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Letter No.C.206/86/40/38/VPH/T.49/T.No.16031/16032 dated 20.01.2015 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to refund the security and Earnest money deposit withheld by the 1st respondent in the name of the petitioner or his firm, Jai Balaji Leasing with respect to other completed contracts as well as new contracts.

2. Heard both sides.

3. This Court is not inclined to entertain the Writ Petition any further and decide the matter on merits solely on the reason that the agreement of contract entered into between the parties contains the arbitration clause and therefore, if any dispute arises between the parties, it is to be resolved only through arbitral proceedings and not by filing a writ petition, as has been done in this case. Moreover, the impugned communication was issued as early as on 20.01.2015 and the present writ petition is filed after such a long time which is however sought to be explained by stating that the said

proceedings was issued without hearing the petitioner and thus, it violates the principles of natural justice.

4. However, perusal of the communication issued by the Railway dated 19.01.2017 to the petitioner would show that the Railway has already decided to invoke Clause 26.3 of the contract and seek for the reference of the dispute to the arbitration, by an Arbitrator appointed in terms of the contract. Therefore, such stand taken by the railway is apparent and evident by way of their further communication issued on 12.06.2018 as well.

5. When such being the factual position, I do not think that the petitioner can canvass anything on merits before this Court in respect of the dispute pending between the parties, as the same has to be referred to and agitated only before Arbitrator. Accordingly, without expressing any view on the merits of the matter, the Writ petition is dismissed as not maintainable, however, by granting liberty to the respective parties to agitate the matter by way of arbitral proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

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18.02.2019

Speaking/Non-speaking order
Index: Yes/No
vsi/gsi

K.RAVICHANDRABAABU,J.

Vsi/gsi

To

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