

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.326 of 2019

Srinivas Waste Management Services (P) Ltd.
rep. by its Director,
Mr.S.Venkateswaran,
F3, Harmony Enclave,
No.8, MP Avenue,
Abbusali Street, Saligramam,
Chennai-600 093. .. Petitioner

Vs.

1. Commissioner,
Tiruchirapalli City Corporation,
Tiruchirapalli.
2. Tiruchirapalli Council,
rep. by its Chief Executive Officer,
Tiruchirapalli City Corporation,
Tiruchirapalli. .. Respondents

* * *

Prayer : Petition filed under Section 11(3), (4)(a), (6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint a nominee Arbitrator on behalf of the respondents herein in consonance with Clause 15.2 of the Agreement dated 24.07.2014 entered into between the petitioner and the respondents herein and as per the provisions of the Arbitration and Conciliation Act, 1996 so as to initiate the arbitration proceedings for settling the disputes between the parties herein.

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For Petitioner : Mr.N.Damodaran

For Respondents : Mr.P.Srinivas

ORDER

This Original Petition is filed seeking for appointment of a nominee Arbitrator on behalf of the respondents herein in consonance with Clause 15.2 of the Agreement dated 24.07.2014 to initiate the arbitration proceedings for settling the disputes between the parties herein.

2. The petitioner was the successful bidder in the tender floated by the respondents for collection, segregation and transportation of municipal solid waste to designated and disposal sites in 18 wards and accordingly, a Letter of Award (LOA) was issued in their favour on 10.07.2014. The parties entered into an agreement dated 24.07.2014 for the same for a period of three years. However, a Work Order dated 03.11.2014 was issued only for 11 wards. The first respondent vide letter dated 01.07.2015 called for certain particulars to be furnished by the petitioner, based on the complaints received from the general public, which was replied to by the petitioner. When the petitioner sought for allotment of work in the remaining 7 wards vide their letter dated 21.07.2015, the first respondent sent the reply dated 28.07.2015 stating that the same could not be done on the ground that the petitioner have not yet complied with the deficiencies pointed

out by the first respondent, whereas, the respondents have not taken any action against the petitioner for such deficiencies.

3. The first respondent issued a Show Cause Notice dated 27.08.2015 raising various deficiencies. The first respondent asked the petitioner to depute a representative to be present in the meeting scheduled on 17.12.2015, thereupon, issued another Show Cause Notice calling upon them as to why the tender awarded to them should not be cancelled. They sent a reply on 04.01.2016 stating that all the deficiencies have been rectified. The petitioner, *inter alia*, claimed that there was an outstanding amount of Rs.69,80,320/- from the respondents, which was very much prejudicial to their functioning. However, after exchange of notices and letters, the first respondent passed the order dated 8.07.2016 terminating the agreement, which, according to the petitioner, was done without even considering their explanation. They questioned the same in W.P.No.31434 of 2016, wherein, this Court granted interim stay in the first instance and subsequently, passed the final order dated 22.02.2018 giving liberty to the petitioner to approach the Arbitrator.

4. It is the claim of the petitioner that they have discharged their obligations under the contract promptly, for which reasons, the

Tiruchirapalli Corporation was awarded third rank out of 73 cities in the survey conducted by the Ministry of Urban Development and there were no complaints against the performance of contract by the petitioner. However, the respondents, without even considering the explanation offered by the petitioner, passed the termination order. Thus, the petitioner issued a notice dated 22.08.2018 in terms of Clause 15.1.b., followed by legal notice dated 10.12.2018 as per Clause 15.2. to the respondents. Since there was no response at all from the respondents, the petitioner instituted this petition seeking the abovestated reliefs.

5. Heard the learned counsels on their side and perused the materials available on record.

6. There is no dispute with regard the factual position between the parties. Admittedly, Clause 15.2. of the Agreement provides for resolution of disputes via arbitration. The petitioner in their letter dated 10.12.2018 named Hon'ble Mr.Justice K.Venkatraman, a retired Judge of this Court, as their nominee, in terms of the said provision. Learned Standing Counsel for the respondents has got no objection for the nominee of the petitioner being appointed as the Sole Arbitrator instead of the procedure stated in Clause 15.2.

7. Having considered the submissions of both sides, this Court appoints Hon'ble Mr.Justice K.Venkatraman, a retired Judge of this Court, residing at L Block, No.125, 17th Street, East Anna Nagar, Chennai-600 102, (Phone No.7708895435), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996. सत्यमेव जयते

8. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

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PUSHPA SATHYANARAYANA, J.

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