



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.10.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**

**and**

**THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A. (MD)No.1060 of 2019**

**and**

**C.M.P. (MD)No.9665 of 2019**

The Chief Executive,  
Arignar Anna Sugar Mills,  
Kurungulam,  
Thanjavur

... Appellant /5<sup>th</sup> Respondent

Vs.

1.B.Naveen

...1<sup>st</sup> Respondent/Petitioner

2.The Secretary to Government,  
Agriculture Department,  
Fort. St. George,  
Chennai-600 009.

..2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

3.The Director of Sugar,  
690, Anna salai,  
Chennai-600 005.

..3<sup>rd</sup> Respondent/2<sup>nd</sup> Respondent

4.The Chairman and Managing Director,  
Tamil Nadu Sugar Corporation Ltd.,  
Chennai-600 035.

...4<sup>th</sup> Respondent/3<sup>rd</sup> Respondent

5.Metal Scrap Trading Corporation,  
(MSTC) Limited,  
Government of India Company,  
69, American Street, Mannady,  
George Town, Chennai.

..5<sup>th</sup> Respondent/4<sup>th</sup> Respondent

**PRAYER:** Writ Appeal is filed under Clause 15 of the Letter Patent Act, to call for the records in W.P.(MD)No.5993 of 2019 dated 27.03.2019 and to set aside the same as illegal.

Prayer in WP(MD). 5993/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus by calling for entire records pertaining to the order passed by the 5th respondent vide G.1.Accts/Scrap/D5/2018 dated 20.12.2018 and quash the same and consequently direct the 5th respondent to grant permission to



access their premises to comply with the e-tender vide MSTC/SRO/18-19/172 dated 11.04.2018 within the time frame fixed by this Court.

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For Appellant : Mr.S.Saji Bino  
Standing counsel  
For R1 : Mr.R.L.Dhilip Pandian  
For R2 to R4 : Mr.A.Muthukaruppan  
Additional Government Pleader

**JUDGMENT**

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.S.Saji Bino, learned counsel for the appellant, Mr.R.L.Dhilip Pandian, learned counsel for the first respondent, Mr.A.Muthukaruppan, learned Additional Government Pleader for the respondents 2 to 4. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal by Arignar Anna Sugar Mills is directed against the order in W.P.(MD)No.5993 of 2019, dated 27.03.2019. The said writ petition was filed by the first respondent herein challenging the order passed by the appellant, dated 20.12.2018 and for consequential direction to the appellant to grant permission to access their premises to comply with the e-tender, dated 11.04.2018.

3. The first respondent / writ petitioner was awarded a contract for removal of iron scrap from the appellant mill on 11.04.2018. The allegation against the first respondent is that the weighing scale, which is situated in the appellant's premises, was tampered by inserting a electronic chip in the control panel. Therefore, the weight of the scarp was altered. Further, it is stated that in the junction box, there was one remote board connecting with junction box PCB. By the insertion of the chip, the weight, which is recorded, will be shown as lesser than the actual weight of the scrap. Hence, a criminal complaint was lodged before the Vallam Police Station, which was registered in Crime No.99 of 2018 under Sections 265 and 409 IPC.

4. It is stated by the learned counsel for the appellant that investigation is completed and charge sheet has to be filed shortly. Parallely the appellant had issued show cause notice to the first respondent / writ petitioner on 10.10.2018, for which reply was given by the first respondent on 10.11.2018 and orders have been passed on 20.12.2018 cancelling the tender granted in favor of the first respondent and forfeiting the earnest money



deposit. This order was impugned in W.P.(MD)No.5993 of 2019.

5. The learned writ Court opined that there is no material to connect the first respondent / writ petitioner with the insertion of the chip in the weighing machine, which is admittedly situated inside the mill premises and in the absence of evidence, the first respondent / writ petitioner cannot be found faulted and therefore, held that the order dated 20.12.2018 passed by the appellant is not sustainable.

6. Firstly we need to point out that writ of certiorari could not have been entertained because, the matter falls purely within the realm of private contract between the appellant and the first respondent / writ petitioner. Merely because, the appellant is a Company under the Tamil Nadu undertaking, that would not bring the parties to prosecute the matter within the purview of this Court, exercising the jurisdiction under Article 226 of the Constitution of India. Therefore, the writ petition itself should have been rejected as being not maintainable.

7. The second aspect is that it is not known as to whether there is sufficient evidence to hold that the first respondent is guilty. This is more so because, the criminal investigation is in progress and only after the investigation is completed and the charge sheet is filed, this will come to light as who is the culprit. On the administrative side, the appellant has taken a decision to cancel the contract and forfeit the earnest money deposit. It is the appellant's view that as of now the first respondent is the direct beneficiary of the alteration of the weight of the scrap and there is a report from the Weigh Bridge Assistant. Apart from that CCTV camera, which was fixed therein is found dislocated.

8. Therefore, in our considered view, the learned writ Court ought not to have interfered with the order passed by the first respondent, that too in a writ petition under Article 226 of the Constitution of India. If ultimately the first respondent / writ petitioner is exonerated from the criminal charge, it is well open to the first respondent to approach the appropriate forum seeking for damages and the writ Court cannot issue a direction to enable the writ petitioner to perform the contract, which has been cancelled. Even assuming that the first respondent / writ petitioner is exonerated from the criminal proceedings, at best he would not be entitled to make a claim for damages, in specific to perform a contract, which has been terminated.

9. In view of the above, this writ appeal is allowed and the impugned order is set aside. The first respondent is at liberty to approach the appropriate forum for necessary relief, in



the event he is exonerated from the criminal proceedings. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Secretary to Government,  
Agriculture Department,  
Fort. St. George,  
Chennai-600 009.

2.The Director of Sugar,  
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5.The Chief Executive  
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Kurungulam, Thanjavur

+1 CC to M/s.S.SAJI BINO, Advocate ( SR-93823[F] dated 23/10/2019 )

+1 CC to M/s.SPL GP ( SR-94259[F] dated 24/10/2019 )

+1 CC to Mr.S.ELUMALAI, Advocate ( SR-94815[F] dated 25/10/2019 )

**ORDER MADE IN**

**W.A. (MD)No.1060 of 2019**

**23.10.2019**

\_KM/ (26.11.2019) 4P 9C