



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2019

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.23808 of 2018

and

WMP(MD)Nos.21562, 21563 & 21826 of 2018

M/s.Sical Logistics Limited,  
by authorised representative  
Captain K.N.Ramesh  
having its registered office at  
South India House, 73 Armenian Street,  
Chennai - 600 001.

... Petitioner

**Vs.**

1.NLC Tamilnadu Power Limited,  
Having its site office at  
Thermal Power Plant, Harbour Estate, Tuticorin  
also having registered office at  
first floor, No.8, Sathyamurthy road,  
FSD, Egmore Complex of Food  
Corporation of India,  
Chetpet, Chennai - 600 031.  
Rep.by its Chief Executive Officer,

2.NLC India Limited,  
Rep.by its Chief General Manager - Contracts,  
Corporate Office Block - 1,  
Neyveli - 607 801.

... Respondents

**Prayer :** This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the proceedings dated 15.11.2018 with Tender reference No.CEO/NTPL/CHS/Cont/ELTE/2193/2018-19 of the first respondent and quash the same and consequently forbear the respondents from engaging anyone of the work "Movement of Raw Coal from any Mines of MCL to VOC Port Tuticorin via any Rail, Road and or Port route" to the detriment of the rights of the petitioner.

For Petitioner : Mr.AR.L.Sundareshan,  
Senior Counsel  
for G.Prabhu Rajadurai

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : Mr.Yashod Vardhan, Senior Counsel  
for K.R.Laxman

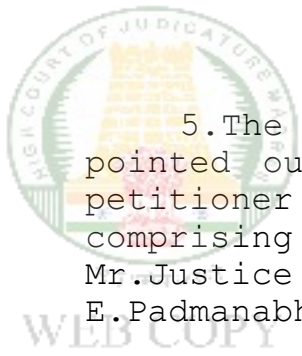
**ORDER**

The writ petitioner is a company registered under the Companies Act and is engaged in the business of Logistics. The petitioner entered into a contract agreement dated 03.07.2013 with the respondent for liaisoning, movement and handling of 3.0 Million Tons Per Annum (MTPA) of raw coal from Bhubaneswari Mines of M/s.Mahanadi Coalfields Limited ('MCL') Talcher, Orissa and other works. The confirmation of the contract was made vide letter dated 06.10.2015 issued by the second respondent. According to the petitioner, the contract which is for a three year period commenced only on 27.07.2017 and ends only on 26.07.2020. On the other hand, the stand of the respondents is that the contract expired already by October, 2018. Dispute arose between the parties when the first respondent issued a notice inviting tender dated 22.09.2018 in connection with their domestic coal requirements. The second respondent also issued another letter dated 15.09.2018 requesting amendment of the contract for extension of the agreement for a further period of 45 days from 15.10.2018.

2.These two developments namely, issuance of the letter dated 15.09.2018 and the tender notice dated 22.09.2018, led the petitioner to invoke the arbitration clause set out in the contract dated 03.07.2013. They filed AR.OP No.72 of 2018 before the Principal District Judge, Tuticorin under Section 9 of the Arbitration and Conciliation act, 1996. In the said petition, interim applications were taken out for restraining the respondents from taking any coercive steps under the Contract and for other reliefs. Interim orders were granted by the in-charge Principal District Judge, Tuticorin on 11.10.2018. Questioning the said exparte interim orders, the respondents filed CRP (NPD) (MD) Nos.2429 to 2432 of 2018.

3.The said civil revision petitions were allowed on 31.10.2018 and the Principal District Judge, Tuticorin was directed to dispose of the said Arbitration OP before a certain date. Thereafter, the respondents issued another tender notice dated 15.11.2018. According to the petitioner, the object of the respondents is to keep out the petitioner from the tender process besides infringing their rights under the contract. According to the petitioner, the respondents being government undertakings are acting in an arbitrary and unreasonable manner. Hence, the petitioner filed this writ petition questioning the tender notice dated 15.11.2018 issued by the first respondent and for certain consequential reliefs. The writ petition was filed on 28.11.2018. Interim stay was granted in WMP (MD) No.21563 of 2018 on 29.11.2018. The said interim order has been periodically extended.

4.Heard the learned Senior Counsel on either side. The respondents have filed a detailed counter affidavit.



5.The learned Senior Counsel appearing for the respondents pointed out that during the pendency of this writ petition, the petitioner filed ACP.No.1 of 2018 before the Arbitral Tribunal comprising Mr.Justice P.K.Balasubramanyan (Retd.) Presiding Officer, Mr.Justice D.Murugesan (Retd.) Co Arbitrator and Mr.Justice E.Padmanabhan (Retd.) Co Arbitrator.

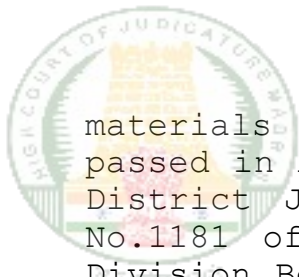
6.The arbitral claim included a challenge to the issuance of the Limited Tender CEO/NTPL/CHS/Cont/ELTE/2193/2018-19 dated 15.11.2018. The petitioners wanted the arbitral tribunal to declare the notification impugned in this writ petition as null and void. They also filed I.A No.4 to 9 of 2018 under Section 17 of the Arbitration and Conciliation Act, 1996 seeking interim relief. In I.A No.8 of 2018, the petitioners wanted stay of the process of Tender No.CEO/NTPL/COAL/PTE/2163/2018-19 and CEO/NTPL/CHS/Cont/ELTE/2193/2018-19 dated 22.09.2018 and 15.11.2018 and for restraining the respondents from acting in furtherance of the tender process or any new tender process. It is admitted on either side that arguments had concluded in I.A No.8 of 2018 and orders have been reserved by the Arbitral Tribunal.

7.The learned Senior Counsel appearing for the respondents placing reliance on the decision of the Hon'ble Supreme Court reported in (2004) 7 SCC 166 (S.J.S.Business Enterprises (P) Ltd vs. State of Bihar and others), contended that this writ petition will have to be dismissed for the simple reason that the writ petitioner has already elected to invoke the arbitral remedy for the very same relief that is sought for in this writ petition.

8.The learned Senior Counsel appearing for the writ petitioner contended that merely because the petitioner has included the subject matter of this writ petition in the claim before the arbitral tribunal, the present writ proceedings cannot be terminated on that ground. He pointed out that the slate was clean when the writ petition was filed. No doubt, during the pendency of these proceedings, he had initiated regular arbitral proceedings before the arbitral tribunal. But then, the scope of the arbitral proceedings pertains to the rights of the parties under the contract. According to him, the scope of the present proceedings and the one before the tribunal are not identical though they may overlap.

9.The primary ground urged in these proceedings is whether an entity within the meaning of Article 12 of the Constitution of India can conduct its affairs in breach of Article 14 of the Constitution. The learned Senior Counsel appearing for the writ petitioner would therefore strongly contend that even if the writ petitioners were to lose before the arbitral tribunal, they can still independently maintain this writ petition.

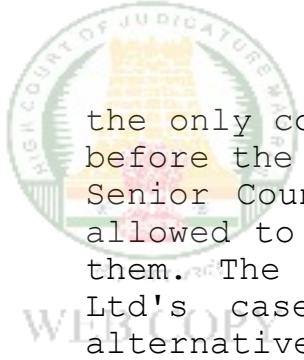
10.I am not persuaded by the submissions of the learned Senior Counsel appearing for the writ petitioner. It is seen from the



materials on record that questioning the order dated 26.11.2018 passed in Arbitration OP No.72 of 2018 on the file of the Principal District Judge, Tuticorin, the respondents herein filed CMA (MD) No.1181 of 2018 before the Hon'ble Division Bench. The Hon'ble Division Bench by order dated 28.02.2019 allowed the appeal and set aside the order dated 26.11.2018 passed in Arbitration O.P No.72 of 2018. In paragraph Nos.39 and 40 of the said order, the Hon'ble Division Bench held as follows :

"39.The next question which falls for our consideration is whether the appellants can be restrained from proceeding with the new tender. In the instant case, in the guise of pendency of arbitration proceedings, the appellants cannot be restrained from proceeding with the fresh tender, as the subject matter of the fresh tender is totally alien to the present dispute between the appellants and the respondent which relates to the earlier contract. Further, as rightly pointed out by the counsel for the appellants, the appellants were restrained from proceeding with the new Tender for movement of coal through an application under Section 9 of the Arbitration and Conciliation Act on the basis of the arbitration clause contained in the contract between the appellant and the respondent, which is the subject matter of this dispute. The new contract has not been executed in favour of the respondent and it is in the pre-bid stage. The respondent also participated in the pre-bid meeting held on 03.10.2018 in respect of the new tender. Therefore, we are of the opinion that the appellants cannot be prevented from proceeding with the new tender in the guise of granting an interim protection. Further, we are of the opinion that even assuming that there is breach of terms of the contract by the appellants, the respondent can only seek for compensation and the appellants cannot be restrained from proceeding with the new tender as per Section 41 (h) of The Specific Relief Act.

40.Considering the over all conspectus of the issue involved in this appeal, we find that as there is already an arbitration clause in the contract entered into between the parties, it is for them to adjudicate the same before the Arbitral Tribunal in the manner known to law. Since the Arbitral Tribunal has already been constituted and three Honourable Judges have been appointed to conciliate the dispute, it is appropriate to direct the parties to adjudicate the disputes between them including breach of contract, period of contract etc., by seeking appropriate relief."



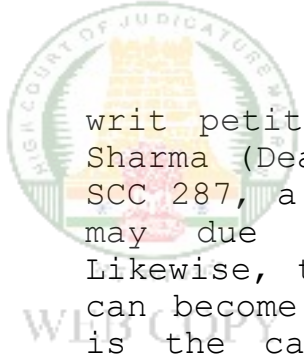
the only course open to the writ petitioner is to pursue the remedy before the arbitral tribunal. As rightly pointed out by the learned Senior Counsel appearing for the respondents, a litigant cannot be allowed to pursue parallel remedies. He must elect to move one of them. The Hon'ble Supreme Court in S.J.S. Business Enterprises (P) Ltd's case held that if a party has already availed of the alternative remedy, it would not be appropriate for the court to entertain the writ petition. This rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court.

12. This principle was laid down by the Constitution Bench in the decision reported in **AIR 1954 SC 207 (K.S. Rashid and Sons vs. ITI CIT)**. It was held that the remedy provided for under Article 226 of the Constitution of India is a discretionary remedy and the High Court has always the discretion to refuse to grant it if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. In K.S. Rashid's case the appellants had already availed themselves of the remedy provided in the statute and the reference made to the High Court was awaiting decision. Hence, the Hon'ble Supreme Court felt that it would not be appropriate to allow the appellants to invoke the discretionary jurisdiction under Article 226 of the Constitution. In this case, after filing this writ petition, the writ petitioner has chosen to mount on another horse. But, he did not dismount from the first one. The petitioner obviously cannot ride on two at the same time. In circus one gets to watch such acrobatic performances. Such exercises cannot be allowed in a court of law.

13. In *Jaisingh vs. Union of India* (1977) 1 SCC 1, the Hon'ble Supreme Court held that after the dismissal of the writ petition by the High Court, the appellant filed a suit in which he had agitated the same question which was the subject matter of the writ petition. The Supreme Court opined that the appellant cannot pursue parallel remedies in respect of the matter at the same time. The case on hand is quite similar. The writ petitioner has already availed the arbitral remedy and is awaiting decision by the arbitral tribunal.

14. The petitioner herein is pursuing his parallel remedies in respect of the tender notice dated 15.11.2018 at the same time. One before this Court and another before the arbitral tribunal. Of course, in certain cases, it has been held that if one proceeding had already been terminated, that may not under certain circumstances come in the way of the High Court exercising its jurisdiction. But, in this case, both the proceedings are alive.

15. I therefore sustain the objection raised by the learned Senior Counsel appearing for the respondents with regard to the maintainability of this writ petition. It is true that when the writ petition was filed, it was quite maintainable. By virtue of the invocation of the arbitral remedy by the writ petitioner, this



writ petition ceased to be maintainable. As held in Satyawati Sharma (Dead) By LRs v. Union of India & Anr. reported in (2008) 5 SCC 287, a legislation which was valid at the time of its enactment may due to change of circumstances become unconstitutional. Likewise, the writ petition otherwise maintainable at the inception can become not maintainable due to subsequent developments. Such is the case on hand and that is why I declined to hear the submissions of the learned Senior Counsel for the petitioner on merits. This writ petition stands dismissed. It is however made clear that the dismissal of this writ petition would not bar the writ petitioner from pursuing his remedies before the arbitral tribunal. The learned Arbitral Tribunal would of course dispose of the interlocutory applications filed by the writ petitioner entirely on its own merits.

16. With this observation, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also stand dismissed.

Sd/-

Assistant Registrar (P AND A)

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Sub Assistant Registrar (CS IV)

1. The Chief Executive Officer,  
NLC Tamilnadu Power Limited,  
Having its site office at  
Thermal Power Plant, Harbour Estate, Tuticorin  
also having registered office at  
first floor, No.8, Sathyamurthy road,  
FSD, Egmore Complex of Food  
Corporation of India,  
Chetpet, Chennai - 600 031.

2. The Chief General Manager - Contracts,  
NLC India Limited,  
Corporate Office Block - 1,  
Neyveli - 607 801.

+1CC to Mr.G.PRABHU RAJADURAI , Advocate SR.No. 54717.

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**15.03.2019**