

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26 / 08 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

O.A.NOS.395 AND 702 OF 2018

AND

A.NO.6138 OF 2018

O.A.NO.395 / 2018

M/s.Sun Facilities Services
Rep. by R.Rosh Kumar
S/o.Sridharan Pillai
The Authorised Signatory
2nd Floor, Akilan Apartments,
2nd Main Road, AVM Avenue,
Virugambakkam, Chennai – 92.

... Applicant

Vs.

- 1.The Divisional Railway Manager
Southern Railway
Salem – 5.
- 2.The Chief Medical Superintendent
Salem Division, Railway Health Unit,
Southern Railway,
Salem – 5.

... Respondents

PRAYER: Original Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996, with a prayer to pass an interim injunction, restraining the second respondent from terminating the contract LOA NOSA/MD.52/CBE/CCC/17 dated 27.09.2017 entered into between the second respondent and the applicant pertaining to the work of cleaning and maintaining the Coimbatore Railway Station for the period of two years commencing from 01.10.2017 to 30.09.2019 and consequently restraining the respondents from entering or assigning the work with any third party which already has been assigned to this applicant pending disposal of arbitration proceedings that is to be initiated as per the Arbitration clause of the work contract under Section 11 of the Arbitration and Conciliation Act.

For Applicant : Mr.S.N.Ravikumar

For Respondent-1 : Mr.S.IIambharathi

For Respondent-2 : Mr.P.T.Ramkumar

O.A.NO.702 / 2018

M/s.Premier Garments Processing
Rep. By its Proprietor Ibrahim Sha
No.29, Govindan Street,
T.Nagar, Chennai – 600 017.

... Applicant

Vs.

The Divisional Railway Manager
Southern Railway
Salem Division.
Salem – 636 005.

... Respondent

PRAYER: Original Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9 (D)(E) of the Arbitration and Conciliation Act, 1996, with a prayer to grant an order of interim injunction restraining the respondent herein, its men, agents, servants, subordinates or any other person or persons claiming through them or authorized by them from, in any manner, interfering with the right of the applicant herein to continue the work of Cleaning and Watering of coaches of platform turn round trains and mechanized housekeeping works at Coimbatore Railway Station for a period of 4 years granted to the applicant herein under the Letter of Acceptance bearing No.SA/M/271/PFTR/CBE/2018 dated 02.04.2018 of the respondent herein, pending adjudication of the disputes through arbitration.

For Applicant : Mr.A.R.L.Sundaresan
Senior Counsel
for Ms.A.L.Ganthimathi

For Respondent : Mr.S.IIambharathi

COMMON ORDER

The Original Application is O.A.No.395 of 2018 has been preferred for the relief of interim injunction, restraining the second respondent from terminating the contract LOA NOSA/MD.52/CBE/CCC/17 dated 27.09.2017 entered into between the second respondent and the applicant pertaining to the work of cleaning and maintaining the Coimbatore Railway Station for the period of two years commencing from 01.10.2017 to

30.09.2019 and consequently restraining the respondents from entering or assigning the work with any third party which has already been assigned to the applicant pending disposal of arbitration proceedings.

2. The Original Application in O.A.No.702 of 2018 has been preferred for the relief of interim injunction pending disposal of the disputes between the parties through arbitration.

3. From a perusal of the materials available before this Court, it is seen that the applicant in O.A.No.702 of 2018, pursuant to the tender notification bearing No.SA-M-04-2018 dated 18.01.2018 was awarded Contract for the work of Cleaning of Platform Turn Round Trains and comprehensive cleaning of Railway Station at Coimbatore for a period of four years. Letter of Acceptance was also issued in No.SA/M 271/PFTR/STN/CBE/2018 dated 02.04.2018. As per the Letter of Acceptance, the applicant is entitled to carry out Cleaning and Watering of Coaches of Platform turn round Trains and Mechanized housekeeping works at Coimbatore Railway Station for a period of four years.

4. While the matters stood thus, the erstwhile Contractor M/s.Sun Facilities Services, was carrying out the work for a period of two years from 01.01.2017 to 30.09.2019. Since the contract was awarded to the applicant in O.A.702 of 2018, the Railway Board proposed to terminate the Contract awarded to M/s.Sun Facilities Services and 48 hours notice dated 17.04.2018 was issued wherein it is proposed to terminate the contract with effect from 19.04.2018 by the competent authority. Against the notice of termination dated 17.04.2018, M/s.Sun Facilities Services filed an Original Application in O.A.No.395 of 2018 before this Court, wherein interim injunction was granted by this Court on 20.04.2018. In view of the interim injunction granted, M/s.Sun Facilities Services is continuing the work.

5. As per the Contract, the applicant in O.A.No.702 of 2018 has to submit a Performance Bank Guarantee within thirty days. However, by notice dated 04.07.2018, the respondent issued a termination notice in respect of Letter of Acceptance dated 02.04.2018 on the ground that the Performance Bank Guarantee was not furnished within time. Subsequently, by letter dated

05.07.2018, it was communicated to the applicant in O.A.No.702 of 2018 that the period for submitting the Performance Bank Guarantee expired and hence, the termination notice was issued. The applicant has obtained the Performance Bank Guarantee on 07.07.2018 and was ready to submit the same. However, the respondent has not issued any notice to the applicant calling for Performance Bank Guarantee.

6. As per Clause 64 of the Standard General Conditions of Contract 2014, the dispute between the parties has to be settled through Arbitration. Since the respondent is attempting to terminate the contract, the applicant has come forward with the prayer of interim injunction till the disputes are resolved through Arbitration vide O.A.No.702 of 2018.

7. I have heard the submissions made on either side and perused the materials available on record.

8. Admittedly, this Court, in O.A.No.395 of 2018, has granted interim injunction on 20.04.2018 restraining the respondents from terminating the contract awarded to M/s.Sun Facilities Services. Accordingly, the contract awarded to M/s.Sun Facilities Services has been continued. As contended by the learned counsel for the respondent Railways, the tender notification for Cleaning and Watering of Coaches of Platform turn round trains was awarded to M/s.Global Agency, Bangalore, who was the successful bidder in Tender No.SA-M-16-2018 dated 10.10.2018 and Letter of Acceptance was also issued on 29.11.2018. Admittedly, the services are important as it relates to public convenience. Any disruption of the same may lead to inconvenience to the public. Further, this Court, in O.A.No.395 of 2018, has already granted interim injunction on 20.04.2018 in respect of the termination notice issued to M/s.Sun Facilities Services, whose contract was for a period of two years from 01.10.2017 to 30.09.2019. The reason for termination was that to award contract to the applicant and to implement the decision of the Railway Board. The decision of the Railway Board does not reveal any reason for terminating the previous contract. Under such

circumstances, this Court has rightly granted interim injunction. In view of the injunction granted, naturally the contract can be continued by the applicant in O.A.No.395 of 2018. The parties have to settle their disputes through arbitration.

9. Above all, the applicant in O.A.No.702 of 2018 has not submitted the Performance Bank Guarantee within the time stipulated in the contract. Having failed to comply with its obligations, the applicant cannot come forward with an Original Application for grant of interim injunction, which will run parallel to the injunction granted in O.A.No.395 of 2018.

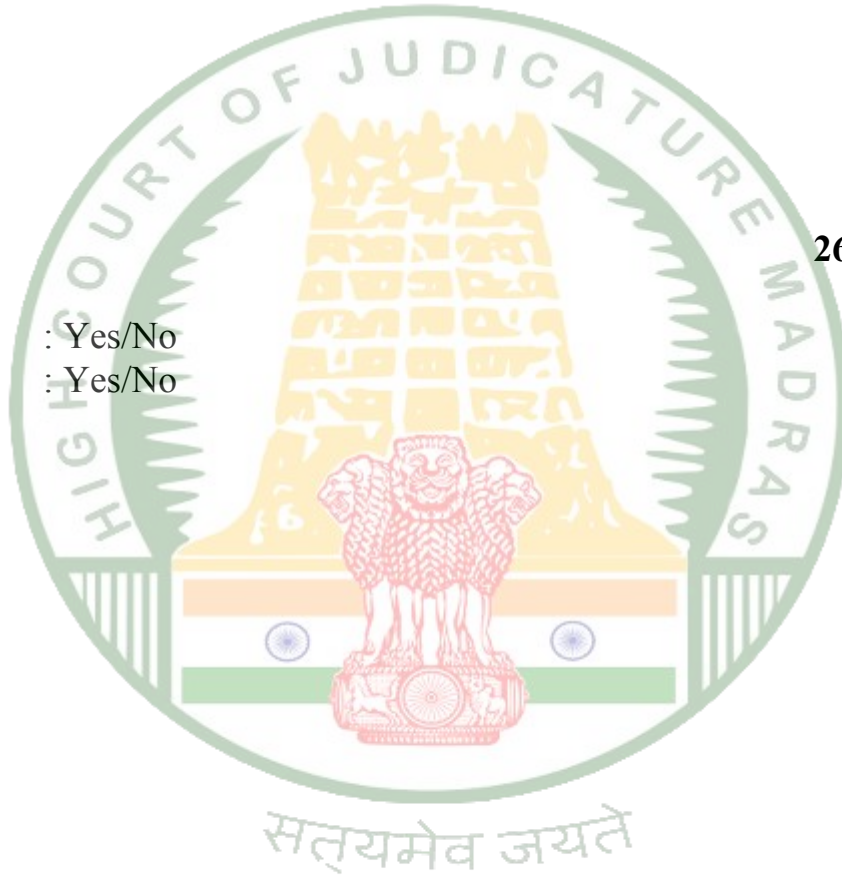
10. Considering the facts and circumstances of the case, the relief sought for by the applicant in O.A.No.702 of 2018 cannot be granted for the present and accordingly, O.A.No.702 of 2018 stands dismissed.

11. In view of the dismissal of the Original Application in O.A.No.702 of 2018, the interim injunction granted in O.A.No.395 of 2018

on 20.04.2018 is made absolute and the parties shall commence and complete the arbitration proceedings within the statutory period. Further, in view of the order passed in O.A.No.395 of 018, no order is necessary in A.No.6138 of 2018 in O.A.No.395 of 2018 and the same stands closed.

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Index : Yes/No
Internet : Yes/No
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M.GOVINDARAJ, J.

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AND A.NO.6138 OF 2018

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