

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.A. No.503 of 2018
and A. No.6868 of 2018

M/s. Power & Instrumentation (Guj) Ltd.,
309, Atlantis Enclave,
Ibhash Chowk, Gurukul Road,
Ahmedabad-380 052.

... Applicant

Vs

Chennai Port Trust,
2nd Floor, Old Administrative Office
Building,
Rajaji Salai,
Chennai-600 001.

... Respondent

PRAYER : Application filed under Order XIV Rule 8 of Original Side Rules r/w Sec.9 of the Arbitration and Conciliation Act, 1996, praying to pass an order of interim injunction restraining the respondent herein, their men or its agents, representatives, assigns or such other persons claiming through or under the respondents from using the equipments supplied by the petitioner to the respondent in any manner whatsoever.

For Applicant : Mr. N.L. Rajah, Senior Advocate
for M/s.Rohini Ravikumar

For Respondent : Mr.Haja Mohideen Gisthi

Advocate Commissioner : Mr.I.Abrar Md. Abdullah

ORDER

This application has been filed seeking for interim injunction restraining the respondent from using the equipments supplied by the respondent in any manner whatsoever.

2. This Court by an order dated 13.06.2018 granted an interim order restraining the respondent from allowing any third party contractor to meddle with the equipments supplied by the applicant. The dispute has been already referred to the Arbitrator, which is not in dispute. The dispute was particularly with regard to the 4th item of scope of works of the contract, which relates to the design, supply, installation, testing and commissioning of Resin cast type Copper busbar of 1250 A at wharf from LT panel. When the matter is pending before the learned Arbitrator, it appears that the

application for appointment of advocate commissioner was also filed by the applicant herein to inspect machineries erected by them. The above application has been dismissed. Against which, Civil Miscellaneous Appeal No.1822 of 2019 has been filed before this Court.

3. During the pendency of the C.M.A., this Court by an order dated 28.03.2019 taking into the submission of both sides appointed Mr. I.Abrar Mohammed Abdullah, as an Advocate Commissioner to conduct the inspection at the respondent's premises on the instruments erected by the applicant in the presence of both parties. It is also directed that he can avail the service of Electrical Engineer from Central Power Research Institute (CPRI), Bangaluru or any other expert in the field. The said Civil Miscellaneous Appeal is still pending. The dispute appears to be with regard to the inspection of machineries by the Advocate Commissioner. The Advocate Commissioner was also heard through video conferencing today. As per his submission, it appears that instead of mere inspection, both sides have requested the Advocate Commissioner to measure the equipments and it also stated that for such measurement, the ships also required. Whereas,

the respondent herein has objected that the load should not be connected with the ship vessels. At that stage, the Commissioner could not complete his work.

4. When this application has been posted in the last hearing, the Advocate Commissioner is also directed to be present in the video conferencing. As the Advocate Commissioner has submitted his oral submission through Video conferencing that as both parties have requested to measure the machineries, but he could not measure the same, and the Electrical Engineer is also not available as directed by this Court. When this Court posed the question as to whether any Electrical Engineer from CPRI is required, the learned Advocate Commissioner has submitted that despite the request made by him, he could not get the Electrical Engineer as indicated in the order. Therefore, this Court had passed an order for mere measurement, both sides can nominate the Electrical Engineer and the Advocate Commissioner can measure the equipments in the presence of Electrical Engineer nominated by both sides. Now, the learned Senior Counsel Mr.N.L.Rajah has also agreed for that and they are prepared to nominate the

engineer on their side, for which, the counsel Mr.S.Haja Mohideen Gisthi, seeks time to get instructions in this regard.

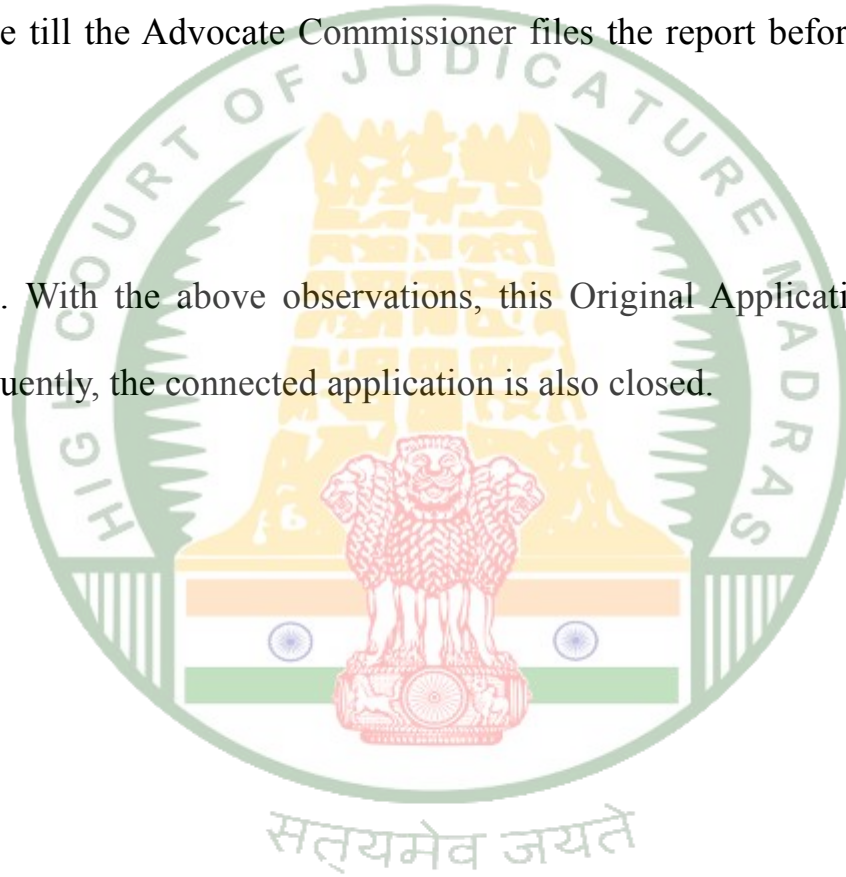
5. As the orders already passed by this court in C.M.A., the parties are advised to move before the concerned court and seek modification or review of the order, particularly, with regard to the nomination of Electrical Engineer to assist the Advocate Commissioner, this Court is of the view that for measuring the equipments, the presence of Electrical Engineer would itself suffice. Therefore, the Advocate Commissioner may get appropriate modification from the Court to get the aid of Electrical Engineer from CPRI without any further delay. In such view of the matter, the parties are advised to approach the C.M.A. Court to seek appropriate review in this regard. However, this case is only with regard to the appointment of Electrical Engineer. As per the Advocate Commissioner's report, the erected machineries are kept in one place. From that place, three connections also going to other connections and the same would indicate that the machineries are already put in use. In such view of the matter, there cannot be any injunction restraining the use of the machineries. However, it is made clear

that there shall not be any modification, alteration or tampering of the machineries and the respondents shall not tamper the machineries and they should maintain the machineries as it is in the present status. This order shall continue till the Advocate Commissioner files the report before the C.M.A. Court.

6. With the above observations, this Original Application is closed. Consequently, the connected application is also closed.

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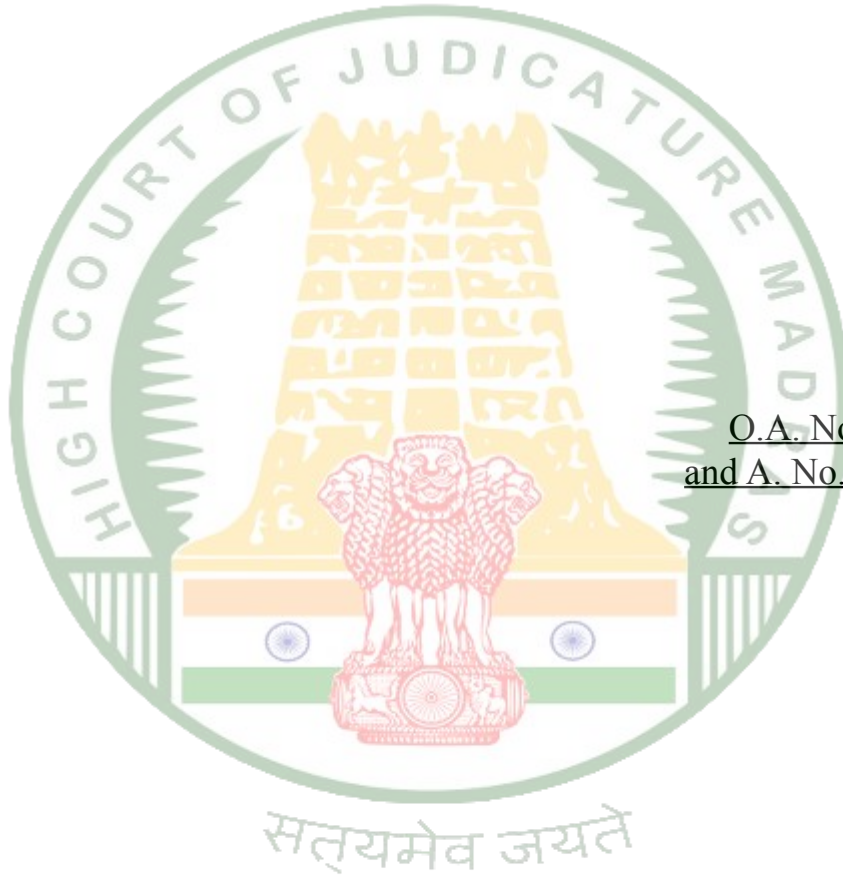


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