

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.18232 of 2018

and

W.MP.Nos.21538 & 21539 of 2018

M/s. DVS Engineering Company,
Rep. by its Partner,
Y.Vijaya Babu. Petitioner

Vs

- 1.The Director of Sugar,
Tamil Nadu Sugar Corporation,
690, Anna Salai,
Nandanam, Chennai 600 0035.
- 2.The chairman and Managing Director,
Perambalur Sugar Mills Ltd.,
Eraiyr Village, Veppanthattai Taluka,
Perambalur District, Tamil Nadu-621 113.
- 3.The Chairman and Managing Director,
M/s. Arignar Anna Sugar Mills,
Kurungulam, Thanjavur,
Tamil Nadu 613 303.
- 4.The Managing Director,
M/s.Kallakurichi -II Co-Op Sugar limited,
Kachirayapalayam, Villupuram,
Tamil Nadu-606 207. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for entire records in connection with the impugned notice in R.C.No.11140/P&P/2017 dated 08.06.2017 passed by the 1st respondent and quash the same and direct the 1st respondent to conduct the test at respondents 2,3,4 in the presence of the supplier viz.M/s. Divine Tubes Pvt. Ltd on three different dates as fixed by this Court.

For Petitioner : Mr.M. Sriram

For Respondents: Mr.L.P.Shanmugha Sundaram,
Spl.G.P. for R1, R2 and R4
: Mrs. T.Girija for R3

ORDER

1. This Writ Petition has been filed by the petitioner, in the nature of Certiorari Mandamus, questioning the impugned notice dated 08.06.2017 passed by the first respondent namely, The Director of Sugar, Tamil Nadu Sugar Corporation, Nandanam, Chennai and quash the same and direct the 1st respondent to conduct the test at respondents 2,3,4 in the presence of the supplier viz. M/s. Divine Tubes Pvt. Ltd on three different dates as fixed by this Court.
2. The petitioner is a company engaged in the business of supply, erection, commissioning of Heat Surface Evaporator. It is stated that the said machineries are used in sugar manufacturing unit for boiling the sugarcane juice. It is claimed that the petitioner has been in the said business for the past 30 years. The petitioner on the basis of work order, had come forward to install machineries in the factory premises of the second respondent namely Perambalur Sugar Mills Ltd, Eraiyur village, Veppanthattai Taluka, Perambalur District and the third respondent namely M/s Arignar Anna Sugar Mills, Kurungulam Thanjavur and the fourth respondent namely M/s. Kallakurichi-II Co-Operative Sugar Mills Limited, Kachirayapalayam, Villupuram. The petitioners have completed the erection of the machineries on 14.11.2017 and it is claimed that the machineries have commenced functioning on 18.12.2017. The petitioner claimed balance of payments. Despite passage of two years the balance remained unpaid.
3. It is contention of the learned counsel for the respondent that there is an Arbitration clause in the Work Contract and therefore, the present writ petition would not be maintainable. The petitioner is also aggrieved by the impugned order dated 08.06.2018 which, on a perusal, shows that it is not actually an order but only a show cause notice, calling upon the petitioner to show cause as to why the petitioner's company need not to be put in blacklist. The petitioner claimed that the said show cause notice itself caused serious prejudice and goodwill of the petitioner's company and caused a severe damage to the on going contracts and future prospects of the petitioner's company. It is in these circumstances, the petitioner left with no other option has filed the writ petition for the above relief.
4. Pending the writ petition, it is mutually stated by both learned counsel for petitioner and also by the learned counsel for the respondents, the second respondent namely Perambalur Sugar Mills Ltd, Eraiyur village, Veppanthattai Taluka, Perambalur District and the fourth respondent namely M/s. Kallakurichi-II Co-Operative Sugar Mills Limited, Kachirayapalayam, Villupuram, that have settled their bills as raised by the petitioner and therefore, there are no dues to

the paid to the petitioner. According to the petitioner, the third respondent has to pay a sum of Rs.10,62,000/- as dues. A Memo has been filed by the learned counsel for the respondents wherein, it has been stated that the third respondent has claimed that owing to the fact that the quality of steel was not to the satisfaction or to the requirement or the expected quality as demanded by them the amount due is only Rs.5,01,056/-. The said claim is rebutted by the petitioner.

5. In view of the same, a direction is issued to the third respondent to settle the amount, which they have admitted to the petitioner, namely a sum of Rs.5,01,056/- on or before 15.02.2020.
6. In respect of the balance claim, the parties may invoke the Arbitration Clause which is found in the Work contract. The third respondent has raised some serious allegations with regard to the quality of steel supplied by the petitioner. The said issue cannot be decided in a writ proceedings. The issue requires letting in evidence, marking of documents, etc. Only an Arbitrator will be competent to decide the said issue. Therefore, the petitioner is at liberty to invoke the Arbitration Clause in respect of the balance payment.
7. In view of the above direction, the impugned order dated 08.06.2018 in Rc.No.11140/P&P/2017 issued by the first respondent, the Director of Sugar, may be kept in abeyance. Once, the Arbitration proceedings are completed, on the basis of the award, the first respondent shall take a further decision, whether such notice is required to be issued to the petitioner. If so, a fresh notice should be issued with details, following the necessary rules, calling for explanation and thereafter the first respondent may proceed in accordance with law.
8. With the above observation, this Writ Petition is disposed of. No Costs. consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Director of Sugar,
Tamil Nadu Sugar Corporation,
690, Anna Salai,
Nandanam, Chennai 600 0035.

2.The chairman and Managing Director,
Perambalur Sugar Mills Ltd.,
Eraiur Village, Veppanthattai Taluka,
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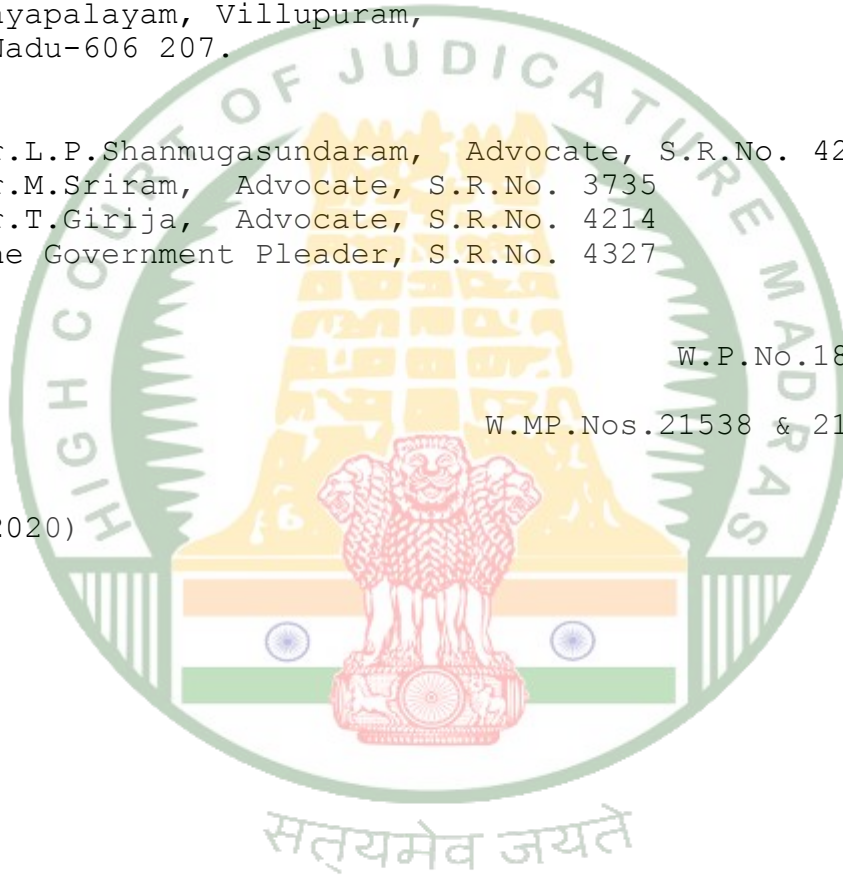
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M/s.Kallakurichi -II Co-Op Sugar limited,
Kachirayapalayam, Villupuram,
Tamil Nadu-606 207.

+lcc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 4213
+lcc to Mr.M.Sriram, Advocate, S.R.No. 3735
+lcc to Mr.T.Girija, Advocate, S.R.No. 4214
+lcc to the Government Pleader, S.R.No. 4327

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BS (CO)
GN(26/02/2020)



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