

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

OP.No.829 of 2019

and

O.A No.1056 of 2018

The State Trading Corporation of India Limited
A-29, Thiru-vi-ka Industrial Estate
Guindy,
Chennai-600 032
Rep. By its Manager

..Petitioner

Vs.

Tamil Nadu Civil Supplies Corporation
Rep. by its Managing Director
No.42, Thambusamy Street
Kilpauk
Chennai-600 010.,

.. Respondent

PRAYER: Petition filed under Section 11(5) of the Arbitration and Conciliation Act 1996, to appoint an Arbitrator to hear and decide the dispute between the Respondent and the petitioner in pursuant to the contract dated 22.01.2008.

For Petitioner : Mr.S.Umapathy

For Respondent : Mr.P.Paramasivadoss

ORDER

This petition has been filed for appointment of an Arbitrator to hear and decide the dispute between the Respondent and the Petitioner in pursuant to the contract dated 22.01.2008.

2. Both the Corporation had entered into an agreement for the supply of Toor Dhall to the Civil Supplies Corporation. As there was a default committed by the present petitioner in effecting the supply within the time, the contract said to have been executed by the parties has been cancelled by the respondent which culminated into the dispute between the applicant and the respondent. As per the contract, dispute was originally referred to the sole Arbitrator.

3. The respondent has made a claim to the tune of Rs.6,42,42,349.27 towards the loss sustained by the respondent due to non-supply of Toor Dhall as per the agreement dated 22.01.2008. Besides, the validity of the cancellation of the contract is also the subject matter before the Arbitrator. The Arbitrator after hearing the both sides had passed the final award dated 09.04.2014 holding that the cancellation of contract by the respondent is valid. However, in respect of the claim for recovery of money and consequential loss,

the Arbitrator has found that the claim is not correct and in fact cancelled the order issued by the respondent in this regard and directed the respondent to issue fresh notice based on the immediately followed subsequent Tender rate after the grant of time without penalty be issued and finalised after giving a personal hearing to the applicant herein. Though this award was passed in the year 2014, now the respondent has issued a demand notice on 04.07.2018 after four years of the arbitration award.

4. It is the contention of the learned counsel for the applicant that since the previous Arbitrator has not decided the issue on merits, issuing of the fresh demand notice also has to be arbitrated. Therefore, the same arbitrator has to be appointed.

5. The learned counsel for the respondent has no objection in appointing the same Arbitrator.

6. Having regard to the above facts, since the issue between the parties is with regard to the consequential loss, there has to be proof as well as evidence and it has to be resolved by the Arbitrator, as the Arbitrator has not resolved the same in the earlier occasion and left open to issue fresh notice, this

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Court is of the view that the same Arbitrator is required to go into the issue and decide the claim.

7. Accordingly, Mr.V.Boovalingam, Retired District Revenue Officer, No.133 - 8th Street, Arulanandammal Nagar, Thanjavu-613 007, is appointed as Arbitrator to enter upon the reference, particularly, the demand made by the respondent dated 23.10.2018 and conclude the proceedings within a period of six months. The fees of the Arbitrator shall be fixed by the Arbitrator as per law and fees shall be paid equally by both the parties.

8. This Original Petition is disposed of. Consequently, the connected application is closed.

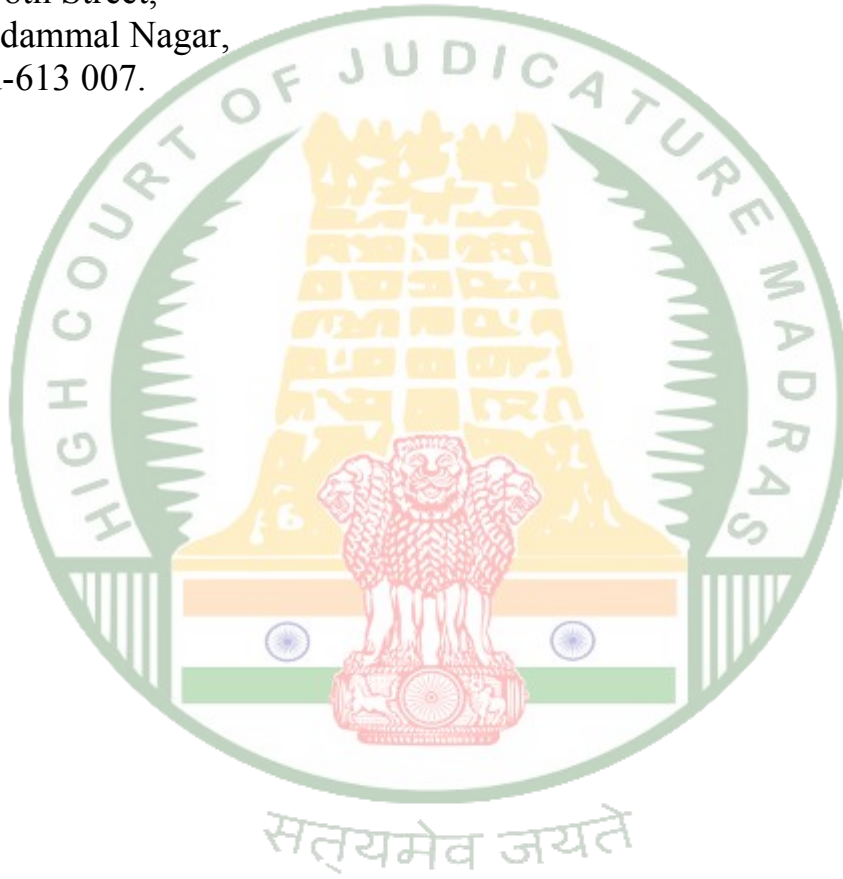
16.07.2020

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To

Mr.V.Boovalingam
Retired District Revenue Officer,
No.133 - 8th Street,
Arulanandammal Nagar,
Thanjavu-613 007.

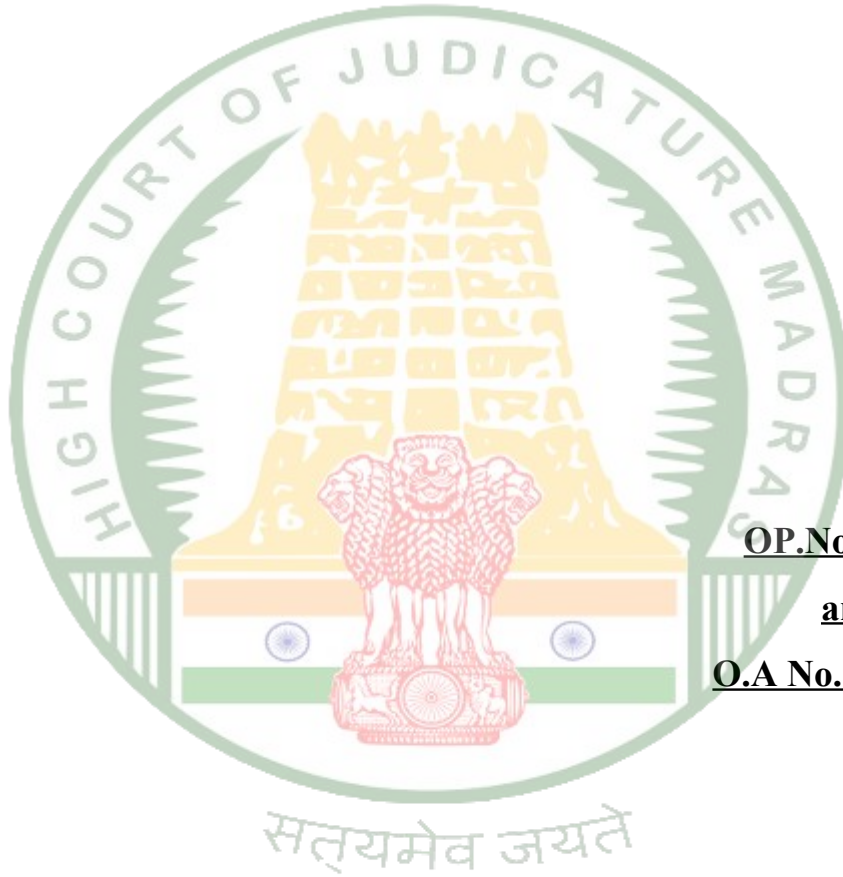


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