

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 586 of 2021
With
IA No: CAN 1 of 2021

(Through Video Conference)

Reserved on: 17.11.2021

Pronounced on: 25.11.2021

B S Enterprises and Ors.

...Appellants

-Vs-

The Indian Oil Corporation and Anr.

...Respondents

Present:-

Mr. Dipankar Pal,
Ms. Juin Dutta Chakraborty,
Mr. Joy Chakraborty,
Mr. Dip Jyoti Chakraborty, Advocates
... for the appellants

Mr. Amit Kumar Nag,
Mr. Abhishek Nag, Advocates
... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. Appellant is aggrieved with the order of the learned Single Judge dated 16.06.2021 whereby WPA No. 10509 of 2021 has been dismissed.
2. The appellant had filed the writ petition challenging the order dated 10th May, 2021 cancelling the contract award to it.

3. The plea taken in the writ petition was that the appellant had participated in the tender floated by the respondent Indian Oil Corporation Limited for transportation of oil petroleum by road. The Letter of Acceptance (LOA) dated 9th March, 2021 was issued in terms of which the petitioner was required to produce ready TTs (Tanker Trucks) for physical inspection within 30 days of LOA. The trucks were inspected on 07.04.2021 and 08.04.2021. Admittedly there was a delay caused by the petitioner to produce the TTs for verification. Some deficiency was noticed and the petitioner was granted time to place the complete trucks within 45 days. The petitioner could not place the trucks within time, hence the contract has been terminated.

4. Being aggrieved with the same the appellant had filed the writ petition which has been dismissed by the learned Single Judge.

5. Learned Counsel for the appellant submits that due to COVID 19 pandemic he could not remove the deficiency noticed in the trucks and could not produce the truck within time and, therefore, the respondents are not justified in cancelling the contract. He has submitted that the petitioner ought to have been given the protection of force majeure clause.

6. Opposing the prayer the learned Counsel for the respondents submitted since the petitioner did not fulfill the requisite conditions and did not produce the trucks, hence the contract has been terminated and no notice as required for invoking the force majeure clause was given and the tender was floated much prior to the onset of the COVID 19 pandemic, therefore, the plea relating to non-compliance of the condition cannot be executed.

7. Having heard the learned Counsel for the parties and perusal of the records, it is noticed that in terms of Clause F.4 of the NIT the successful tenderer offering ready built TTs upon placement of LOA was required to produce TT for physical inspection within 30 days from the LOA. In terms of Clause F.6 successful tenderer upon placement of work order was required to produce TTs for loading at the location within 15 days from the date of issue of work order. Clause F.8 clearly stipulates that in case the tenderer fails to produce all TTs for physical verification and does not place all the ready built TTs for loading within 45 days from the date of LOA, work order will be cancelled and security deposit will be forfeited. In terms of Clause F.10, on failure to produce TT for loading within 15 days from the work order or 45 days from the LOA, the TTs offered by the tenderer will be placed on holiday listing apart from forfeiture of EMD/SD. Clause F.11 provides for termination of contract.

8. The record further reflects that the agreement dated 22nd March, 2021 was executed between the parties and the documents of agreement also contained the similar clauses.

9. Though in terms of the LOA the petitioner had produced the TTs but they were not fitted with locking system and were not ready for loading and were not meeting the requirement of terms and conditions of the tender. At the end of 45 days from the issuance of LOA only 2 TTs were reported by the appellant and balance 16 TTs were not reported for loading fitted with the full locking system. The petitioner had not complied with the terms of the LOA and the agreement, therefore, his contract was terminated by order dated

10.05.2021. A perusal of the record reveals that the respondents have proceeded strictly in terms of the agreement.

10. So far as the plea of the appellant about non-compliance of condition due to COVID 19 is concerned, the tender was floated in November, 2020 much prior to the onset of second wave of COVID 19 pandemic. The LOA was also issued to the appellant on 9th March, 2021 before the second wave of COVID 19 pandemic. The appellant has tried to take the shelter on force majeure clause contained in Clause 14, but for invoking the said clause the appellant was required to give the notice to the other side as per stipulation therein but nothing has been pointed out to show that any such notice was given. Even otherwise, situation like COVID 19 pandemic is not specifically covered by the force majeure clause.

11. In these circumstances, we are of the opinion that the learned Single Judge has not committed any error in rejecting the challenge to the termination of contract.

12. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.11.2021

PA(SS)