



Cont. P. No. 1821 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 30.03.2021
Judgment Delivered on : 30.04.2021

Coram :

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Contempt Petition No 1821 of 2012

M/s. Madras Hospitality Services
registered Partnership Firm
Having Office at No.6
Cathedral Road
Chennai - 600 006
represented by its Managing Partner
Mr. J. Jagdish

.. Petitioner

Versus

1. Tangy Enterprises Private Limited
(formerly incorporated as M/s. Buena Vista
Beach Resort and Club Pvt Ltd)
a company incorporated under Companies Act, 1956
Beach Road, Neelankarai
Chennai - 600 041
represented by its Managing Director
Mr. Emmanuel Fernandez

2. Mr. Immanuel Fernandez
Beuna Vista XVI, Casuarina Drive
Neelankarai
Chennai - 600 041

3. Mr. Joseph Fernandez
Franc Dale-II, Bella Vista

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Sunrise Avenue, Neelankarai
Chennai - 600 041

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4. Mr. Mark Owen Fernandez
Flat No.9, Third Floor
Directors Enclave
Old No.48, New No.7
Anna Main Road
Directors Colony, Kodambakkam
Chennai - 600 024

5. Dr. R. Stephen Louie
F-9, 1st Phase, 1st Floor
Spencer Plaza
Chennai - 600 002

.. Respondents

Contempt Petition filed under Section 11 of The Contempt of Courts Act praying to punish the respondents herein for disobedience of the order dated 17.05.2012 in O.A. No. 436 of 2012 in C.S. No. 335 of 2012 on the file of this Court.

For Petitioner : Mr. J. Sivanandaraj

For Respondents : Mr. Ravi Paul, Senior Advocate
for M/s. Paul & Paul Associates for RR1 to 4

Mr. Ravi Anantha Padmanabhan for R5

Mr. K.S. Jaya Ganeshan
Senior Panel Counsel for Postal Department

ORDER

R. SUBBIAH, J

This contempt petition is filed praying to punish the respondents for having wilfully disobeyed the order 17.05.2012 passed by this Court in O.A. No.

436 of 2012 in C.S. No. 335 of 2012.



2. The petitioner herein has filed the suit in C.S. No. 335 of 2012 against the respondents herein praying to direct the respondents 1 to 4 herein to pay a sum of Rs.2 crores as damages with interest at the rate of 18% per annum; to declare that there is no arbitration agreement between the parties and for a consequential permanent injunction restraining the defendants, their men, servants, agents or assigns or any other person claiming under them from in any manner proceeding with the arbitration proceedings and for costs.

3. Pending suit, the petitioner herein has filed two applications namely A.No.2319 of 2012 and O.A.No.436 of 2012 in C.S. No. 335 of 2012.

4. Original Application No.2319 of 2012 has been filed praying to direct the respondents 1 to 4 to jointly furnish security for Rs.2 crores and deposit the same before this Court pending disposal of the suit, failing which pass an order attaching the Petition mentioned property pending disposal of the suit.

5. Original Application No.436 of 2012 has been filed to grant an order of interim injunction restraining the defendants, their men, servants, agents or assigns or any other person claiming through them or under them from in any manner proceeding with the Arbitration Case No. ARC/SA-RSL-138/2012 before the Sole Arbitrator, pending disposal of the above suit.

6. Pending disposal of the suit, this Court granted an order of interim injunction on 17.05.2012 in O.A. No. 436 of 2012, thereby restraining the



respondents from proceeding further with the arbitration case. According to the petitioner, the order dated 17.05.2012 has been wilfully and deliberately violated by the respondents and therefore, contempt proceedings have to be initiated against them. Accordingly, the present Contempt Petition has been filed before this Court.

7. For the purpose of disposal of this Contempt Petition, certain facts are required to be examined and they are briefly stated hereunder.

8. The Petitioner-M/s. Madras Hospitality Services is a registered Partnership firm engaged in setting up and running leisure, tourism, entertainment, sports, restaurant, bar, pub, club and hotel business. During the course of their business, the first respondent company, which is running a resort and hotel, looking at the experience and expertise of the petitioner in the hoteling business entered into a business venture by signing a Memorandum of Understanding, dated 29.01.2010 with the first respondent, which contains several terms and conditions governing their business. However, according to the petitioner, the Memorandum of Understanding is silent about the reference of dispute, if any, to an arbitrator. Clause 8.2 of the Memorandum of Understanding only provides for resolving the dispute between them by resorting to litigation before the Courts of Chennai.



9. It is stated that, four months after the commencement of the collaborative business, the first respondent started making additional claims that were unsubstantiated, despite the fact that the petitioner infused his own money for running and managing the collaborative business with the first respondent. All the claims made by the first respondent were merely to harass the petitioner and were beyond comprehension. The petitioner has been working with the first respondent for few months. While so, respondents 1 to 4, in collusion with respondent No.5, conducted a proceeding in the nature of a "Kangaroo Court" by referring it as an arbitration proceeding. The respondents 1 to 4 unilaterally appointed the fifth respondent as the sole arbitrator. There was neither any arbitration clause in the agreement nor did the petitioner agree for any such arbitration for resolution of the dispute. In such a situation, the fifth respondent sent an e-mail dated 31.03.2012 stating that he has accepted to act as a sole arbitrator as per Clause 8.2 of the Memorandum of Understanding. In the communication, the fifth respondent has also stated that he is entitled to fix 10% out of the award amount as his fee. According to the petitioner, such an appointment is nothing but an attempt to make justice delivery system a mockery of justice. Further, on 04.04.2012, another e-mail was sent to decide the case on a fast track basis. A reply dated 09.04.2012 was sent by the petitioner stating that Clause 8.2 of the Memorandum of Understanding is not an



arbitration clause at all. The petitioner also requested to furnish certain documents by way of reply dated 09.04.2012. While so, the fifth respondent, had sent a letter dated 11.04.2012, in which he had relied on the letter dated 15.03.2012 to show that he was appointed as an arbitrator. According to the petitioner, the contents of the letter dated 11.04.2012 will not confer any right on the fifth respondent to act as an arbitrator. Therefore, on 13.04.2012, the petitioner refused to accept the appointment of the fifth respondent as an arbitrator. In spite of the same, the fifth respondent has stated that he is proceeding with the arbitration proceedings and adjourned the case for hearing on 09.05.2012. According to the petitioner, he was not furnished with any document to contest the so-called arbitration proceedings and therefore, the petitioner went to the arbitration centre on 09.05.2012 and sought for the copy of the documents. While so, by letter dated 11.05.2012, the fifth respondent intimated that the arbitration proceedings were adjourned to 25.05.2012 for filing objections by the petitioner. Immediately, the petitioner sent an e-mail, dated 12.05.2012 and wanted to list the matter on 30.06.2012, instead of 25.05.2012. In response, the fifth respondent sent a communication through e-mail on 15.05.2012 giving three choice of dates for the petitioner to choose namely 25.05.2012, 30.06.2012 and 30.07.2012, the dates on which the arbitration proceedings can be taken up. It is in those circumstances, the



petitioner has filed the instant suit along with Original Application in O.A.No.436 of 2012 on 15.05.2012. On 17.05.2012, the learned Single Judge granted an order of interim injunction.

10. According to the petitioner, a copy of the order of interim injunction granted by the learned Single Judge of this Court on 17.05.2012, was served on the respondents 1 to 5 on various dates between 19.05.2012 to 22.05.2012. However, the fifth respondent, in collusion with the respondents 1 to 4, claimed that even as early as on 15.05.2012, an award was passed in the arbitration proceedings initiated by the respondents 1 to 4. According to the petitioner, only after receipt of the communication intimating that this Court has passed an interim injunction on 17.05.2012, the fifth respondent has deliberately passed an award by putting an ante-date as 15.05.2012. Therefore, it is vehemently contended by the petitioner that, only in order to render the order of interim injunction unenforceable, the respondents have come forward with a false plea that on 15.05.2012, an award was passed by the fifth respondent. Such a claim made by the respondents is in violation of the order dated 17.05.2012 passed by this Court for which the respondents are liable to be prosecuted.

11. Mr.J.Sivanandaraj, learned counsel for the petitioner vehemently contended that a false plea was taken by the fifth respondent as if the award dated 15.05.2012 was communicated to the petitioner, but the petitioner has not



received any such award dated 15.05.2012. Such a plea was raised only to circumvent the legal process and to get reprieve from the contempt proceedings.

According to the learned counsel for the petitioner, the fifth respondent, having received the order dated 17.05.2012 on 19.05.2012, sends an e-mail on 23.05.2012 stating *that the post-award proceedings posted on 23.05.2012, 30.06.2012 and 30.07.2012 are cancelled permanently by the Tribunal owing to the order dated 17.05.2012 passed by this Court, which was received on 19.05.2012.* By pointing out the communication dated 23.05.2012, the learned counsel for the petitioner contended that the communication dated 23.05.2012 itself would stand testimony to the fact that the fifth respondent attempted to circumvent the legal process. The learned counsel for the petitioner also submitted that the fifth respondent enrolled himself as an advocate only 08.09.2010 and within two years of his enrolment, he was appointed as an arbitrator to arbitrate the dispute between the petitioner and the respondents 1 to 4, even in the absence of any clause to refer such dispute for arbitration. The learned counsel for the petitioner also invited the attention of this Court to similar misdemeanour committed by the fifth respondent in getting himself appointed as an arbitrator and passing orders in favour of the claimants therein.

Above all, the fifth respondent, who received the "Certificate of Practice" on 29.03.2012, had been appointed as arbitrator in the present case and he passed



the so-called award in question on 15.05.2012. Above all, the learned counsel for the petitioner also invited the attention of this Court to the order dated 12.02.2013 passed by this Court in O.A.No.436 of 2012 and Application No. 2319 of 2012 in C.S. No. 335 of 2012, wherein this Court has specifically observed that the fifth respondent is illegally conducting arbitration proceedings unilaterally without the consent of both parties. This Court also observed that the fifth respondent did not act bona-fidely and made deliberate and intentional attempt to over-reach the order passed by this Court. Therefore, this Court held that the respondents 1 to 5 are liable for contempt proceedings. Hence, this Court imposed costs of Rs.2,00,000/- to the fifth respondent payable to the Tamil Nadu State Legal Services Authority, High Court, Madras. Above all, it is stated that the fifth respondent is habitually engaging himself as arbitrator in collusion with the claimants to gain illegally. Therefore, on receipts of several complaints from the aggrieved persons, the Bar Council of Tamil Nadu and Puducherry, conducted an enquiry and suspended the fifth respondent from acting as an arbitrator by passing an order dated 12.06.2019. The learned counsel for the petitioner also relied on the report submitted by the Inspector of Police, Thousand Lights Police Station as directed by this Court in OP No. 542 of 2016 and contended that the action of the fifth respondent in acting as an arbitrator without even following the basic procedures established under law



and passing irrelevant and unceremonious orders in favour of the claimant, is questionable. In such circumstances, the learned counsel for the petitioner contended that the act of the fifth respondent in passing the so-called award dated 15.05.2012 much after receiving the copy of the order dated 17.05.2012 passed by this Court on 19.05.2012 and feigning ignorance about the receipt of the order dated 17.05.2012 before passing the award, is nothing short of an act of contempt of this Court. The learned counsel therefore prayed for initiating contempt proceedings against the respondents.

12. On the above submissions, we have heard Mr. Ravi Paul, learned Senior Counsel appearing for the respondents 1 to 4.

13. Mr. Ravi Ananda Padmanabhan, learned counsel for the fifth respondent contended that the fifth respondent had passed an award on 15.05.2012 and it was sent to the petitioner by post on 16.05.2012, which is evident from the postal acknowledgment card. The award was received by the petitioner on 17.05.2012, while so, the present contempt proceedings need not be continued against the respondents. Further, the averment that the award was passed by putting an ante-date as 15.05.2012 is false and misleading and the petitioner has to establish it in a manner known to law. Even otherwise, the arbitration proceedings initiated against the petitioner was defended by the petitioner by engaging a lawyer by name Mr. Adesh Anto. During the course of



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otherwise, on coming to know about the order dated 17.05.2012 passed by this Court, the fifth respondent, in obedience to the order, cancelled all the post-award proceedings. The fifth respondent has not in any manner contravened the order passed by this Court and therefore, the learned counsel prayed for dismissal of the Contempt Petition.

15. We have heard the counsel on either side and perused the materials placed.

16. On 17.05.2012, this Court granted an interim injunction restraining the respondents from proceeding further with the arbitration proceedings. According to the petitioner, the order dated 17.05.2012 was immediately communicated to the respondents and the respondents have also received the communication sent by the petitioner on various dates between 19.05.2012 and 23.05.2012. However, the fifth respondent passed an award by ante-dating it as 15.05.2012 so as to circumvent the legal process. For having passed such an award, after coming to know about the order dated 17.05.2012 passed by this Court, the respondents are liable to be proceeded with by initiating contempt proceedings.

17. However, the contentions of the petitioner, are repudiated by the fifth respondent by stating that even before passing the order dated 17.05.2012, he has passed the award on 15.05.2012 and communicated it to the petitioner on



17.05.2012, therefore, he feigned ignorance about the order dated 17.05.2012 passed by this Court. It is also stated that on coming to know about the order dated 17.05.2012 passed by this Court, the fifth respondent passed an order cancelling all the post-award proceedings, which stands testimony to the fact that the fifth respondent has complied with the order passed by this Court on 17.05.2012, while so, the present contempt petition deserves to be dismissed.

18. Having heard the submissions of the learned counsel for both sides, we are of the view that the main issue that arises for our consideration in this Contempt Petition is as to whether the fifth respondent has passed the award on 15.05.2012 by putting an ante-date, after he received the communication intimating about the order dated 17.05.2012 passed by this Court.

19. Earlier, this Court heard the submissions of the counsel for both sides and by order dated 12.11.2019, in Sub-Application Nos.501 and 502 of 2019, passed the following order:-

"4. The learned counsel for the petitioner would contend that during the course of hearing in the Contempt Petition, the fifth respondent has filed an Additional Typed set of papers dated 06.01.2019 in which he had enclosed the copies of the postal Receipt No. ET265687178IN, Acknowledgment Card and the print out from the Indian Post Website. According to the counsel for the petitioner, the aforesaid documents filed in the Typed set of papers dated 06.01.2019 are forged and therefore, the sixth respondent, postal department has to be directed to submit a report with respect to the details of the postal Receipt No. ET265687178IN specifically clarifying the



date and time on which the consignment was booked, in which post office, name of the person who sent the consignment and the person to whom it was intended to be delivered etc., According to the counsel for the petitioner, these particulars are very much necessary to prove as to whether the alleged award dated 15.05.2012 was passed by the fifth respondent before the order of interim injunction was granted by this Court on 17.05.2012.

5. The learned counsel appearing for the contesting respondents has no objection for issuing a direction to the sixth respondent/postal department as prayed for.

6. Accordingly, Sub-Application No. 502 of 2019 is allowed and the sixth respondent/postal department is directed to furnish the particulars relating to the Postal Receipt No. ET 265687178IN, Acknowledgment Card etc., to this Court within a period of four weeks.

7. Sub-Application No. 501 of 2019 is filed to direct the seventh respondent - Director of Forensic Science Department to examine the entire Arbitration Observation Sheet dated 09.05.2012 to ascertain if lines mentioned in paragraph 16 of this affidavit have been interpolated/added after obtaining the signature of parties and after the seal of the fifth respondent was affixed and to file a detailed report.

8. The learned counsel for the contesting respondents vehemently opposed this application on the ground that it has no nexus sought to be achieved in the contempt proceedings and this petition has been filed only to harass the contesting respondents.

9. This application in Sub-Application No. 501 of 2019, in our opinion, need not be ordered as it has no nexus to the contempt petition. The main issue involved in the Contempt Petition is as to whether the fifth respondent has passed the alleged award on 15.05.2012 before passing of the interim order by this Court on 17.05.2012. While so, whether there was any interpolation in the Observation Sheet dated 09.05.2012 maintained by the fifth respondent and to examine the validity of the the award dated 15.05.2012 said to have been passed by the fifth respondent is insignificant and it need not be examined by this Court in this Contempt Petition. Therefore, Sub-



application No. 501 of 2019 is dismissed.

Post the Contempt Petition for hearing after four weeks."

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20. Pursuant to the above order dated 12.11.2019, the Senior Superintendent of Post Offices, Chennai City Central Division, has filed an affidavit in which he has stated as under:-

"3. I respectfully submit that as per the directions of this Honourable Court, I am filing this affidavit. I submit that this Honourable Court had directed the Postal Department to file a report on 23.01.2020 pertaining to a receipt bearing No.ET265687178IN dated 16.05.2012.

4. I respectfully submit that after perusing the records available it is seen that disposal of the article No. ET265687178IN dated 16.05.2012 addressed to M/s. Madras Hospitality Services, No.6, Cathedral Road, Chennai - 600 086 sent by Arbitral Tribunal ARC/SA/RSL 136/XII, Chennai - 600002 could not be furnished as the records pertaining to the period 2012 of Gopalapuram Delivery Post Office, Chennai - 600 086 under Mylapore H.O. under the administrative control of Chennai City Central Division were weeded out after following due procedures.

5. I respectfully submit that the prescribed preservation period of delivery slip/delivery records is for a period of 18 months.

6. I respectfully submit that due to the long period of seven years and also of the weeding out of records, the status of the article could not be provided.

Under these circumstances, it is humbly prayed that this Honourable Court may be pleased to record the above submission and pass such other order as this Honourable Court may deem fit and thus render justice."



20. As per the affidavit filed by the Senior Superintendent of Post Office, the records relating to the article through which the fifth respondent sent the award to the petitioner could not be traced. However, on a perusal of the copy of the postal receipt No. ET265687178IN made available, it is evident that an article had been booked in the Counter No.1 OP-Code No.SG was addressed to "M/s. Madras Hospital, Chennai" which apparently refers to the petitioner. Therefore, prima facie, we are of the view that on 16.05.2012, soon after passing the award on 15.05.2012, the fifth respondent had despatched the award to the petitioner. The interim order was passed by this Court only thereafter on 17.05.2012. This only indicates that even before the order dated 17.05.2012 was passed by this Court, the fifth respondent has passed an award on 15.05.2012. Whether the award was passed after following due procedures contemplated under law or the fifth respondent's appointment as an arbitrator is valid, cannot be gone into by this Court in this Contempt Petition. This is more so that the award passed by the fifth respondent has been set aside by this Court and it is no longer enforceable against the petitioner.

22. However, it is the foremost contention of the petitioner that the date "15.05.2012" has been manipulated or ante-dated to circumvent the present contempt proceedings. We are not in a position to accept it for the reason that the postal receipt dated 16.05.2012 clearly indicates that it was sent to the



petitioner. Therefore, the presumption is that, even on 15.05.2012, the fifth respondent has passed an award and it was despatched to the petitioner on 16.05.2012. Therefore, the contempt proceedings need not be allowed to be continued as against the respondents. Further, we wish to observe that the respondents 1 to 4 are in no way connected with the present contempt proceedings and the entire issue revolves around the act of the fifth respondent in allegedly contravening the order dated 17.05.2012 passed by this Court.

23. The fifth respondent has filed a counter affidavit before this Court on 06.01.2014. In the counter affidavit, he has defended the present contempt proceedings by contending *inter alia* that the petitioner had perused the documents relating to the arbitration proceedings on 09.05.2012 and the petitioner also admitted the same. The arbitration proceedings were also defended by the petitioner by engaging his counsel by name Mr. Adeesh Anto. After complying with the procedures the award was passed on 15.05.2012 and it was served to the petitioner through registered post on 16.05.2012 and served on the petitioner on 17.05.2012. However, after coming to know about the order dated 17.05.2012, the fifth respondent had kept in abeyance all further proceedings and complied with the order passed by this Court. He has also stated that he has no intention to defeat or disobey the order passed by this Court. Therefore, he prayed for dismissal of the contempt petition.



24. Though elaborate written argument was filed by the petitioner as well as the fifth respondent, in our opinion, the contents thereof are unwarranted and irrelevant for the purpose of considering this contempt petition. As mentioned above, the fifth respondent, soon after passing the award on 15.05.2012, prima-facie, had communicated it to the petitioner on 16.05.2012 and having regard to the same, we are not inclined to proceed further with this contempt petition.

25. At the same time, we wish to observe that even assuming that the arbitration proceedings initiated at the behest of the respondents 1 to 4, by appointing the fifth respondent as arbitrator, is valid, we find from the records that on 12.05.2012, the petitioner wanted the case to be listed on 30.06.2012, instead of 12.05.2012, as originally proposed by the fifth respondent. In response, the fifth respondent sent a communication through e-mail on 15.05.2012 giving three choice of dates for the petitioner to choose namely 25.05.2012, 30.06.2012 and 30.07.2012. Having issued such a communication, we are at a loss to understand as to what prompted the fifth respondent to pass an award on 15.05.2012 itself much to the chagrin of the petitioner. This only indicates that the fifth respondent did not adhere to the basic procedures required in conducting the arbitration proceedings. This had given rise to the present contempt proceedings against the fifth respondent as also the respondents 1 to 4. In the given circumstances, the fifth respondent ought to



have adjourned the proceedings as indicated in the communication dated 15.05.2012 to any other date. On the one hand, the fifth respondent sent the communication dated 15.05.2012 giving suitable dates for hearing the arbitration proceeding and on the other hand, passes an award on the same date namely 15.05.2012 which had given rise to the filing of the present contempt proceedings by the petitioner. This attitude of the fifth respondent cannot be appreciated, rather, it has to be deprecated and we do not wish to add any further in this case.

26. With the above observation, the contempt petition is closed. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

rsh

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Dated at Madras this the day of 2022.

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