



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 6TH DAY OF OCTOBER, 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.413 of 2014

In the matter of the Arbitration and Conciliation Act, 1996 and in the matter of dispute between M/s.Aishwarya Feeds and Tamil Nadu Civil Supplies Corporation Limited.

M/s.Aishwarya Feeds,
Prop. R.Gunasekaran,
No.4/132, 4th KM, Mohanur Road,
Vaguram Patti, Sanyasikaradu P.O.,
Namakkal – 637 002.

. . . Petitioner

Versus

1.Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director, H.O. (Commercial),
No.12, Thambusamy Salai,
Kilpauk, Chennai- 600010.

2. Shri V.Bhoovalingam,
DRO (Retd).Ld. Second Respondent,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Salai,
Kilpauk, Chennai 600010.

. . . Respondents

Original Petition praying that this Hon'ble Court be pleased to call for

the records of the arbitration from the First Respondent and after perusing

the records



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(a) Set aside the Award dated 09.04.2014 rendered by the 2nd respondent in Case No.22/2012 VB.

(b) Allow the claims of the petitioner.

This original petition coming on this day before this Court for hearing in the presence of Mr.Vivek Menon, Advocate for the petitioner herein, and Mr.S.Saravanan, Advocate for the 1st respondent herein and upon reading the petition and the award dated 09.04.2014 filed herein and the learned counsel for the petitioner having submitted that under the circumstances, he shall go for fresh arbitration in respect of the above issue alone and petitioner counsel has no objection for the respondent constituting the fresh arbitral tribunal **it is ordered as follows:-**

That the award dated 09.04.2014 rendered by the 2nd respondent upholding the forfeiture of the amount alone be and is hereby set aside.

2) That the respondent herein, be and is hereby directed to appoint a fresh arbitrator to decide the only issue as to whether forfeiture clause involved by the respondent and forfeiture of the Earnest Money Deposit for a sum of Rs.7,63,400/- made by the respondent herein, be and is hereby valid, taking note of the various correspondence exchanged between the parties and evidence adduced in this regard.



3) That the parties hereto shall be at liberty to adduce additional evidence also apart from the evidence already produced before the erstwhile Arbitrator.

4) That the respondents herein, be and is hereby directed to constitute the Arbitral Tribunal.

WITNESS THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID THIS THE
6th DAY OF OCTOBER, 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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O.P.No. 413 of 2014

ORDER

DATED: 06.10.2021

THE HON'BLE MR.JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 03/01/2022

APPROVED ON : 04/01/2022



THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No. 413 of 2014

M/s.Aishwarya Feeds,
Prop.R.Gunasekaran,
No.4/132, 4th KM, Mohanur Road,
Vaguram Patti, Sanyasikaradu P.O.,
Namakkal – 600 010.

. . . Petitioner

Versus

1.Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director, H.O. (Commercial),
Kilpauk, Chennai- 600010.

2.Mr.V.Bhoovalingam,
DRO (Retd).Ld. Second Respondent,
Tamil Nadu Civil Supplies Corporation,
Mo.12,Thambusamy Salai,
Guindy, Chennai 600010.

. . . Respondents

PRAYER : Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 09.04.2014 rendered by the 2nd respondent in Case No.22/2012 VB and allow the claims of the petitioner.

For Petitioner : Mr.Vivek menon

For Respondents : Mr.S.Saravanan for R1



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ORDER

This original petition has been filed to set aside the award dated 07.04.2014 rendered by the 2nd respondent in Case No.22/2012 VB and allow the claims of the petitioner.

2. As the dispute arose between the parties in the contract entered between the parties, the same has been referred to the learned Arbitrator.

3. The brief facts leading to filing of this original petition is as follows:

An agreement dated 12.07.2010 came to be executed between the parties for supply of 5 lakhs masala packets in two spells i.e. 1.25 lakh packets before 31.08.10 as first spell and the balance quantity of 3.75 lakh packets before 28.09.10 as second spell. However, the petitioner has supplied only 3,23,217 packets and remaining 1,77,450 packets were not supplied. Though original period of supply was stipulated as 31.08.2010, the time was extended till 30.12.2010. Despite the extension of time, the petitioner has not supplied the remaining 1,77,450 masala packets, which



resulted in black listing the petitioner and also forfeiture of the Earnest Money Deposit paid by the petitioner. Hence, the matter was referred to the Arbitrator.

4. It is the contention of the learned counsel for the petitioner before the Arbitrator that though 1,77,800 packets were ready in advance, the same cannot be delivered due to the request of the respondent to change the cover. Besides, the Quality Inspector of the respondent has also not given nod for supply. However, the learned Arbitrator has found that as the conditions of the contract has been violated, he passed an award upholding the forfeiture of Earnest Money Deposit alone. However, the order black listing the petitioner is set aside. Now, the challenge has been made only with regard to the Earnest Money Deposit.

5. It is the contention of the learned counsel for the petitioner that the learned Arbitrator has not taken note of the evidence adduced by the claimant for the delay of supplying 1,77,800 packets. It is his contention that though extension of time was granted upto 31.12.2010, the letter dated 09.09.2010 was addressed by the respondent wherein in fact they requested the petitioner to deliver remaining 1,77,800 packets by changing the expiry date in the cover. Hence, it is his contention that when the materials have



already been ready with printed covers, as the respondents requested to change the covers, the delay was occasioned at this stage and cancellation was done, besides, security deposit was also forfeited. It is the further contention that the evidence adduced by the claimant in this regard is not even considered by the learned Arbitrator. Hence, he submitted that when the evidence is not considered, the same goes to the root of the matter. The award will fall within the ambit of patent illegality. Hence, seeks to set aside the portion of the award with regard to the Earnest Money Deposit.

6. Per contra, the learned counsel for the respondent submitted that the learned Arbitrator has considered the entire documents and found that despite the extension time was granted twice, the remaining packets have not been supplied. Therefore, the learned Arbitrator has rightly considered the contractual aspects invoking Clause 12 of the agreement, which makes it very clear that it empowers the respondent to invoke the levy of penalty and also forfeiture of the Security Deposit, which has been done in this case. Therefore, it is his contention that, when the orders have been passed by the authorities based on the contractual terms which has been rightly interpreted by the Arbitrator, the same cannot be interfered under Section 34 of the Arbitration and Conciliation Act.



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7. As the issue is narrow in this matter, the only challenge is made with regard to the forfeiture of the Earnest Money Deposit of Rs.7,63,400/-. The Arbitral award setting aside the black listing is not put under challenge by both sides. Therefore, the only challenge is with regard to the forfeiture of the Earnest Money Deposit made by the petitioner herein.

8. It is relevant to refer the clauses in the contract :

Clause 12(d) of the agreement reads as under:

12(d) In the event of failure to complete the supply of the contracted quantity within the time, the purchaser reserves the right to either cancel the order for the portion of the undelivered quantity or to grant extension of time with penalty or subsequent tender rate(L1 rate), whichever is less as indicated in Clause-12(a) above or to take action to terminate the contract, forfeit the Security Deposit/ invoking Bank Guarantee and collect consequential loss if any.

9. The Arbitrator has mainly relied upon Clause 12(d) of the contract. On perusal of the same, the Clause provides for reserving the power to the employer either to cancel the order for the portion of the



undelivered quantity of the claim order or to grant extension of time with penalty or subsequent tender rate.

10. The above clause read together with the entire Clause 12 makes it clear that the purchaser reserves right to cancel the orders for the unsupplied quantity and place orders with the remaining suppliers for the supply of the said quantity at the risk and cost of such supplier and also to terminate the contract, and also forfeit the Security Deposit besides invoking Bank Guarantee.

11. On perusal of the entire award, there is no materials available on record to show that whether the respondent has undertaken to claim any risk and cost by purchasing the remaining materials from some other purchasers.

12. Be that as it may, it is the main contention of the petitioner that though the delay in supply of remaining 1,77,800 packets were solely attributable to the respondent and in this regard, the evidence is also given by the petitioner, the oral evidence is never discussed by the learned Arbitrator. It is also to be noted that though the time was extended upto



the petitioner to supply remaining packets in changed cover, clearly indicates that they agreed to take delivery even after the period has expired.

Therefore, the reasons for delay are attributable to the respondent and when evidence is also produced, the Arbitrator ought to have seen the evidence and discussed the same. It appears that the material evidence is ignored and merely the award has been passed without considering the evidence.

13. Accordingly, this Court is inclined to set aside the award of the learned Arbitrator upholding the forfeiture of the amount alone and the respondent is directed to appoint a fresh Arbitrator to decide the only issue as to whether forfeiture Clause invoked by the respondent and forfeiture of the Earnest Money Deposit for a sum of Rs.7,63,400/- made by the respondent is valid, taking note of the various correspondences exchanged between the parties and evidence adduced in this regard. The parties are at liberty to adduce additional evidence also apart from the evidence already produced before the erstwhile Arbitrator. The learned counsel for the petitioner also submitted that under these circumstances, he will go for fresh arbitration in respect of the above issue alone. Accordingly, this original petition is allowed.



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14. Respondent is directed to constitute the Arbitral Tribunal.

Petitioner counsel has no objection for the respondent constituting the fresh Arbitral Tribunal.

Sd./- N.S.K.J
06.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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