



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.15538 of 2021

and

W.M.P(MD) Nos.12464,12466 and 12468 of 2021

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M/s.Arasan Arassi Transports,
Represented by its Managing Partner,
Mr.R.Senthil Selvam,
Arasan Arassi Illam,
Plot No.69, Mullai Nagar,
Seelanaikenpatty, Salem - 636 201.

... Petitioner

Vs.

1.The Deputy General Manager
(Category Management - Logistics) CPO-HQO,
Hindustan Petroleum Corporation Limited,
9th Floor, Marathon Futurex Building - A Wing,
Mafatlal Mills Compound, N.M. Joshi Marg,
Mumbai - 400 021.

2.The Deputy General Manager - LPG,
Hindustan Petroleum Corporation Limited,
Madurai LPG Regional Office,
171-172, SIDCO Industrial Estate,
Kappalur, Madurai - 625 008.

3.The Chief Plant Manager,
Hindustan Petroleum Corporation Limited,
Madurai LPG Regional Office,
171-172, SIDCO Industrial Estate,
Kappalur, Madurai - 625 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to his proceedings in Ref. No. HPCL/Madurai/Packed Tpt dated 12.07.2021 and quash the same and consequently direct the respondents herein to allow the petitioner to continue with the contract as per the LOA dated 30.03.2021 by considering replacement of the trucks, invoking clause 24 of the tender document issued in Tender No.20000612-HD-10157 dated 30.03.2021 and thereafter refund the security deposit.

For Petitioner : Mr.G.Arul Murugan
For Respondents : Mr.Mohammed Fayaz Ali



ORDER

The petitioner challenges an order dated 12.07.2021 by which the contract awarded to the petitioner was terminated and the petitioner was informed that the security deposit of Rs.4,00,000/- (Rupees Four Lakh) paid by him is forfeited.

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2.The petitioner states that he participated in a tender pertaining to the transportation of packed LPG cylinders by road. He was the successful bidder at such tender. Consequently, by proceedings dated 30.03.2021, a provisional letter of acceptance was issued to the petitioner. In terms thereof, the petitioner was required to provide eight trucks for purposes of transportation of packed LPG cylinders. According to the petitioner, the tender process took up a lot of time and, in the meantime, the trucks were idle. On account of the financial burden caused by the Covid-19 Pandemic, the petitioner inducted eight trucks as additional trucks to the Erode plant of the Indian Oil Corporation Limited. Subsequently, upon receipt of the letter of acceptance from the respondents, the petitioner offered alternative trucks to the Indian Oil Corporation instead of the eight trucks that were deployed with the Indian Oil Corporation. It is contended that the said contract enables the petitioner to offer alternative trucks. Meanwhile, the third respondent issued a show-cause notice dated 24.06.2021. Although the petitioner replied to such show-cause notice on 01.07.2021, by impugned order dated 12.07.2021, the contract was cancelled and the security deposit forfeited.

3.Mr.Mohammed Fayaz Ali, learned counsel accepts notice on behalf of the respondents. He submits that all the eight trucks had already been deployed with the Indian Oil Corporation at the time of submission of bid by the petitioner.

4.The dispute between the petitioner and the respondents is a dispute arising from and out of a contract for transportation of packed LPG cylinders by road. It has to be borne in mind that there is a material difference between a dispute relating to a tender and a dispute relating to contract. In the context of tenders, the Court in exercise of jurisdiction under Article 226 of the Constitution interferes if the tendering process is arbitrary, discriminatory or patently unreasonable. The reason for such interference is that the State as a tendering authority is required to be transparent and non-discriminatory while procuring goods or services or even selling goods or services.

5.By contrast, once the contract is awarded, the relationship between the parties is governed by the terms of such contract. Disputes in such context typically involve disputed questions of fact which cannot be conveniently or appropriately addressed by affidavit evidence. In addition, typically, such contracts contain a dispute resolution clause.



6.In the case at hand, Clause 39 of the tender contains an arbitration clause. In relevant part, the said Clause provides as under:

"39. Arbitration : Any dispute or difference of whatsoever nature, arising out of or in connection with this agreement or its termination, shall be referred to and resolved by a Sole Arbitrator, in accordance with the Arbitration and Conciliation Act, 1996 as amended by time to time."

7.In light of the aforesaid arbitration clause, the petitioner has a contractual remedy to address his grievances. Even with regard to interim orders, the Arbitration and Conciliation Act, 1996 enables a person aggrieved to seek interim orders under Section 9 from the Court or under Section 17 from the Arbitral Tribunal.

8.For the reasons set out above, W.P.(MD)No.15538 of 2021 is dismissed without any order as to costs. However, it is open to the petitioner to initiate arbitration proceedings in accordance with the contract with the respondents herein. Consequently, W.M.P(MD) Nos.12464, 12466 and 12468 of 2021 are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy General Manager
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+1 CC to M/s.G. ARUL MURUGAN, Advocate (SR-28102[F] dated
03/09/2021)

W.P (MD) No.15538 of 2021
01.09.2021

RS (13.09.2021) 4P 5C