



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2021

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.15897 of 2021

and

W.M.P(MD) .Nos.12810 and 12813 of 2021

WEB COPY

Santhana Mariappan.S

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli)
Ltd.,
Central Office, Tirunelveli.

2. The Deputy Manager,
Commercial Corporation,
Tamil Nadu State Transport Corporation (Tirunelveli)
Ltd.,
No.23/2, Thoothukudi Main Road,
V.M.Chathiram, Tirunelveli - 627 011.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records relating to the impugned order passed by the first respondent dated 23.08.2021 in K.No.No:3215 /(O&M)Corp /TNSTC /TNV /2020 as illegal and quash the same and consequently direct the respondents to collect the monthly tender charges for the currently advertised buses of depots within the Tirunelveli and Thoothukudi Zones under the control of first respondent from the petitioner in pursuant to the tender confirmation order issued by the second respondent Ka.No.No:3215/(O&M)Corp/TNSTC/TNV/2020 dated 18.03.2020.

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.R.Rajamohan,

TNSTC (Tirunelveli) for R1 and R2

O R D E R

The petitioner challenges an order dated 23.08.2021 of the first respondent by which the petitioner was called upon to remove all the advertising boards/panels on or before 27.08.2021.

2. The petitioner states that a tender was floated in relation



to the grant of a licence to display advertisements in all buses operating in the Tirunelveli division. Upon submission of a bid, the contract in relation to the above was awarded to the petitioner. Almost immediately thereafter, the first wave of the COVID-19 pandemic affected normal life. Therefore, the petitioner requested for an extension of time to make the security deposit. Such request was accepted and the petitioner remitted a sum of Rs.30,03,033.00/- on 23.12.2020 towards security deposit. For the first eleven month period of the contract, the petitioner was required to pay a sum of Rs.1,111/- + GST for each bus. In effect, the petitioner was required to pay a sum of Rs.11,81,193/- per month. Such payments were made by the petitioner for the months of February and March 2021. However, it is stated that out of the 901 buses, only about 198 buses were plying. Therefore, the petitioner requested that he should be permitted to make payments only in respect of the 198 buses and not the entire 901 bus fleet. In such circumstances, the impugned order was issued resulting in the filing of the present writ petition.

3. Mr.R.Rajamohan, learned Standing Counsel for the Tamil Nadu State Transport Corporation (Tirunelveli) Limited, accepts notice on behalf of both the respondents. He refers to and relies upon the agreement dated 11.01.2021 between the petitioner and the respondents. In particular, he points out that Clause 20 of the said agreement contains an arbitration clause. Therefore, he submits that the present dispute should be referred for arbitration by the petitioner.

4. Upon consideration of the aforesaid submissions and on examining the documents filed in support of the writ petition, it is clear that the dispute arises out of the agreement dated 11.01.2021. As such, the dispute resolution mechanism specified in such agreement becomes applicable. Ordinarily, in judicial review, this Court declines to exercise jurisdiction if the matter relates to the performance of a contract. Indeed, if such contract contains a dispute resolution clause by way of arbitration or otherwise, the Court would be even more reluctant to interfere. In the present case, by communication dated 22.07.2020, the respondent informed the petitioner that the licence fee is not being charged for the entire lockdown period extending from 10.05.2021 to 27.06.2021 and also for the Sundays falling on 25.04.2021 and 02.05.2021. Therefore, it cannot be said that the respondents have acted in an arbitrary manner so as to excite this Court into exercising jurisdiction notwithstanding the existence of an alternative remedy.

5. The main contention of the petitioner appears to be that only 198 buses were plying and not the full complement of 901



buses. This contention is refuted by the respondents. As such, this is a disputed question of fact which cannot be conveniently or appropriately addressed by way of affidavit evidence.

6. Therefore, the petitioner should invoke the arbitration clause contained in the agreement dated 11.01.2021. On this issue, it should be noted that the said arbitration clause provides for arbitration by the Managing Director of the Tamil Nadu State Transport Corporation. The Arbitration and Conciliation Act 1996, as applicable on date, does not permit arbitration by an interested party. Consequently, a neutral arbitrator would have to be appointed. The petitioner is permitted to invoke the arbitration clause and seek the constitution of the arbitral tribunal. The Arbitration and Conciliation Act, 1996 also enables a party to seek interim orders before Court under Section 9 thereof or from the arbitral tribunal under Section 17 thereof.

7. Subject to the above observations, W.P(MD).No.15897 of 2021 is disposed of without any order as to costs. Consequently, the connected W.M.P(MD).Nos.12810 and 12813 of 2021 are closed.

Sd/-

Assistant Registrar (WRITS)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli)Ltd.,
Central Office, Tirunelveli.
2. The Deputy Manager,
Commercial Corporation,
Tamil Nadu State Transport Corporation (Tirunelveli)Ltd.,
No.23/2, Thoothukudi Main Road,
V.M.Chathiram, Tirunelveli - 627 011.

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-28471[F] dated 07/09/2021)

W.P. (MD)No.15897 of 2021
06.09.2021

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