



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

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Krishnan Ramasamy, J.,

The Chennai Metropolitan Water Supply and Sewerage Board (in short, the respondent/Board), for the purpose of supplying drinking water in various areas, used to engaged water tank lorries by way of floating tenders. The applicants herein are the successful tenderers and they entered into an agreement of contracts. The applicants used to supply the drinking water after getting work orders from the respondent/Board. As per the terms of the work orders after payment of security deposit of Rs.30,000/- and certain other charges, the applicants' tanker lorries would be allowed to supply water.

2. The grievance of the applicants is that due to certain mechanical defect and diversion of traffic, the applicants could not ply their tanker lorries. However, the respondent/Board after issuing show cause notices vide proceedings dated 19.05.2022 and other dates, cancelled the work orders issued to the applicants and thereby, terminated the contract and also forfeited the security deposit. Aggrieved by the same, it appears that some of the applicants moved the Writ Petitions before this Court wherein, this Court dismissed the Writ Petitions giving liberty to invoke arbitration clause and work out their remedy. Accordingly, the applicants have been taking steps to refer the matter to arbitration, however, in the meanwhile, the respondent/Board has cancelled the work orders and thereby, not allotting the work orders to the applicants, thus, they are put to irreparable loss and cause prejudice to their livelihood. Therefore, the applicants have come forward



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

with these applications seeking a direction to the respondent/Board to issue work orders to the applicants' tanker lorries for the purpose of distributing water in the areas pursuant to the contract agreement entered by them and for appointment of Arbitrator to adjudicate the present dispute.

3. According to the respondent/Board, as per Clause 12 of the Contract Agreement, if a vehicle has major repairs, it does not require to be replaced, but ought to be repaired and operations be resumed within 30 days failing which, action will be initiated and security deposit will be forfeited. The said clause further states that work order will be issued only for a particular vehicle and if the said vehicle is found to be absent continuously, it will be liable for termination of contract. In the present cases, one of the applicant had acted contrary to Clause 12 having not plied the vehicles and restore the vehicles for more than 30 days, the respondent/Board has rightly terminated the contract in terms of the contract entered into between the parties.

4. Further the respondent submits that some of the applicants diverted their route to ply the tanker lorries, thus, the GPS tracked the same and consequently, the Smart Card issued to the applicants got blocked automatically and no further trips were allowed thereafter. Therefore, the applicants are not entitled for the relief as sought for in the applications.

5. The learned counsel appearing for the applicants would submit that the power of cancellation/termination of the contract is vested only with the respondent/Board. While so, in the present cases, the Purchase Manager has issued the orders cancelling/terminating the contract, which are not



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

sustainable. He would further submit that the applicants are ready and taking earnest steps to refer the matter to the arbitration and to resolve the dispute and in the interest of justice, taking into consideration of the plight of the applicants whose source of livelihood is only by way of present contract entered with the respondent/Board and request this Court to direct the respondent/Board to issue the work orders to the applicants.

6. Heard the learned counsel appearing for the applicants and the learned counsel for the respondent/Board and perused the materials available on record.

7. According to the respondent/Board, the applicants' water tankers are fitted with GPS tracking system and level sensor by the agency engaged by the respondent/Board. The movement of the water tankers will be monitored through the centralised GPS and level sensor monitoring system, then and there by the service provider, which will be monitored by a filling point Incharge, concerned area Engineer and Territorial Superintendent Engineers. If any water tanker is found engaged in an unauthorised supply, a fine of Rs.20,000/- will be levied besides the cancellation of all the trips on that day and further, once unauthorised supply is identified through the GPS, the smart card issued will be automatically blocked and no further trips will be allowed for that water tanker. Despite this checking system, according to the respondent/Board, since the applicants' water tankers were found to have undertaken unauthorised trips and have supplied water illegally to third parties in violation of the terms of the agreement and as such, the respondent/Board by relying on Clauses 19 and 26 of the contract, has



terminated the contract and also deactivated the smart cards.

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8. However, on perusal of the termination orders, it reveals that taking note of the alleged illegal water supply said to have been made by the applicants, the Purchase Manager has passed the orders, terminating the contract of the applicants and stopped giving work orders to the applicants' tanker lorries. The main grievance of the applicants is that the Purchase Manager is not competent authority to terminate the contract and only the respondent/Board has the power to do so as envisaged under Clause 26 of the Contract, which reads as under:

“26. Contract Period:

Three years (Thirtysix months) with effect from the date of issue of first Work Order. However the Board reserves the right to extend or reduce the contract period if warranted. The Board also reserves the right to terminate the Contract without any prior intimation.”

9. On perusal of the above, it is clear that only the respondent/Board has the power to terminate the contract and as such, the learned counsel for the applicants has rightly contended that the orders passed by the Purchase Manager cancelling the termination of contract of the applicants are not sustainable. In fact, contract was awarded to the applicants and entered into contract agreement by the Board only and as such, the authority to cancel or terminate the contract shall be the Managing Director of the Board. However, it is submitted on behalf of the respondents that notice inviting tender was issued by the Purchase Manager and the work orders are being issued by the



Purchase Manager and for the purpose of terminating the contracts of the applicants, the Purchase Manager has obtained approval of the Managing Director in the files and this is in accordance with the Board's Delegation of Powers since Clause 56 of the Board's Delegation of Powers states that the authority for termination of contracts shall be the authority empowered to accept such contract. Therefore, there is no infirmity in the orders of termination passed by the Purchase Manager.

10. Clause 56 of the respondent/Board's Delegation of Powers reads as under:

“56. Termination of Contract

i) The authority for termination of contracts shall be the authority empowered to accept such a contract. However in respect of contracts accepted by Tender Committee or the Board, the authority for termination of contracts shall be the Managing Director.”

ii).....

11. A perusal of the above, it is clear that the authority for termination of contracts shall be the Managing Director, in the event if the Board accept the contract. In the present case, admittedly, the contracts of the applicants have been accepted by the Board only and as such, the Managing Director is the only authority, empowered to terminate the contracts. Even on verification of the files produced, it is found that only a Note was put up before the Managing Director, wherein, no order was passed by the Managing Director, terminating the contract of the applicants, whereas, the Purchase



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

Manager who is not empowered, has passed the orders, terminating the contracts of the applicants.

12. In fact, on earlier occasion this Court on consideration of *prima facie* case made out by the applicants, by a detailed order dated 06.07.2022 passed the following interim order:-

..... “7. A perusal of the aforesaid order would go to show that the purchase manager, who has no authority has passed the impugned order and further he has not referred about the board proceedings in the said order. In Clause 26 of the Contract Agreement, it is very clear that only the Board has reserved its right to terminate the contract and therefore the termination order passed by the 4th Respondent is not in accordance with law and as per the contract, in which case, the Arbitrator can pass order for damages as well as for restoration to operate lorries.

8. In view of aforesaid circumstances, this Court is inclined to pass the following interim order:

(i) There shall be an order of interim stay of the operation of the order passed by the 4th Respondent dated 18.05.2022.

(ii) This Court also directs the Respondents to permit the applicants to operate their lorries,,within 5 days from the date on which this order copy is made ready.”

13. The above said order will hold good in respect of other applications.

14. The case of the applicants is that the Purchase Manager has passed orders without proper show cause notice and enquiry by relying upon Clause 19 of the contract terminating the work order contrary to the terms and



conditions of the work order.

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15. According to the learned counsel for the applicants, Clause 19 would apply only if the offence is found continued for more than two times, the work order of the vehicle would be cancelled, whereas, in the present case, the applicants were alleged to have committed illegality only once and therefore, the respondent/Board ought to have relied upon Clause 9 instead of Clause 19. For better appreciation of the issue, it is relevant to extract Clause 9 and Clause 19 of the Contract which reads as follows:-

“9. WATER SUPPLY

The drinking water should be unloaded in the allotted locations mentioned in the trip sheets from any of the water distribution stations within Chennai City. The water lorry will be engaged for a minimum of 8 trips per day. However, the number of trips shall be increased or decreased as per the requirement at the discretion of Board's official.

If the water tanker is found engaged in supply of water to other facilities of CMWSSB other than the locations specified in the trip sheets without any due authorization, a minimum fine of Rs.10,000/- will be imposed. If this offence is found continued for more than two times, the work order of the vehicle would be cancelled besides cancelling all the trips made on that day and forfeiture of the SD after issuing Show-cause notice by the respective Area Engineer and get the explanation from the lorry owner.

If any water tanker is not able to run minimum 8 trips per day or as ordered by the Board, for any reason or thereof due to the defect in the water tanker frequently in a period of one month, the work order of that particular vehicle would be cancelled and penalty imposed as per provisions of the contract.

The trips for all the lorries shall be equally allotted



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Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

with street supply, tank supply and payment trips/Free trips and rates as directed by the Engineer concerned.

19. UNAUTHORISED SUPPLY

If unauthorised supplies of water are detected by the Departmental officers, the contract is liable for termination besides levying penalty as may be decided by the competent authority.

Unauthorised supply mean, supply of water to another facility other than CMWSSB designated locations in the trip sheet.

If any water tanker is found engaged in unauthorised supply, a fine of Rs.20,000/- will be levied besides the cancellation of all the trips on that day. Once the unauthorised supply is identified through the GPS, the smart card issued will be automatically blocked and no further trips will be allowed for that water tanker. The vehicle will be stopped immediately and enquiry will be conducted and completed within 30 days from the date of incident. Based on the enquiry conducted by the General Manager/Vigilance officer, if the unauthorised supply made is found to be proved, the work order issued for the vehicle will be cancelled and the contract will be terminated immediately along with forfeiture of security deposit. In addition, the driver and the consumer who availed the water will be booked under IPC 379 for theft of water. The Owner may also be booked under the section IPC 379, after suitable departmental enquiry.

If any unauthorised supply made is found through GPS subsequently the smart card issued will be automatically blocked and no further trips will be allowed for that water tanker. However the payment for the genuine trips made during that period will be considered.

Further, the driver who was found to be involved in illegal supply will not be permitted to drive any vehicle in Board's contract/operation.

If the water tanker is found engaged in supply of water to other facilities of CMWSSB other than the locations specified in the trip sheets without any due



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Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

authorization, a minimum fine of Rs.10,000/- will be imposed. If this offence is found continued for more than two times, the work order of the vehicle would be cancelled besides cancelling all the trips made on that day and forfeiture of the SD after issuing Show-cause notice by the respective Area Engineer and get the explanation from the lorry owner as detailed in clause-10 above.”

16. On reading of the above, it is clear that the respondent/Board is empowered to take necessary action when the offence is found continued for more than two times.

17. On perusal of the impugned termination orders, nowhere it has been mentioned as to how the offence was committed and how many times and no details were mentioned as regards the vehicle found supplying water unauthorisedly in the area other than specified in the work order. Further, as per Clause 30 of the terms of the contract, any dispute arising out of the contract will be decided under the Arbitration and Conciliation Act. However, the respondents have not initiated any arbitration proceedings till now. Clause 30 of the contract reads as under:

“30. ARBITRATIONS

In case of any dispute arising out of this contract the matter will be decided under the Arbitration and Conciliation Act and the arbitrator shall be nominated by the M.D. Both the parties should abide by that arbitrators decision.”



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

18. On a perusal of the above Clause, which facilitates the parties to resolve their disputes or differences arising out of the agreement by way of arbitration and the matter will be decided under the Arbitration and Conciliation Act, 1996. Therefore, in cases where there is an arbitration clause, it is obligatory for the Court under the 1996 Act to refer the parties to arbitration in terms of their arbitration agreement. Further both the learned counsel for the parties have agreed to get resolve the disputes before the Arbitral Tribunal and also urged this Court to refer the matter to the Arbitral Tribunal by appointing an Arbitrator.

19. Accordingly, while disposing of the above Arbitration Applications, this Court feels it appropriate to appoint an Arbitrator to resolve the disputes between the parties. Accordingly, Hon'ble Thiru Justice N.Kirubakaran (Retd.), Cell No.9445025454, having residence at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089, is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator after issuing notice to the parties and upon hearing them, may take up and deal with each dispute and dispose of the same in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses.

20. Till the arbitration proceedings are completed by the Arbitral Tribunal, the respondent/Board is directed to continue to engage applicants' water tanker lorries by issuing the work orders and also activate the Smart Cards for the purpose of supplying water, within a period of five (5) days



Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

from the date of the order made ready. It is made clear that this Court has not decided any of the issues/disputes in this order and the applicants are at liberty to raise all the contentions *vis-a-vis* the claims made in the present applications before the learned Arbitrator. The learned Arbitrator shall resolve the dispute without being influenced by any of the observations made by this Court in the present order.

21. In view of the aforesaid directions, all the Arbitration Applications are disposed of. Connected Original Applications are closed.

26.08.2022

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Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022

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Arb.Appln.Nos.142, 145 to 152 of 2022 and 120 to 125 of 2022
& O.A.Nos.347 to 352 of 2022s

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