



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.34561 of 2019 and

WMP.No.35269 of 2019

M/s.Annamalaiyan Filling Station,
Rep. by its Proprietor,
Chennai-Bangalore National Highway (NH-4),
Kondapuram, Kaveripakkam Post,
Vellore District.

...Petitioner

Vs

1.Indian Oil Corporation Limited,
Rep. by its Chief General Manager (O),
Marketing Division, Southern Region,
Indian Oil Bhavan,
No.139, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The Deputy General Manager (OPS),
Marketing Division, Southern Region,
Indian Oil Bhavan,
No.139, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

3.The Deputy General Manager,
Indian Oil Corporation Limited,
Korukkupet Terminal,
Chennai-600 021.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents pertaining to the Impugned Order of the 1st Respondent in Ref. TNSO/ OPS/ ANNAMALAIYAN, dated 07.02.2018 and quash the same and consequently direct the Respondents to disburse the admitted amount of Rs.4,64,310.48/- to the Petitioner payable towards the transportation charges as well as the security deposit for the contract period in work order No.TNSO/ OPS/POL/4127/MS/HSD/2009/87, dated 05.12.2009 with interest.



For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.A.S.Sivasubramaniam

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O R D E R

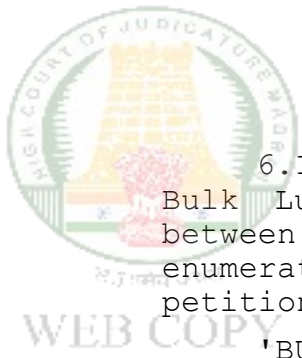
The petitioner challenges a communication dated 07.02.2018 whereunder its representation dated 14.12.2015, seeking return of security deposit and settlement of bills has been rejected.

2.The petitioner is a dealer of the Indian Oil Corporation, the respondents herein. It was awarded two contracts, one for transportation of petrol and diesel and the second for transportation of fuel. According to the petitioner, the two contracts are independent and distinct and the terms of one should not impact the terms relating to the other.

3.In relation to the contract of supply of lube oil with the Southern Railways, a particular transaction come to be disputed by Southern Railways and it was alleged that the products supplied by IOCL and transported by the petitioner had not reached their destination. However, the petitioner would maintain that it holds a delivery challan in respect of the sale consignment. The respondent has withheld payment in respect of the bills in relation to the aforesaid transaction that is pending Arbitration.

4.The petitioner has raised a claim for the settlement of its transport invoices in respect of the aforesaid consignment and the respondents have, for their part, raised a counter-claim in relation to the value of lube oil transported by the petitioner.

5.While this is so, the petitioner made a request for return of security deposit and for settlement of bills in relation to transportation of fuel which, admittedly, forms the subject matter of an entirely different contract. This request has been rejected by the respondents on the ground that the consignment of lube oil that is alleged not to have arrived at the destination, that is, the Southern Railways, is valued at a sum of Rs.34 lakhs and liability for the same would have to be borne by the petitioner.



6. In this regard, my attention is drawn to Clause 20 of the Bulk Lube Transport Agreement dated 15.02.2011 entered into between the petitioner and the respondents. Clauses 15 onwards enumerate various liabilities of the contractors i.e. the petitioner, wherein Clause 20 reads as follows:-

'BULK LUBE TRANSPORT AGREEMENT

.....

20. The contractor/s is are totally responsible for delivering the correct quality and quantity of the product as per invoice at the destination specified. The Contractor's driver should satisfy himself/themselves regarding the quantity and quality prior to the sealing of the truck/s. In the event of any loss of product recorded at the destination, the cost of such shortages at prices to be determined by the Contracting Corporation including transportation cost for shortage would be debited either to the contractor/s bills, if any, with the Corporation or shall be made good directly by the contractor/s or will be adjusted against any deposit or other amount payable to the contractor/s. The contractor cannot be absolved of his responsibility for correct delivery even though seals of trucks are intact.'

7. The above clause, in conclusion, states that the responsibility of delivering the proper quality and quantity of the lube oil vests with the petitioner. In the event of loss of product recorded at the destination, the cost of such shortage/loss, including transportation cost for shortage, would be debited by way of debit to the contractor bills, adjustment against any deposit, direct settlement by the contractor or by way of adjustment of any other amount payable to the contractors.

8. Thus, the terms as agreed to by the parties, and that bind them, are to the effect that liability, if any, is to be met out of 'any other amount payable to the contractors'. The adjustment/debit in this case has been made on the strength of this clause. In view of the unambiguous and categorical terms of the contract that bind the parties, I see no justification for intervention of the Court. Admittedly, the proceedings for arbitration are at an advanced stage and hence the issue of whether the impugned adjustment made in the interim, will depend on the fate of the arbitration proceedings itself.



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9. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

vs

To

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Korukkupet Terminal,
Chennai-600 021.

+1cc to Mr.P.S.Sivasubramaniam, Advocate SR.No.20676

+1cc to Mr.Muthumani Doraisami, Advocate SR.No.20531

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SKM(CO)
GMY(02/05/2022)