



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.1048 of 2022

and W.M.P. (MD) Nos.882 and 883 of 2022

WEB COPY

Power Media,
Represented by its Proprietor,
Santhana Mariappan,
S/o. Shanmugavel,
No.218A,Theni Main Road,
P.P.Chavadi,
Madurai.

... Petitioner

vs.

The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Central Office,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned tender notification issued by the respondent in Tender No.3215/O&M/Corp/TNSTC/TNV/2020 nil. dated and quash the same.

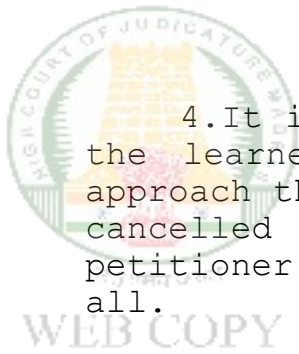
For Petitioner : Mr.M.Subash Babu
For Respondent : No Appearance

O R D E R

I am not impressed with the submissions made by the learned counsel for the petitioner.

2.The petitioner, had the benefit of a contract granted in his favour for putting up advertisement boards and it was implied that the respondent Transport Corporation would be running 901 buses. Owing to the Covid-19 pandemic, the number of buses operated had drastically reduced to 198. Complaining about this particular fact, though the contract was subsisting till 24.11.2023, the petitioner had earlier filed W.P.(MD)No.15897 of 2021.

3.That came up for consideration before a learned Single Judge of this Court and by order dated 06.09.2021, it had been directed that since the agreement provided an arbitration clause, the petitioner should move appropriate application seeking appointment of an arbitrator and seeks necessary reliefs. The petitioner had taken up that particular direction of this Court and had filed A.O.P. No.289 of 2021 which is now pending on the file of the Principal District Court at Tirunelveli.



4.It is also mentioned that on the same day on 06.09.2021, when the learned Single Judge had directed the petitioner herein to approach the arbitral tribunal, the existing agreement had also been cancelled by the respondent. This naturally means that the petitioner has no contractual relationship with the respondent at all.

5.The respondent had now, issued a tender schedule and the petitioner is deeply aggrieved by the same. It is stated that the last date and time for submission of tender is on 28.01.2022. The petitioner fears that a third party might get the tender and therefore, the petitioner's interest would be deeply affected and third party rights would also accrue.

6.But having approached the arbitral tribunal and having also mentioned in the petition filed before the arbitral tribunal that the respondent intends to call for new tenders, the petitioner may very well approach the arbitral tribunal seeking necessary reliefs. The Arbitrator and Conciliation Act, 1996 is comprehensive in nature. The writ petition cannot be maintained. There cannot be an injunction restraining the respondent from calling for tenders.

7.With respect to the issue on tenders, the Hon'ble Supreme Court in **Uflex Limited Vs. The Government of Tamil Nadu and others** reported in **2021 SCC Online 738**, had categorically come down on Courts interfering with tender matters and had stated that it is exclusively the domain of the Tender Issuing Authority and the Court under Article 226 of the Constitution of India cannot sit as an Appellate Authority over every act done by the Tender Issuing Authority. Paragraph No.40 in the said Judgment is as follows:-

"..40.We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examine are restricted as set out in **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651** and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the



tendering authority knows best as to what is suited in terms of technology and price for them."

8.I may also referred to **Vidya Drolia and Others Vs. Durga Trading Corporaiton**, reported in **2021 (2) SCC Page 1**, wherein, a larger Bench of the Supreme Court had very clearly stated that arbitrability of an any issue should be taken up only before the arbitral tribunal and it is not for the Courts to examine the issue of arbitrability.

9.All the issues raised in the writ petition can be agitated before the Arbitral Tribunal and hence, no further directions are required. The Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sjj

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

The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Central Office,
Tirunelveli District.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-2986[F] dated 28/01/2022)
W.P.(MD) No.1048 of 2022

25.01.2022

MGJ(14.02.2022) 3P 3C