



W.P.Nos.22252, 22253 & 22254 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.22252, 22253 & 22254 of 2011

and

M.P.Nos.1, 1, 1, 2, 2 & 2 of 2011

M/S. K.K.M. Power Builder
Rep. by its Proprietor M.Kamaraj,
Main Road, Ambal & Post,
Nagapattinam District-609503.

...Petitioner in WP.22252/2011

M/S. Simsson Electricals,
Rep. by its Proprietor J.Prema,
No.1A, 3rd Street, Sri Ramapuram,
Ambur, Vellore-635802.

...Petitioner in WP.22253/2011

M/s.Yes Yes Electricals,
Rep. by its Proprietor R.Shanmugasundaram,
Plot No.24, D.No.53, A.E.Sukumar Avenue,
Old Suramangalam, Salem-636 005.

...Petitioner in WP.22254/2011

-Vs-

1. Bharat Sanchar Nigam Limited,
Rep. by its Principal Chief Engineer(E),
No.60, Ethiraj Salai, Chennai-8.

2. The Executive Engineer(Electrical)
Bharat Sanchar Nigam Limited,
No.1/241, Meyyanur Road,
Salem-636004.

...Respondents in all WPs.



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Common Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to order No.50(85) EEE BSNL ED/SLM/2010-2011/296 dated 15.06.2011 issued by the 2nd respondent and quash the same as being illegal arbitrary, unconstitutional and contrary to the natural justice and consequently forbear the Respondents from altering the terms of the contract dated 01.04.2009 entered into between the petitioner and the 2nd respondent without obtaining the prior written consent of the Petitioner.

For Petitioners
in all WPs. : Mr.C.K.Chandrasekhar

For Respondents
in all WPs. : Mr.K.R.Ramesh Kumar

COMMON ORDER

The writ petitions are filed challenging the proceeding dated 15.06.2011, issued by the second respondent, reducing the limit for withdrawal of diesel issued for various categories of USOF sites.

2.The petitioners are power builders. A tender in January 2009 for handling the operations and maintenance of 12 Universal Service



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Obligation Fund sites at the rate of Rs.8,42,786/- per site for 5 years in the BSNL, Electrical Division, Salem, was issued on 01.04.2009. The Petitioners tender were accepted by the respondents. An agreement was entered into between the parties on 01.04.2009 with regard to the maintenance of the USOF sites as per the stipulated conditions laid down in the contract for operation and comprehensive maintenance of Electro-Mechanical Services for 12 USFO sites under BSNL, Electrical Division Salem.

3.The contract was executed for a period of 5 years and expired on 31.03.2014. The second respondent signed the agreement on behalf of the first respondent and the work order specified the nature of work to be undertaken by the petitioners. The schedule of work was to provide round the clock site care-taking, operation and comprehensive maintenance of the electoral mechanical services of the universal service providers, maintenance of Diesel Generator sets, including supply of lube oil, filters, coolant, transportation and filing of diesel, making arrangement of storage of diesel etc., after every 7000 hours, there should be top haul and after 10000 hours, there should be major over-haul of the Diesel generator sets.

The batteries were to be replaced after two years and the cost of the



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batteries were reimbursed by BSNL. Clause 6 of the work schedule specified as follows:

No.of USPs at site	Total maximum load	CPH of DG sets (litres per hour)
1	Up to 5 KW	2.7 litres
2	More than 5 KW and up to 7 KW	3.1
3	More than 7 KW and up to 9 KW	3.6
3	More than 9 KW and up to 11 KW	4.5
3	More than 11 KW and up to 13 KW	5.5

4.The grievance of the petitioners is that the second respondent has issued the impugned order dated 15.06.2011 suddenly reducing the diesel quantity from the aggrieved quantity. The reduction in limit for payment of diesel consumption has been unilaterally effected in total breach of the contract dated 01.04.2009 to the prejudice of the petitioners and that too with retrospective effect from 13.09.2010. In view of the violations, the petitioners have chosen to file the present writ petitions.

5.The learned counsel for the petitioners mainly contended that this Court has considered a similar issue in WP.No.15778 of 2011 and the writ petition was allowed on 21.04.2022, setting aside the order passed by the



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respondents. Thus, the present writ petitions are also liable to be considered.

6.The learned counsel for the respondents objected to the said contentions by stating that the periodical review, which was permissible under the contract, was made by the competent authorities and there was no irregularity as such. After reviewing the test results of other sites, consumption per hour of the DG set for the entire Tamil Nadu zone was taken note of and accordingly, the order impugned was issued as per the testing report.

7.The learned counsel for the respondent drew the attention of this Court with reference to the terms and conditions of the contract. As per the contract and general guidelines, the petitioners have to resolve the issues through arbitration proceedings. When the petitioners aggrieved for arbitration clause, the writ petitions are not maintainable. Pertinently the petitioners gave an undertaking availed by the general guidelines issued and in view of the undertaking given by the petitioners, they have to invoke the arbitration clause for the purpose of resolving the issues.



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8.The learned counsel for the petitioner reiterated that an earlier writ petition was allowed by this Court and therefore, the present writ petition also to be considered. It is also brought to the notice of this Court that the arbitration clause was not considered by this Court in the earlier writ petition decided on 21.04.2022 in WP.No.15778 of 2011, when the arbitration clause contemplated under the general guidelines and the undertakings given by the petitioners to abide by the general guidelines were brought to the notice of this court and therefore, the said order cannot be followed in a mechanical manner by this Court.

9.If at all any error in respect of the earlier order passed by the High Court or the Supreme Court, the Courts are bound to look into the facts independently and form an opinion with reference to the merits placed before the Courts concerned. A wrong order cannot be followed in a mechanical manner by the Court. In this regard, the Division Bench of the Madras High Court in the case of ***Director of Sericulture Department, Salem, Vs. K.Kumar*** reported in ***[2015 (4)CTC 241]*** reads as follows:

“34.It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought



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to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay vs. R.S.Nayak [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second



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contention of the writ petitioners is also liable to be rejected.

41. *In Union of India v. Kartick Chandra Mondal [(2010) (2) SCC 422]*, the Supreme Court, relying upon its previous decisions in various cases including the one in *State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 69]*, held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in *Kartick Chandra Mondal* was subsequent to the decision in *Maharaj Krishan Bhatt* and the decision in *Maharaj Krishan Bhatt* is also referred to in *Kartick Chandra Mondal*."

10. The Hon'ble Supreme Court of India in the case of ***Basawaraj and Another Vs. Special Land Acquisition Officer*** reported in ***[2013(14)SCC 81]*** held that "It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending a wrong decision made in other cases. The said provisions



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does not envisage negative quality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong orders.”

11.In the present case, the petitioner relies on the earlier order passed by this Court, wherein under the general guidelines, arbitration clause has been contemplated and the specific undertaking given by the petitioners, were not even brought to the notice of this Court. This being the factum, this Court cannot follow the said order passed by this Court and now it is brought to the notice of this Court that there is an arbitration clause in the general guidelines and the petitioners also have given an undertaking.



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WEB COPY 12.Contractual obligations or its violations are to be adjudicated

with reference to the documents and evidence in force. High Court cannot conduct a roving inquiry in respect of such disputed facts in a writ proceedings under Article 226 of the Constitution of India. Thus, the parties have to approach the competent forum for adjudication and resolve the issues in the manner known to law. In the present case, the petitioners have narrated the violations committed by the respondents which arose from and out of the contract entered into between the parties and thus, the petitioners are at liberty to invoke the arbitration clause for the purpose of resolving the dispute between the parties.

13.Accordingly with the above observations and liberties, the writ petitions stand **disposed of**. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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