



W.A.No.690 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.No.690 of 2023

M/s.Ashtech (I) Pvt. Ltd.,
Ashtech House,
30, Popotwadi, Kalbadevi Road,
Princess Street,
Mumbai-400 002.

.. Appellant

Vs

1.Tamil Nadu Generation Distribution
and Corporation Ltd.,
rep. by Chief Engineer/Civil Designs,
3rd Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer,
Ennore Thermal Power Station,
Ennore, Chennai-600 057.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 15.2.2023 in W.P.No.15963 of 2020.



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For the Appellant : Mr.V.P.Raman

For the Respondents : Mr.P.Wilson
Senior Counsel
for Mr.K.Arun Prasad
for respondents 1 and 2

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.V.P.Raman, learned counsel for the appellant and Mr.P.Wilson, learned senior counsel for the respondents.

2. The appellant assails the order passed by the learned Single Judge thereby dismissing the writ petition and granting liberty to the appellant to raise all defences in the civil suit.

3. Learned counsel for the appellant submits that the act of the respondents in issuing the demand notice and approaching the civil court is against the undertaking given by them in the clarificatory proceedings raised by the appellant.



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4. It is submitted by learned counsel for the appellant that initially writ petitions were filed challenging the demand being made by the respondents. The learned Single Judge of this Court came to the conclusion that the respondents can charge at the rate of Rs.540/- per metric tonne. The appellant had filed a review application. In the review application, the same was reduced to Rs.410/- per metric tonne. The appellant had filed a clarificatory application and in the clarificatory application, the advocate for the present respondents had given an undertaking that the MoU dated 11.11.2005 would be considered. The learned counsel submits that the respondents in flagrant violation of the undertaking given have directed the appellant to pay at the rate of Rs.410/- per metric tonne and the difference of Rs.60/- is being claimed, which is improper. Reliance is placed on Clauses 3 and 6 of the MoU entered into between the parties.

5. Learned senior counsel for the respondents submits that the civil suit is pending. The appellant has filed the written statement.



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6. The disputed question of fact exists. Clause 6 of the MoU was for a particular period. There are different heads under which charges are being levied.

7. It is not disputed that the civil suit is filed by the present respondents claiming recovery of Rs.410/- per metric tonne. The appellant herein has already filed the written statement. The civil court would be appropriate to decide the dispute between the parties, as it would have the benefit of the evidence adduced by the parties. In the civil suit, a decision can be taken after the parties adduce their evidence. The scope in the writ petition would be in a limited compass.

8. Learned counsel for the appellant contends that even in contractual matters this Court can invoke powers of judicial review. In certain commercial matters this court may exercise power of judicial review, however, the powers of judicial review under Article



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226 of the Constitution in commercial transactions is in a very limited and narrow compass.

9. Be that as it may, the learned Single Judge has not decided the writ petition on merits and considering the pendency of the civil suit in respect of the same issue, refrained from exercising the writ jurisdiction.

10. This Court in appeal would be loath in interfering with the discretion exercised by the learned Single Judge, more particularly, when the decision is not on merits, but relegating the parties to the civil court, especially when the dispute is sub judice before the civil court and the civil court is seized of the matter.

11. In the light of that, the writ appeal is disposed of. No costs. Consequently, C.M.P.No.6879 of 2023 is closed.

12. It is made clear that the civil court would consider the



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matter on its own merits considering the cases put forth by the plaintiff and the defendant without being influenced by the observation made by the learned Single Judge of this Court. Needless to mention that all contentions of the respective parties are kept open.

(S.V.G., CJ.)

(P.D.A., J.)

19.06.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

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