



Crl.O.P.No.9338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.9338 of 2023

and

Crl.M.P.No.6091 of 2023

South India Corporation Private Limited,
(Formerly known as South India Corporation Limited)
Represented by its Director,
Mrs.Valliammai
D/o.Mr.Valliappan,
Chettinad Towers, 5th Floor,
603, Anna Salai,
Chennai-600 006.

.. Petitioner

Vs.

1.The State of Tamil Nadu Rep.by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai City V Detachment,
Chennai.

2.Arappor Iyakkam
Rep.by its Managing Trustee Jayaram Venkatesan,
No.7. Satya Plaza 2nd Floor,
Dr.Thirumoorthy Nagar Main Road,
Chennai-600 034.



Crl.O.P.No.9338 of 2023

[R2-impleaded as per order of this Court
dated 25.07.2023 in Crl.M.P.No.8943/2023
in Crl.O.P.No.9338 of 2023]

..Respondents

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to call for the records and quash the FIR in Crime No.1 of 2023 dated 27.02.2023 on the file of the The Deputy Superintendent of Police, Vigilance & Anti Corruption, Chennai City V Detachment, Chennai registered for offences under Sections 120(B), 420 IPC and 13(2) r/w. 13(1)(c) & 13(1)(d) of Prevention of Corruption Act, 1988.

For Petitioner	:	Dr.M.R.Venkatesh For Mr.K.Moorthy
For R1	:	Mr.S.Udayakumar Government Advocate (Crl.Side)
R2	:	Dr.V.Suresh

ORDER

M/s.South Indian Corporation Private Limited, the petitioner herein is shown as 7th accused in Crime No.1 of 2023, on the file of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai.



CrI.O.P.No.9338 of 2023

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2. This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the complaint against the petitioner.

3. The sum and substance of the complaint as found in the FIR is that the petitioner's company is the successful bidder for the contract quoted by TANGEDCO for the operation of manual Wagon Unloading of Port at Visakapattinam between the period 2001 to 2019. The subject matter of the investigation is in respect of purchase order No.49, wherein the precise allegations and the matter taken up for investigation is the payment of Wagon Unloading Charges (WUC) reimbursed by the TANGEDCO to the tune of Rs.1267.49 Crores not in fact paid to the Visakhapatnam Port by the petitioner herein and only Rs.239.36 Crores was paid. Thereby the difference running around Rs.1,000/- Crores is misappropriated. In fact, this allegation as found in the FIR arise from the complaint given by one NGO called Arappor Iyakkam as well as the CAG report. After preliminary report, detailed enquiry was ordered leading to registration of FIR in Crime No.1 of 2023.



CrI.O.P.No.9338 of 2023

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4. The learned counsel appearing for the petitioner, after referring to the terms of contract of the purchase order No.39 as well as purchase order No.49, submitted that the parties i.e., the petitioner and the TANGEDCO had specifically understood that the Wagon Unloading Charges were not statutory charges and therefore, there is no requirement for production of bill for claiming reimbursement. Having engaged private contract daily wages, the petitioner has completed the unload work, paid the levy due to Visakhapattinam Port and balance to the daily wages and in fact TANGEDCO has agreed and confirmed the balance of Rs.300 Crores payable to the petitioner and the matter been seized of by the NCLT. While fact being so, after few years of completing the contract, the present FIR has been registered with malafide intention. In the course of preliminary enquiry, the officials of the petitioner's company were called and have given their statement explaining the terms of contract and the manner in which they executed it and it has been clearly explained to the Investigating Officer that as per the purchase order No.39, Wagon Unloading Charges were categorised as non



Crl.O.P.No.9338 of 2023

statutory charges and there is no need to submit any proof for payment to the Port for getting charges reimbursed by the TANGEDCO.

5. The learned counsel appearing for the petitioner also referred the negotiations that took place between the petitioner and the TANGEDCO while finalising the purchase order No.49. Wherein, they have indicated that the Wagon Unloading Charges are not statutory charge.

6. The learned counsel appearing for the intervenor namely the “Arappor Iyakkam” submitted that a grave misappropriation in the name of levy has been brought out in their complaint, which had been going on in the TANGEDCO since 2001. Further, the information collected through RTI also substantiated their complaint to the effect that the TANGEDCO has incurred loss for Rs.1,200 Crores and it is a matter for investigation.

7. The learned Government Advocate (Crl.Side) appearing for the State would submit that the complaint of Arappor Iyakkam on



CrI.O.P.No.9338 of 2023

WEB COPY

19.09.2019 was taken up for verification and after being satisfied, permission to register the enquiry was granted by the Government on 30.08.2021. Accordingly on 02.09.2021, Departmental Enquiry (DE) was registered. Based on the outcome of the DE, case in Crime No.1 of 2023 was registered on 27.02.2023. *Prima facie* materials had been collected during the detailed enquiry indicating that in the process of procuring indigenous coal from Chhattisgarh, Odisha and West Bengal through rail-sea-rail route, which reaches to Visakapattinam has to be loaded at Visakapattinam, Paradip and Haldia ports and in turn to discharge at Chennai Port and Tuticorin Port for the consignment of TANGEDCO. In the said Ports, the petitioner's company, who is the successful bidder, been engaged by the TANGEDCO since 2001.

8. Wagon Unloading Charge is a determined sum for a metric ton and in the Purchase Order No.49, it was fixed as Rs.131.40. It is a statutory charge payable along with levy to the Port and the same has to be reimbursed on production of receipts. While the terms of contract reads so, a sum of Rs.1,267.49 Crores received from TANGEDCO by the



Crl.O.P.No.9338 of 2023

petitioner herein. However, on cross verification, nearly about Rs.217 Crores alone has been remitted to Visakapattinam Port till 2019. The Purchase Order No.49 dated 20.02.2001 was extended time to time in view of the interim orders passed by the Court. The detailed enquiry has revealed that the petitioner along with another company M/s.Western Agencies Madras Private Limited in collusion was engaged themselves in conspiracy along with some officials of TANGEDCO and had caused pecuniary loss to the TANGEDCO to the tune of Rs.908 Crores.

9. The petitioner strongly refuted the contention of the petition that the registration of the complaint is off suit of the order passed in favour of the petitioner in the NCLT. The learned Government Advocate (Crl.Side) representing the State submitted that there is no ulterior intention in registering the case as contended by the petitioner. In fact sustained investigation was carried out and only after collecting the materials sufficient to register the case, the present FIR has been registered.



Crl.O.P.No.9338 of 2023

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10. The learned counsel appearing for the NGO / the intervenor submitted that as per the terms of the contract, Wagon Unloading Charge is a statutory charge, even if for any reason it is to be taken as non statutory charge, the manner in which the amount claimed towards the Wagon Unloading Charge is erroneous and not only contrary to the terms of contract but also has caused monetary loss to the exchequer. This has been explicitly noted in the CAG report dated 30.03.2019.

11. In response to this submissions, the learned counsel appearing for the petitioner stated that allegations cropped up in the CAG report been adequately and properly explained by the TANGEDCO itself and thereafter, CAG has not carried forward this issue further. While so, the present complaint registered in the year 2023 would indicate the implicit malafide action of the State, particularly, after the investigation of the contract made in the year 2019, in which the dispute regarding non payment had already been agitated by the petitioner herein before NCLT.



CrI.O.P.No.9338 of 2023

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12. This Court, after considering the elaborate arguments made by the learned counsels and on perusing the records, is of the opinion that registration of FIR by the State cannot be termed as an action of malice. Some time in our country, the law enforcing agency takes its own time to act or react, where we may suspect the in-action, but certainly not their action. This is a case, where the constitutional authority namely CAG has pointed out the violations and financial regularity running to several 100 Crores. TANGEDCO had come out with its own reasoning and explanation but not satisfactory to the CAG to remove the objections. The terms of contract for the Purchase Order No.49 no doubt empowers the Board, their right to relax or modify any of the conditions stipulated in the specifications, wherever deemed necessary in the best interest of the Board or to delete any portion of the work covered by any of these specifications to choose any alternative obligations depending upon its operational convenient. Whether such exercise of discretion done to favour M/s.South Indian Shipping Corporation to obtain wrongful gain is the matter under investigation.



CrI.O.P.No.9338 of 2023

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13. The learned counsel appearing for the intervenor citing this terms and conditions mentioned in clause 17(4) and other provisions which undoubtedly gives the power to the TANGEDCO to relax the conditions or modify the conditions will not be a reason for the petitioner to presume that the statutory Charge for Wagon Unloading been converted into non statutory charge. The communications, which were read out before the Court by the learned counsel, are all Unilateral Proposal emanating from the M/s.South Indian Corporation Private Limited and this Court is unable to lay its hand to any document which the nature of accepting the proposal in response to the offer made by the petitioner. Particularly, in respect of conversion of statutory liability to non statutory liability.

14. Be that as it may. These are the issues, which should be investigated by the agency, which has now seized the matter. The statement of Mr.Sivakumar, the Chief Operative Officer of M/s.South Indian Corporation Private Limited, which form part of the investigation



CrI.O.P.No.9338 of 2023

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file indicates that the payment of Rs.1,267 Crores by TANGEDCO to M/s.South Indian Corporation Private Limited is not fully based on the documents from the Dock Labour Board, Visakapattinam and he has given reasons why those documents need not be given. It is for the Investigating Officer to get satisfied with the reason and that can be done only after completion of investigation. This is not the stage for the High Court to interfere under Section 482 of Cr.P.C., when there is no iota of reason to infer that the prosecution is lodged with malafide intention.

15. That apart, this Court records that the learned counsel appearing for the Enforcement Directorate appeared in this case and placed on record that pursuant to the registration of this case by the State Vigilance Commissioner, Enforcement Directorate has taken cognizance of the predicate offence and has registered a case in ECIR 11 of 2023 on 27.03.2023 under PMLA Act.



Crl.O.P.No.9338 of 2023

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16. In the result, this Criminal Original Petition is dismissed.

Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

25.07.2023

Internet : Yes/No

Index: Yes/No

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To

1.The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai City V Detachment,
Chennai.

2.The Pubic Prosecutor,
High Court of Madras, Chennai.



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Crl.O.P.No.9338 of 2023

Dr.G.JAYACHANDRAN, J.

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Crl.O.P.No.9338 of 2023

25.07.2023