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W.A.No.648 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.No.648 of 2020 and

CMP No.9115 of 2020

ELGI Equipments Limited,
rep. by Mr.Shyam Vasudevan,
Had-Legal & Secretarial Singanallur,
Coimbatore 641 005.

... Appellant

Vs.

- 1.The Union of India,
Rep. by the Chairman- Railway Board,
Room No.256-A, Rail Bhavan,
Raisina Road, New Delhi 110 001.
 2. The General Manager, Southern Railway,
Park Town, Chennai 600003.
 3. The Chief Administrative Officer/Construction,
Southern Railway, Office of CAO, Construction,
Egmore, Chennai 600 008.
 4. MM Associates, rep. by Muruganandam,
3/140, Gopinathapuram, Vellalapatti Post,
Omalar Taluk, Salem 636 012, Tamilnadu
- Respondents

...



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Prayer: Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed by this Court in W.P.No.27912 of 2014 dated 03.06.2020.

For Appellant : Mr.P.H.Aravind Pandian, Senior Counsel
for M/s BFS Legal

For Respondents : Mr.P.T.Ramkumar for R1 to R3

JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court Appeal has been filed, challenging the order passed by this Court in W.P.No.27912 of 2014 dated 03.06.2020 by the writ petitioner.

2. The brief facts leading to file the writ appeal is as follows.

The appellant herein filed the above said writ petition to quash the proceedings in DRG No.SR/CN/24155 datd 07.01.2014 and to direct the respondents 1 to 3 to construct the road under bridge as per DRG No.CN/23117, accepting the differential cost from the appellant.

2.1.The appellant is one of the largest exporters of air compressors in India and has its factory and foundary in the Kodangipalayam Village,



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which requires movement of huge trucs and container trailers through L No.138. The construction of LUS in the place of an RUB will effectively ensure that such heavy vehicles cannot reach the appellant's factory through LC No.138, directly interfering with its right to carry on lawful business. The third respondent had agreed to construct a RUB, if the appellant agreed to bear the differential costs. The appellant has also agreed to the same and also signed a document recording the agreement to do so, which is also signed by the third respondent. Further, new drawings were approved for the RUB and the entire cost was worked out to the minutest detail. Despite this, all of a sudden, the respondents 1 to 3 have decided to proceed with the construction of LUS, without any notice to the appellant. The appellants exports close to half its finished products out of India, particularly from its factory at Kodangipalayam and invariably more than 100 container trucs and trailers come to its factory premises everyday, either to deliver the inputs for the goods manufactured by it or to carry the finished goods for export. Therefore, the only possible other alternative is to drive through Kothavadi Village, which has only very narrow mud roads and the turning radius is very less. If the apellant adopts this so-called alternative route, there is



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definitely a risk of the import material getting damaged too.

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2.2. Therefore, on coming to know that a Limited Usage Subway (LUS) is proposed to be conducted at LC 138, the appellant wrote a letter dated 23.11.2010 to the third respondent requesting to have the height of the proposed LUS a 6.1 Metres in order to facilitate flow of Container Traffic. The Appellant also sent a general arrangement drawing (GAD) for the proposed under bridge and paid a sum of Rs.2,00,000/- towards Centage charges and also accepted to bear the differential cost of construction of the under bridge of the desired height, over and above the cost of the LUS proposed to be built. Subsequently, on request of the third respondent, the appellant has also paid a sum of Rs.84,922/- towards further centage charges, vide demand draft and it was received on the same date by the third respondent.

2.3. But the third respondent vide letter dated 25.03.2011 has stated that there was no sanction for LUS, and the competent authority has not agreed to accept the appellant's proposal to bear the difference in cost and sought for the appellant's consent for bearing the full cost. Thereafter, the appellant sent several reminders to the officials seeking recommendation and



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approval of the petitioner's proposal to bear the differential cost of the RUB.

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2.4. On 12.01.2012, the third respondent sent a letter to the appellant stating that the detailed estimate for the proposed RUB was Rs.1,88,83,896/- and the railway would bear Rs.50,48,816/- and the remaining Rs.1,38,35,080/- would be bear by the appellant as deposit. The petitioner accepted for the above proposal and sent their acceptance letter and the construction of the RUB was included as a deposit work in the list of approved works (LAW) Item No.342 of 2011-12. But, subsequently, the third respondent changed the above proposal vide proceedings dated 07.01.2014, from an LUS to RUB. Hence the appellant has filed the writ petition.

3. At the time of admission of the writ petition on 20.10.2014, based on the submissions of the counsel for either parties, the Writ Court has passed an interim order, directing the appellant to deposit a sum of Rs.1,88,00,000/-, which was the original estimate in the year 2012, without prejudice to the claim of both parties. Accordingly the appellant had also deposited the above amount. Subsequently, the respondents had submitted



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a revised estimate, which comes to Rs.2,45,49,065/- and based on which, the Writ Court has passed the following interim order dated 24.11.2014.

13. Therefore, there will be an interim direction to the following effect:-

(i) With the amount of Rs.1.88 Crores deposited by the petitioner pursuant to the interim order dated 20.10.2014, the respondent shall immediately proceed to call for tenders, award contract and also have the work executed.

(ii) After completion of work, the respondent shall file a report into the Court about the total cost involved.

(iii) At the time when the respondent files a report after completion of the project, the actual difference between the estimated cost and the actual cost involved would be known. The question as to whether the difference should be paid by the petitioner or not can be taken up at that stage.

14. Therefore, the respondent shall proceed with the formalities relating to tender and also execute the work and file a report before this Court. Post the matter for reporting part compliance in the first week of February, 2015.

4. Subsequently, a report was filed by the Railways stating that the



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cost of construction was Rs.1,87,34,649/- and the appellant has to pay a sum of Rs.56,20,396/- as maintenance charges of bridge, i.e. 30% of the total cost. At the time of final disposal dated 03.06.2020, the Writ Court has disposed the matter observing as "*neither the petitioner nor the Railways need to pay/reimburse any amount to other; and as the RUB is operational even from the year 2015 by virtue of the interim orders of this Court, no further order needs to be passed in the writ petition and accordingly, disposed the writ petition*". As against the order passed by the Writ Court, the present intra Court Appeal has been filed by the writ petitioner on various grounds.

5. Heard the learned Senior Counsel appearing for the appellant and the learned counsel appearing for the respondents. Also, we have perused the materials on record.

6. It is the contention of the appellant that the original cost of RUB was Rs.1,88,83,896/-, out of which, the original share of Railways in this was Rs.50 Lakhs and the original share of the appellant was Rs.1.38 Crores.



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Ultimately, after disagreed with the appellant's offer to pay the incremental cost (on account of conversion from LUS to RUB), the Railways awarded the tender for construction of an LUS for Rs.1.10 Crores. The cost of construction of RUB finally amounted to Rs.1,87,34,649/- and the Railway was ready to spend Rs.1.10 Crores had it been a LUS. Thus, only the incremental cost i.e. a sum of Rs.76.95 Lakhs ought to have been borne by the appellant and the amount that Railway was anyway going to expend should be refunded to the appellant. Per contra, it is the contention of the respondent/Railway that the appellant has to pay 30% of the cost of construction bridge as maintenance charges.

7. After hearing the submission made by both the parties and upon perusing the records, it is made clear that, according to the appellant, the respondents have to refund the excess amount paid by them for construction of bridge, since the construction was only an RUB not an LUS. But, the contention of the respondents is that the appellant has to pay 30% cost of construction of bridge as maintenance charges. In such circumstances, we are of the opinion that, the aforesaid dispute is purely on the basis of



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contractual commitments between the parties and the same cannot be decided under Article 226 of the Constitution of India. Further, there is no written agreement between the parties and as such, the question of appointment of Arbitrator to resolve the matter was not arisen at the time of filing the writ petition. Therefore, this Court suggested that the remedy is only before the competent forum either before the Civil Court, or before the Arbitrator, or before the Mediator.

8. At this juncture, the learned counsel for the appellant submitted that the appellant is ready to approach either before the Mediator or before the Arbitrator to resolve the issues involved in the present appeal.

9. The learned counsel appearing for the respondents/Department, on instructions, fairly agreed for referring the matter before the Arbitrator, however, on application made by the appellant before the General Manager, Southern Railway, Park Town, Chennai 600003 seeking to refer the mater before the Arbitrator, ***more particularly, the Honourable Justice Mr.Ramasubramaniam (Retired), Hon'ble Supreme Court of India.***



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10. In view of the above submissions, we inclined to pass the following order.

i) The appellant is directed to make an application before the second respondent, viz., the General Manager, Southern Railway, Park Town, Chennai-3 seeking to refer the matter before the Arbitrator, more specifically before the Honourable Justice Mr.Ramasubramaniam (Retired), Hon'ble Supreme Court of India, within four weeks from the date of receipt of a copy of this order and on such application being received, the parties are directed to agitate their claim before the Arbitrator.

ii) It is made clear that the issue to be decided in the present appeal is with regard to the claim made by the appellant as well as the respondents in the instant writ appeal alone and the learned Arbitrator shall decide the matter on its own merits, without being influenced by any of the observations made by this Court as well by the Writ Court.

11. With the above directions, this writ appeal is disposed of. No



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costs. Consequently, connected miscellaneous petition is closed.

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(D.K.K.J.)

(P.B.B.J.)

17.07.2023

Internet: Yes/No

Index : Yes/No

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To

- 1.The Chairman- Railway Board, Union of India,
Room No.256-A, Rail Bhavan,
Raisina Road, New Delhi 110 001.
2. The General Manager, Southern Railway,
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