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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.02.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 24681 of 2018

And

W.M.P.Nos. 28714 & 28715 of 2018

Everwin Security Services Private Ltd.,
Rep. by its Managing Director
C.Murugan
No.18, 6th Main Road
Kasturibai Nagar, Adyar,
Chennai – 600 020.

... Petitioner

..Vs..

1. The Regional P F Commissioner
E P F Organisation, Regional Office
R 40, A1, TNHB Office-cum-Shopping complex
Mugappair East, Chennai – 600 037.

2. The Assistant P.F. Commissioner (CT)
R 40, A1, TNHB Office-cum-Shopping complex
Mugappair East, Chennai – 600 037.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's impugned order dated 24.07.2018 and quash



the same and consequently direct to the first respondent to remove the petitioner from blacklist.

For Petitioner	:: M/s. K.Sindhuja
For Respondents	:: Ms. Sunita Kumari Standing Counsel

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an order dated 24.07.2018 and further seeking interference of the same and consequently to direct the first respondent/ the Regional P F Commissioner, EPF Organisation, Regional Office at Chennai, to remove the petitioner Everwin Security Services Private Limited, represented by its Managing Director from being blacklisted.

2. The petitioner is a company promoted by Security Professional experts. It is claimed that the Directors formerly served the Government of India, Reserve Bank of India, Tamilnadu Government and also have experience in USA. Unfortunately, they have been blacklisted by the respondents.



3. The respondents are the Regional P F Commissioner at Chennai and the Assistant P. F Commissioner (CT) also at Chennai.

4. It is seen that the petitioner had entered into an agreement with the first respondent on 01.12.2017 for engagement of security guards. The second respondent had communicated to the petitioner on 08.02.2018, seeking clarifications on monthly invoices relating to proof of payment of PF Contributions along with ECR Statement and proof of payment of Employee State Insurance Contribution along with statement and proof of crediting the salary and it was held out that without the said statements, the invoices / Bill raised by the petitioner would be rejected.

5. It is also seen that the petitioner had not given the necessary statements reflecting credit of salary of their employees. The petitioner have their own grievances. They claimed that a security guard can work only 26 days in accordance with the Minimum Wages Act, 1948 and they also relied on a circular of the Ministry of Labourer and Employment, New Delhi that for every additional day of work beyond the 26 days, the workmen will have to be compensated by payment of double wages.



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6. At any rate, the explanation of the petitioner did not find favour with the first respondent, necessitating a show cause notice to be issued on 12.04.2018. The petitioner had sent a letter giving clarifications and for intervention to the Regional PF Commissioner on 31.05.2018. The petitioner also issued a clarification letter with respect to minimum wages and over time wages again on 31.05.2018. The impugned order came to be passed on 24.07.2018.

7. A perusal of the same shows that the respondent had taken a decision to terminate the contract for engagement of security services and have also raised allegations about the quality of services provided and have also alleged that there has been violation of labour law, such as payment of contribution to employees and denial of appropriate benefits / payments to the employees. The clarifications were held unsatisfactory. The contract was terminated and a further decision was taken to blacklist the petitioner. The Writ Petition had been filed questioning that particular decision taken by the respondents.



8. The petitioner and the respondent while entering into the agreement had taken a conscious decision to insert a clause to refer disputes to arbitration.

9. Let me fall back to the Hon'ble Supreme Court in *Vidya Drolia & Ors. Vs. Durga Trading Corporation* wherein the Hon'ble Supreme Court had held that arbitrability of a dispute must be decided only by the arbitral tribunal.

10. It had been very specifically stated that the Court should not enter into a discussion about arbitrability particularly when there is a clause to refer disputes to arbitration. In view of that particular pronouncement, which is naturally binding, and owing to the fact that there is an alternate remedy available to the petitioner which had been agreed by the petitioner themselves with the respondent, I would dismiss the Writ Petition, but however give a liberty to the petitioner to refer to arbitration all disputes.

11. I am confident that the arbitral tribunal as and when constituted will enter into a discussion on all aspects and render a finding.



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C.V.KARTHIKEYAN, J.,

vsg

12. With the aforementioned observation, this Writ Petition stands dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

20.02.2023

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

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