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OSA No. 283 of 2022 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal Nos. 283, 284, 286, 289, 298 and 323 of 2022
and

C.M.P. Nos. 18547, 18720, 19284, 19357, 20116, 20188,
20190, 20225, 20944 and 22924 of 2022

1. The Managing Director
Chennai Metropolitan Water Supply and Sewerage Board
75, Santhome High Road, Raja Annamalaipuram
Chennai - 600 028
2. The Chief Engineer
Chennai Metropolitan Water Supply and Sewerage Board
MRC Nagar, Chennai - 600 028
3. The General Manager/Vigilance Officer
Chennai Metropolitan Water Supply and Sewerage Board
75, Santhome High Road, Raja Annamalaipuram
Chennai - 600 028
4. The Purchase Manager
Chennai Metropolitan Water Supply and Sewerage Board
75, Santhome High Road, Raja Annamalaipuram
Chennai - 600 028

5. The Area Engineer - XIV
Metro Water Area Office
Perungudi, Chennai - 600 096

.. Appellants in all the
Original side Appeals

Versus

.. Respondent in OSA 283

D. Saravanan

<https://www.mhc.tn.gov.in/judis>



OSA No. 283 of 2022 etc., batch

R. Sivakumar
Proprietor of S.V. Dharnisa Water Supply
No.17, Sadhasivam Nagar
1st Link Street, Puzhudhivakkam
Chennai - 600 091

.. Respondent in OSA 284

P. Manikannan

.. Respondent in OSA 286

S. Geetha

.. Respondent in OSA 289

V. Murugaiyan

.. Respondent in OSA 298

Girija Kaviarasan

.. Respondent in OSA 323

O.S.A. No. 283 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 348 of 2022 on the file of this Court.

O.S.A. No. 284 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 349 of 2022 on the file of this Court.

O.S.A. No. 286 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 347 of 2022 on the file of this Court.

O.S.A. No. 289 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 350 of 2022 on the file of this Court.

O.S.A. No. 298 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 352 of 2022 on the file of this Court.



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O.S.A. No. 323 of 2022:- Original Side appeal filed under Section 37 (1) (b) of The Arbitration and Conciliation Act, 1996 read with order XXXVI Rule 1 of the Appellate Side Rules against the order dated 26.08.2022 passed in O.A. No. 351 of 2022 on the file of this Court.

For Appellants : Mr. Gautam S. Raman
in all the appeals

For Respondents : Mr. R. Ravichandran
in all the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

All these Original Side Appeals are filed by the appellants / Chennai Metropolitan Water Supply and Sewerage Board (in short “the Board”) questioning the correctness and/or validity of the common order dated 26.08.2022 passed by the learned Judge in O.A. Nos. 348 , 349 , 347, 350, 352 and 351 of 2022 respectively.

2. The aforesaid Original Applications have been filed by the respondents seeking to grant an ad-interim injunction restraining the appellants herein or their men or agent from preventing them from operating the Water tank Lorries bearing Registration Nos. TN-07 CS 8077, TN- 04 AV 8184, TN-25 BC 8190, TN-18 AQ 8471, TN-12-AJ 4585 and TN-04 AS 7477 respectively, on the basis of the work orders dated 26.02.2021 issued to them, pending disposal of the arbitration proceedings.



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3. The necessary facts leading to the filing of these appeals are as follows:

3.1. According to the appellants / Board, it is a Public Sector Undertaking constituted as per G.O. Ms. No.916, Rural Development and Local Administration Department dated 21.05.1975. Subsequently, the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (Act No.28 of 1978) was notified and the same has been brought into force vide G.O. Ms. No.1176, Rural Development and Local Administration Department dated 22.07.1978. As per the provisions of the said Act, the Board was constituted to look after the growing needs of the citizens to get drinking water supplied, besides effecting sewerage services in Chennai Metropolitan area. For the purpose of supplying drinking water to various breadth and length of the City, the Board had called for tenders and after processing the same, entered into agreements with the successful tenderers for supply of water through lorries, having capacity of 16000 litres, 9000 litres and 6000 litres and the supply of water through lorries is governed by work orders issued by them.

3.2. The respondents in these appeals are the owners of the water tank lorries, with whom the Board had entered into agreements on various dates and issued work orders dated 26.02.2021 to them. As per Clause 28 of the agreements, Global Positioning System (GPS) is fitted with the lorries for the

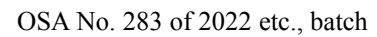


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purpose of tracking its movement; and that, the movement of the water tank lorries will be monitored through the centralised GPS and level sensor monitoring system then and there by the service provider, which will also be monitored by filling point in-charge, concerned Area Engineer as well as the Territorial Superintending Engineers. Further, the CE(O&M)-1 will review the mobile water supply system monthly once.

3.3. While so, the lorries belonging to the respondents were found to have undertaken unauthorised trips and supplied water to third parties in violation of the terms of the agreements. Therefore, the Board called upon the respondents / owners of the lorries for enquiry. Accordingly, enquiry was conducted on 28.04.2022, in which, the respondents participated and submitted written responses, stating *inter alia* that the diversion was due to the repair in the vehicles and other reasons. However, the replies submitted by the respondents were rejected by the Board on the premise that the owners of the vehicles have to exercise care and control over their drivers in order to effectively discharge the contractual obligations and accordingly, the Board passed the orders of termination on 18.05.2022 terminating the contracts entered into with the respondents.

3.4. Assailing the orders of termination dated 18.05.2022, the respondents preferred WP Nos. 13605, 13627, 13623, 13642, 13631 and



3.5. On the basis of the observation made by the learned Judge, the respondents filed Original Application Nos. 348, 349, 347, 350, 352 and 351 of 2022 along with Arbitration Applications, under section 9 of the Arbitration and Conciliation Act, 1996. In the Original Applications, among other things, it was vehemently contended on behalf of the respondents herein that the orders of termination have been passed in violation of the principles of natural justice. According to the respondents, in fact, an enquiry was conducted on 28.04.2022, during which it was simply stated that while supplying the water, the vehicles were utilised in an unauthorised manner. However, no specific material particulars had been furnished to the respondents or any show cause notice was issued before passing the orders of termination. Yet another contention raised on behalf of the respondents before the learned Judge was that the power of cancellation / termination of the contract is vested only with the Board, whereas the orders of termination have been passed by the Purchase



Manager, who is an incompetent authority. Above all, it was contended on behalf of the respondents that as per clause 19 of the agreement, if the vehicle is found engaged in supply of water to other facilities of the Board other than the location specified in the trip sheet without any authorization, a minimum fine of Rs.10,000/- would be imposed; and that, if the offence is continued for more than two times, then, the work order would be cancelled, besides cancelling all the trips on that day, after issuing a show cause notice and upon receipt of the explanation from the vehicle owner. But, the said procedure has not been adhered to by the Board before passing the orders of termination. Therefore, the respondents prayed for grant of interim injunction, pending disposal of the arbitration proceedings.

3.6. Opposing the reliefs sought by the respondents, the appellants / Board filed a common counter affidavit stating *inter alia* that for the alleged unauthorised supply of water, enquiry was conducted, in which, all the respondents / owners of the vehicles participated, and their statements were recorded and after considering the same, the orders of termination came to be passed; that, the plea of the respondents that they cannot exercise any control over the acts done by the drivers of the vehicles, cannot be accepted; and thus, the appellant sought for dismissal of the original applications.

3.7. Upon considering the rival submissions and perusal of the



materials placed, the learned Judge analysed the various clauses of the agreements and disposed of all the original applications, by a common order dated 26.08.2022. Aggrieved by the same, the appellants / Board are before this court with the present appeals.

4.1. Assailing the common order dated 26.08.2022 passed in the Original Applications, the learned counsel for the appellants would contend that the order of the learned Judge in directing the appellants to engage the respondents' water tank lorries by issuing work orders and reactivate their smart cards pending arbitration proceedings, is akin to a mandatory injunction, thereby restoring the determinable contracts in favour of the respondents and hence, the same is contrary to Section 14 of the Specific Relief Act, 1963. In this connection, the learned counsel placed on the decision of the Honourable Supreme Court in ***Indian Oil Corporation Ltd v. Amritsar Gas Service and others [1991 (1) Supreme Court Cases 533]***, in which, in Para No.12, it was held as follows:

"12. The arbitrator recorded finding on issue No.1 that termination of distributorship by the appellant-corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No.2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms.

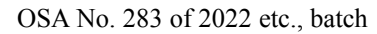


The award says as under:

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This finding read along with the reasons given in the award clearly accepts that distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contract which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-corporation is contrary to the mandate in Section 14 (1) of the Specific Relief Act and there is an error of law apparent on the face of the award, which is stated to be made to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

4.2. Continuing further, the learned counsel for the appellants would contend that as per Clause 19 of the agreements, the competent authority is empowered to terminate the contract, besides levying penalty for unauthorised supply other than the locations indicated in the trip sheet. According to the learned counsel, the notice inviting tenders was issued only by the Purchase Manager; and after completion of the tender process, work orders were also issued by the Purchase Manager in favour of the respondents and hence, the Purchase Manager, who is competent to issue the work orders, is equally empowered to terminate the contract for the proved violation. In any event, the



4.3. The learned counsel for the appellants also submitted that the correctness of the validity of termination orders, if any, has to be gone into by the Arbitrator. However, the learned Judge, upon interpretation of the clauses governing the contracts, has decided that the termination is contrary to the contracts. Thus, by virtue of the order passed by the learned Judge at the interlocutory stage, there is nothing left for adjudication in the matter and even the appointment of arbitrator has become unnecessary. With these submissions, the learned counsel for the appellants prayed for allowing these appeals by setting aside the common order passed by the learned Judge.

5. Per contra, the learned counsel appearing for the respondents would contend that after analysing the terms of the agreements, the learned Judge directed the appellants to continue to engage the respondents' water tank lorries by issuing work orders and activate the smart cards for the purpose of



supplying water, till the completion of arbitration proceedings. Adding further, the learned counsel submitted that the learned Judge also appointed a retired Judge of this Court as an arbitrator to adjudge the *inter se* dispute between the parties. According to the learned counsel, the orders of termination have not been preceded by a valid enquiry to ascertain the nature of violation allegedly committed by the drivers of the vehicles. Even if there is any such violation, as per the agreements, the Board ought to have imposed only fine and ought not to have passed the orders of termination. Furthermore, the orders of termination have been passed by the Purchase Manager of the Board, who is an incompetent authority and the so-called delegation made in favour of the Purchase Manager has not been accepted by the learned Judge, while passing the order impugned herein. Thus, it is submitted that the order of the learned Judge is well founded and it does not require any interference at the hands of this court.

6. We have heard the learned counsel appearing for both sides and also perused the materials available on record.

7. The facts remain undisputed are that after following due procedure, the appellants / Board entered into agreements with the respondents for supply of drinking water and issued work orders on 26.02.2021 and the



said agreements are valid until 18.02.2024. While so, they terminated the contracts on 18.05.2022, citing certain violations of the terms and conditions of the agreements. Assailing the orders of termination, the respondents originally preferred writ petitions viz., WP.Nos.13605, 13627, 13623, 13642, 13631 and 13636 of 2022, which by order dated 08.06.2022, were disposed of by granting liberty to them to invoke the provisions of the Arbitration and Conciliation Act, 1996, in view of the arbitration clause in the agreements. Thereafter, the respondents filed Original Applications praying for grant of interim injunction restraining the appellants from in any manner preventing them from operating the water tank lorries owned by them, pending disposal of the arbitration proceedings. The said original applications were disposed of, by the learned Judge, by the common order dated 26.08.2022, the relevant passage of which is usefully extracted below:

“17.On perusal of the impugned termination orders, nowhere it has been mentioned as to how the offence was committed and how many times and no details were mentioned as regards the vehicle found supplying water unauthorisedly in the area other than specified in the work order. Further as per clause 30 of the terms of the contract, any dispute arising out of the contract will be decided under the Arbitration and Conciliation Act. However, the respondents have not initiated any arbitration proceedings till now. Clause 30 of the contract reads as under:

....

18.On a perusal of the above clause, which facilitates the parties to resolve their disputes or differences arising out of the agreement by way of arbitration and the matter will be decided under the Arbitration and Conciliation Act, 1996. Therefore, in cases where there is an arbitration clause, it is obligatory for the Court under the 1996 Act to refer the parties to arbitration in terms of their arbitration agreement. Further both the learned counsel for the parties have agreed to get resolve the disputes before the



Arbitral Tribunal and also urged this court to refer the matter to the Arbitral Tribunal by appointing an Arbitrator.

19. Accordingly, while disposing of the above Arbitration Applications, this court feels it appropriate to appoint an Arbitrator to resolve the dispute between the parties. Accordingly, Hon'ble Justice N.Kirubakaran (Retd) Cell No.9445025454 having residence at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089 is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.....

20. Till the arbitration proceedings are completed by the Arbitral Tribunal, the respondent / Board is directed to continue to engage applicants' water tank lorries by issuing the work orders and also activate the Smart Cards for the purpose of supplying water, within a period of five (5) days from the date of the order made ready. It is made clear that this court has not decided any of the issues/disputes in this order and the applicants are at liberty to raise all the contentions vis-a-vis the claims made in the present applications before the learned Arbitrator. The learned Arbitrator shall resolve the dispute without being influenced by any of the observations made by this court in the present order.

21. In view of the aforesaid directions, all the Arbitration Applications are disposed of."

The aforesaid order of the learned Judge is under challenge in these appeals at the instance of the appellants / Board.

8. It is the specific case of the appellants/ Board that the order passed by the learned Judge directing them to issue work orders to the respondents' water tank lorries and reactivate their smart cards, pending the arbitration proceedings, amounts to allowing the ultimate relief and an interim award at the stage of section 9 proceedings, which is contrary to the mandate of the Arbitration and Conciliation Act, 1996. It is also stated that without properly appreciating clause 19 of the agreements, the learned Judge erred in finding that the Purchase Manager has no authority to pass termination orders



and that, the learned Judge erred in interpreting the clauses of the contract entered into between the parties, which is exclusively within the purview of the Arbitrator. Thus, according to the appellants / Board, after conducting proper enquiry, the orders of termination have been passed by the competent authority and hence, the order of the learned Judge thereby restoring the determinable contract, is liable to be set aside.

9. On the other hand, the respondents stated that without issuing any show cause notice indicating the nature of violations committed by the drivers of the vehicles owned by the respondents, the appellants / Board conducted formal enquiry and ultimately, terminated the contracts entered into with the respondents, which is in violation of the principles of natural justice. Further, they have not strictly adhered to the clauses found in the agreements. Therefore, the learned Judge has correctly dealt with the issues involved herein and passed the order impugned herein, which calls for no interference by this court.

10. Upon considering the pleadings coupled with the rival submissions and also perusal of the records, it is seen that without issuing show cause notice as contemplated in the agreements and merely based on the GPS tracking system, the appellants / Board have passed the orders of termination for the alleged violation committed by the drivers of the water



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tank lorries owned by the respondents, in violation of the principles of natural justice. As already stated above, the said termination orders were put to challenge by the respondents by filing writ petitions under Article 226 of the Constitution of India, but the writ court did not test the same, as there is an arbitration clause in the agreements and hence, granted liberty to the respondents to file appropriate petitions under the Arbitration and Conciliation Act, 1996. Accordingly, the respondents filed the original applications under section 9 of the Arbitration and Conciliation Act, 1996. Though the learned Judge has examined the clauses mentioned in the agreements relating to unauthorised supply, arbitrations, termination of contract, etc., he has not granted any interim injunction in favour of the respondents / set aside the orders of termination, but appointed an Arbitrator to resolve the disputes between the parties, having regard to the arbitration clause in the contract and as agreed by the learned counsel appearing for both the parties. It was also categorically observed by the learned Judge that he has not decided any of the issues/ disputes in the order and the respondents are at liberty to raise all the contentions *vis-a-vis* the claims made in the original applications before the learned Arbitrator; and that, the learned Arbitrator shall resolve the dispute without being influenced by any of the observations made by him. The order of the learned Judge to that extent, does not warrant any interference, in the



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opinion of this court.

WEB COPY11. However, taking note of the admitted fact that the agreements entered into between the parties, are valid from 18.02.2021 to 18.02.2024 and the issues relating to validity of the termination orders, etc, are already seized of by the Arbitral Tribunal, this court modifies the order of the learned Judge *qua* issuing a direction to the appellants to continue to engage the respondents' water tank lorries by issuing work orders and also activate the smart cards for the purpose of supplying water, within a period of five (5) days from the date of copy of the order made ready, to the effect that the same shall be effective till the expiry of the contract i.e., on 18.02.2024 or pending determination of the arbitration proceedings, whichever is earlier. Needless to state that both the parties are at liberty to raise all the contentions available to them before the learned Arbitrator.

12. With the aforesaid clarification and modification, all these Original Side Appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
19.04.2023

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Index : Yes / No

Internet : Yes / No

To



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