



W.P.No.31498 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31498 of 2023
and
W.M.P.No.31130 of 2023

- 1.Palaniappan
- 2.S.Eswaran
- 3.P.Jagatheesan
- 4.K.Madhesawaran
- 5.S.Nagarani
- 6.K.Sathya
- 7.K.Gomathi

... Petitioner

Vs.

- 1.The Managing Director (MD),
Tamil Nadu State Marketing Corporation Limited,
CMDA Tower II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.
- 2.The General Manager,
Wholesale & Administration,
Tamil Nadu State Marketing Corporation Limited,
CMDA Tower II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.



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3.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
TASMAC Ltd.,
Brindavan Road,
Salem 16

4.The District Manager,
TASMAC Ltd., Namakkal District.

5.The Branch Manager,
State Bank of India,
SME SIRUTHOZHIL BRANCH,
Chetpet, Chennai 600 031.

6.R.Ganesan.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned order passed by the 2nd respondent through proceedings in Na.Ka.No.4/5732/2023 dated 17.10.2023 and quash the same.

For Petitioner : Mr.M.Premkumar

For Respondent : Mr.K.Balakrishnan
Standing counsel



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ORDER

This writ petition has been filed challenging the impugned order dated 17.10.2023.

2. Mr.K.Balakrishnan, learned Standing counsel, takes notice on behalf of the respondents 1 to 4. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The case of the petitioner is that the 6th respondent had entered into IMMS/BEER Transport Agreement dated 07.03.2012 with the 4th respondent for the purpose of transporting the liquors to the retail shops situated in Namakkal District, which is for the period from 07.03.2012 to 28.02.2013. The learned counsel for the petitioner would submit that the said Transport Agreement was renewed. However, no proof has been produced with regard to the same.



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4. At this juncture, on 11.02.2014 a Partnership Agreement was entered into between the 6th respondent and all the petitioners herein to carry on the business mentioned therein in the name and style of “Jayalakshmi Transport”.

5. Under these circumstances, the petitioners would claim that by virtue of the Partnership Agreement, the entire business of the petitioners with the 6th respondent, who is carrying on his business in the name and style of “Jayalakshmi Transports”, including the business from the aforesaid Transport Agreement, which was entered into between the 6th respondent and the 4th respondent, were transferred to the Partnership firm. However on perusal of the said Partnership Agreement, nothing has been mentioned with regard to the Transport Agreement dated 07.03.2012.

6. Therefore, now the issue is pertaining to the receipt of a sum of Rs.51,83,823/-, which was ordered to be paid to the 6th respondent, since



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according to the petitioners, the 4th respondent is supposed to pay the said amount in the name of all the partners in the Partnership firm.

7. However, the said request was rejected by the 2nd respondent vide the impugned order dated 17.10.2023. Further, in the impugned order, while dealing with the contention of the partners of the said Partnership firm, the 2nd respondent had categorically stated that the contract was given to the 6th respondent based on his individual capacity and hence, this contract has nothing to do with the said Partnership Agreement.

8. Even upon a mere perusal of the Partnership Agreement, it appears that the name of the 6th respondent has been included therein in his individual capacity and not as a proprietor of “Jayalakshmi Transport”. Even assuming his capacity as Proprietor of “Jayalakshmi Transport”, though he is one of the partners in the said Partnership firm, the business of a Proprietary concern cannot be clubbed with the Partnership firm since there is no provision in the said Partnership



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Agreement either to convert a Proprietary concern into a Partnership firm
or to merge a Proprietary concern with the Partnership firm.

9. Thus, this Court is of the view that the partners of the said Partnership firm had made the request without any entitlement before the 2nd respondent claiming the amount, which is payable to the Proprietor of the “Jayalakshmi Transport”. Hence, as ordered by the 2nd respondent vide the impugned order, the petitioners, being the partners of the firm, are not entitled for any amount as claimed by them, since the Transport Agreement was obtained by the 6th respondent based on his individual capacity.

10. Thus, there is no merits in the present writ petition and this Court is inclined to dismiss the same.

11. As far as the submission made by the learned counsel for the petitioner with regard to the arbitration proceedings is concerned, since



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this Court held about the entitlement of the petitioners, this Court is not inclined to express its view about the arbitration proceedings and it is for the learned Arbitrator to decide the same on its own merits.

12. In the result, this writ petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is also closed.

02.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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(1/2)