



W.A.No.2579 of 2018

W.A.No.2579 of 2018

D.KRISHNAKUMAR, J.

AND

P. B.BALAJI, J.

This matter is posted today under the caption " for being mentioned ".

2. Heard the learned counsel appearing for the appellants as well as the respondents.

3. The learned counsel for the respondent/writ petitioner seeks appointment of Arbitrator with the consent of the appellants/respondents.

4. The learned Additional Advocate General, on instructions submitted that the Department has not agreed for appointment of Arbitrator.

5. Inview of the above, liberty is granted to the respondent/writ petitioner to approach the appropriate forum seeking appointment of Arbitrator. Accordingly, in paragraph No.9 of the judgment in W.A.No.2579/2018, the last sentence has to be replaced with the following.

. " It is made clear that, in case, the writ petitioner succeeds in his claim and Arbitrator is appointed, the claim of the respondent/writ petitioner shall be considered by the Arbitrator, with regard to the payment of interest, inview of



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the delay on the part of the appellants/respondents in filing the appeal (and without being influenced by any observations made by this Court".)

6. In other respects, the earlier order dated 23.08.2023 passed in W.A.No.2579/2018 shall stand unaltered.

(D.K.K., J.) (P.B.B., J.)

30.08.2023

mst

Note: Registry is directed to issue a fresh order copy, after making necessary corrections.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

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and CMP.Nos.20982 and 21217 of 2018

1.The Secretary to Government,
(Handlooms and Textils Department)
Fort St.George, Chennai-600 009.

2.The Director,
Department of Handlooms and Textiles,
Kuralagam II Floor,
Chennai-600 108.

3.The Convenor,
Tender Acceptance Committee for
TANII Scheme,
Office of the Director of Handlooms and Textiles,
Kuralagam II Floor,
Chennai-600 108.

.. Appellants

VS.

R.Madhusudhanan

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.11.2017 made in W.P.No.23750/2017.



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For Appellants : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by
Mrs.Geetha Thamaraiselvan,
Special Government Pleader
For Respondents : Mr.Abrar Mohamed Abdullah

JUDGMENT

(Judgment of the Court was made by ***Justice D.Krishnakumar, J.***)

The respondent is the writ petitioner and he filed the writ petition challenging the impugned proceedings of the second respondent dated 26.04.2016 and 24.11.2016, in and by which penalty was imposed on the respondent and the writ petition was disposed of with certain directions, against which the instant writ appeal is filed. W.A.No.445 of 2019 was also filed by the respondent challenging the order of blacklisting and the said writ appeal came to be dismissed by this Court on 23.08.2023.

2. The facts of the case would disclose that the third appellant has invited tender for supply of 300 Pneumatic Handlooms, for a period of 3 years, vide tender notification dated 09.11.2015, The respondent participated in the tender process and became the successful bidder. Work order was issued in



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favour of him on 28.01.2016 with a condition to comply with the supply on or before 19.05.2016. A show cause notice was issued by the second appellant on 04.03.2016 to the respondent/writ petitioner for the delay caused in supply of materials to the beneficiaries. Thereafter, cancellation order was passed in Proceedings Rc.No.36042/2015/G3-1 dated 26.04.2016 informing that as per the conditions contemplated in Clause 2(1) of XIII of Tender Schedule and Clause 6(2) of the Tender Agreement, the supply order for the total quantity placed with the respondent is hereby cancelled and as per Clause 5 of IX of Tender Conditions, entire Security Deposit paid by the respondent is ordered to be forfeited.

3. Pursuant to the said order, the respondent submitted his reply to the appellants explaining bonafide reasons for non supply of materials, however considering the respondent's reply and other materials, the appellants have passed an order, blacklisting the appellant from participating in the tender process for a period of one year. Challenging the said order, the appellant/respondent had filed W.P.No.23750 of 2017 before this Court and upon hearing the rival parties, the Writ Court has passed a detailed order dated



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14.11.2017 and it is relevant to extract the operative portion of the order:

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"15.Considering all these aspects, I am of the view that the impugned orders passed against the petitioner need not be interfered with by exercising the discretionary jurisdiction of this court under Article 226 of the Constitution of India, more particularly, when the judicial review of such contractual matters are very limited.

16.However, while considering the other limb of the prayer sought for in this writ petition seeking for a direction to the respondents to pay the petitioner as per the purchase order, it is to be noted that the petitioner claims to have supplied 71 pneumatic handlooms, though by way of belated supply. It is also to be noted that the petitioner claims to have obtained acknowledgment from the beneficiaries for making such supply. It is also to be noted that the respondents, though denied such supply by the petitioner, however, admitted in their counter that only certain parts of such loom were supplied by the petitioner to some beneficiaries. Therefore, the fact remains that there is some dispute with regard to the supply made by the petitioner to some of the beneficiaries. By way of cancellation of the contract, blacklisting the petitioner and forfeiting the security deposit, the petitioner is sufficiently imposed with penalty, with which, this court is not interfering. At the same time, the petitioner cannot be put to double punishment, also by not paying the sum towards the machineries or the parts of the same, which he had claimed to have supplied in the month of May, June and July 2016. At this length of time, it would not serve any purpose in asking the beneficiaries to return the supplied machineries or parts to the petitioner, as, by this time, they would have certainly utilised the machineries or parts. Therefore, the respondents are directed to consider such request of the petitioner by conducting a thorough field inspection and enquiry and pass appropriate order for payment within a period of eight weeks from the date of receipt of a copy of this order. If it is not considered, it would amount to



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double jeopardy apart from the fact the retention of such sum would have to be construed only as unjust enrichment on the part of the respondents. With the above direction, the writ petition is disposed of accordingly. No costs."

Being aggrieved by the said order, the official respondents therein has filed the instant writ appeal.

4. The learned counsel for the respondent/writ petitioner submitted that the order of blacklisting was passed by the appellants not to participate in the tender for one year and the said period has already been over and the respondent was not provided sufficient opportunity to submit his explanation before the authority and subsequently, his explanation was submitted, however without considering the said explanation, his request was rejected and therefore, to that extent the impugned cancellation order and the order of blacklisting are liable to be set aside.

5. The learned Additional Advocate General appearing for the appellants submitted that the impugned cancellation order has been passed on 26.04.2016 by cancelling the agreement for violation of conditions contemplated in Clause 2(1) of XIII of Tender Schedule and Clause 6(2) of the



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Tender Agreement and as per Clause 5 of IX of Tender Conditions, the entire security deposit is ordered to be forfeited and therefore, the order of blacklisting was rightly passed by the appellants. It is further contended that the Writ Court accepting the said contention, has directed that after the cancellation order has been passed, the respondent had supplied goods to the beneficiaries and for the aforesaid supply, the Writ Court has directed the appellants to make payment to the respondent for the belated supply and therefore, prays for appropriate orders.

6. Heard the learned counsel for the parties and perused the materials on record.

7. It is an admitted fact that the respondent has supplied materials to the beneficiaries, after the cancellation order was passed by the respondents Department. As per Clause 17 of the Tender Agreement *"In case of any dispute arising in this Agreement, such disputes shall be referred to the Government of Tamil Nadu, who shall be the Arbitrator and the decision of the Government of Tamil Nadu shall be final and binding on the parties"*.



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Therefore, learned Additional Advocate General appearing for the respondents submitted that when such a clause has been expressly available in the Tender Agreement dated 25.01.2016, without resorting to such a procedure, the respondent has straightaway approached this Court and therefore, on that ground the order of the Writ Court is liable to be set aside. This Court finds some force on the contention made by the learned Additional Advocate General. When the respondent is having alternative remedy of approaching the Arbitrator as per the tender agreement, he can seek his remedy only as per the said agreement.

8. Insofar as the contention of the respondent is concerned, in the light of the fact that the period of one year, blacklisting the respondent to participate in the tender process, has already been over, the relief sought for by the respondent has become infructuous and therefore, writ appeal filed by the respondent in W.A.No.445 of 2019 was dismissed by this Court, vide judgment dated 23.08.2023.

9. In the light of the above, we are not inclined to interfere with the



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order of the Writ Court, however the parties are at liberty to approach the Arbitrator as per the Tender Agreement. It is made clear that it is open to the Arbitrator to pass orders without being influenced by any observations made by this Court.

D.KRISHNAKUMAR, J.
and
P.B.BALAJI, J.

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10. The Writ Appeal stands dismissed with the above liberty. No costs.

Consequently, connected miscellaneous petitions are dismissed.

[D.K.K., J.] [P.B.B., J.]
23.08.2023

Index : Yes / No
Internet : Yes / No
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