



O.A.No.50 of 2024

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O.A.No.50 of 2024
and
Arb.Appln.Nos.59 and 71 of 2024
C.SARAVANAN, J.

Heard the learned Senior Counsel for the applicant and the learned Additional Solicitor General on behalf of the respondent.

2. Earlier on 24.01.2024, an interim order was passed in favour of the applicant in Original Application No.50 of 2024. The 1st respondent was directed not to terminate the contract contrary to the terms and conditions of the contract between them. The applicant had earlier mentioned and obtained lunch motion. The aforesaid ad-interim order was passed *exparte* after briefly hearing the applicant.

3. It now transpires that, earlier on the same day on 24.01.2024, the 1st respondent had proceeded to invoke the Bank Guarantee furnished by the applicant under the contract after the contract had been terminated on 22.01.2024.



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4. On the following day, the 5th respondent bank had also transferred the money to the 1st respondent. Therefore, the 5th respondent bank was impleaded pursuant vide order dated 01.02.2024 in Application No.528 of 2024.

5. The applicant has therefore filed Arbitration Application No. 59 of 2024 in Original Application No.50 of 2024 to punish the 1st respondent and the 2nd respondent therein for wilful disobedience of this Court's order dated 24.01.2024.

6. The applicant has also filed Arbitration Application No.71 of 2024 to direct the restoration of the bank guarantee which was invoked by the 1st respondent after termination of the contract on 22.01.2024.

7. Earlier, when order was passed on 24.01.2024, the impression that was created by the applicant before this Court was that the



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termination of the contract signed between the applicant and the 1st respondent was not justified and was contrary to the terms of the contract between them. It was perceived by this Court that the procedure prescribed had not been followed while terminating the Contract.

8. Today when the case was taken up for hearing, the learned Senior Counsel for the applicant would submit that the 1st respondent had itself addressed communication 09.12.2023, to the 4th respondent through the 3rd respondent for extending the period of contract on account of large-scale disruption caused due to flooding during torrential rain in the city of Chennai on account of Michung Cyclone and therefore to terminate the contract by shifting the blame on the applicant was unfair and unwarranted and therefore interim order passed on 24.01.2024 was to be made absolute.

9. On behalf of the 1st respondent, Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India would submit that the applicant had



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failed to complete the work within the time stipulated under the contract despite several extensions and therefore the 1st respondent was constrained to terminate the contract.

10. On a query, as to why the bank guarantee was invoked with alacrity on the same date of termination of the contract when the period of bank guarantee was for a much longer period. No satisfactory explanation was forthcoming. Learned Additional Solicitor General of India therefore submitted that the amount which transferred by the 5th respondent bank will be re-transferred to the 5th respondent bank subject to the condition that the bank guarantee be revived for the the period of its validity prior to its invocation. The submission of the learned Additional Solicitor General of India stands recorded.

11. Accordingly, Arbitration Application No.71 of 2024 is ordered. The 1st respondent is therefore directed to re-transfer the



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amount immediately to the 5th respondent bank. The 5th respondent bank shall revalidate the bank guarantee to the period of its validity prior to its invocation.

12. Issue as to whether the termination of the contract on 22.01.2024 by the 1st respondent was justified and whether the applicant is entitled to any other relief including interim relief is now to be decided by an Arbitral Tribunal as the contract signed between them contemplates resolution of dispute arbitration.

13. Both the counsels have consented for nominating their respective Arbitrators and have further consented for appointment of **Hon'ble Mr.Justice Sanjay Kishan Kaul, Former Judge of Supreme Court**, as the Presiding Arbitrator. Respective Senior Counsels have given the names of the following persons as the Arbitrators nominated by them:-

(i) **Hon'ble Mr.Justice D.S.R.Varma, Former Judge of**



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Telangana High Court, (Mobile No.9704236666) for the applicant.

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(ii) Mr.M.Ravindra, Retired Chairman, Railway Road, Flat No.18, PGP Manor, No.29, Barnaby Road, Kilpauk, Chennai – 600 010, (Mobile No.9884208964) for the respondents.

14. Recording the above submissions and consent **Hon'ble Mr.Justice D.S.R.Varma, Former Judge of Telangana High Court, (Mobile No.9704236666) and Mr.M.Ravindra, Retired Chairman, Railway Road, Flat No.18, PGP Manor, No.29, Barnaby Road, Kilpauk, Chennai – 600 010, (Mobile No.9884208964)** are appointed as the nominee arbitrators for the applicant and the respondents. Recording the above submission, **Hon'ble Mr.Justice Sanjay Kishan Kaul, Former Judge of Supreme Court, residing at No.19, Akbar Road, New Delhi – 110 001,** is appointed as the Presiding Arbitrator.

15. The three Arbitrators appointed shall constitute the Arbitral Tribunal to resolve the dispute between the parties to the



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agreement/contract. The Arbitral Tribunal shall endeavour to pass an award in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

16. The Arbitral Tribunal shall be entitled to be paid fees and other incidental charges as may be fixed with the consent of the parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

17. The parties are at liberty to move suitable application under Section 17 of the Arbitration and Conciliation Act, 1996 for the relief sought for in these applications. The place of the Arbitral Tribunal shall be Chennai.

18. The venue of the Arbitral Tribunal sitting shall be decided by the Arbitral Tribunal taking note of the convenience of the Arbitrators



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and the parties and their counsels. If desires, the Arbitral Tribunal is also entitled to conduct the proceedings through video conferencing.

19. Original Application No.50 of 2024 stands disposed of with the Constitution of the Arbitral Tribunal. Arbitration Application No.71 of 2024 is ordered as above. Arbitration Application No.59 of 2024 is closed. No costs.

14.02.2024

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C.SARAVANAN, J.

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