



O.A.No.238 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.03.2024
Pronounced on	18.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.A.No.238 of 2024

M/s.Toorq Media Services Private Limited
and M/s.S.S.Tech (Services Integrator),
Multi-Level Parking,
No.33, Theyagaraya Road,
Pondy Bazaar, T.Nagar,
Chennai – 600 017.

... Applicant

Vs.

- 1.The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 600 003.
- 2.The Deputy Commissioner (Revenue & Finance),
Greater Chennai Corporation,
Ripon Buildings, Chennai – 600 003.
- 3.The Superintending Engineering,
Special Projects Department,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 600 003.

... Respondents

Prayer: Original Application is filed under Order XIV Rules of Original Side
Rules read with Section 9 of the Arbitration and Conciliation Act, 1996, praying



O.A.No.238 of 2024

to grant an order of interim injunction restraining the respondents or their men or servants or agents from interfering with the operations of the applicant as per the Concession Agreement dated 20.02.2019.

For Applicant : Mr.Srinath Sridevan
for Mr.Krishnamoorthy Sivasubramanian

For Respondents : Mr.P.S.Raman
Advocate General
Assisted by
Ms.Aswini Devi
Standing Counsel

JUDGMENT

This Application has been filed to, grant of order of an interim injunction to restrain the respondents or their men or servants or agents from interfering with the operations of the applicant as per the Concession Agreement dated 20.02.2019.

2. Heard the learned counsel for the applicant and the learned Advocate General for the respondents.

3. The applicant was awarded a contract by the Greater Chennai Corporation for Design, Development, Implementation, Operation and



O.A.No.238 of 2024

Maintenance of Smart Parking Solution for Street Parking in Chennai for a period of five years under the Chennai Smart City Work.

4. The Tender was floated by the Greater Chennai Corporation. The applicant was declared as the Successful Bidder. Pursuant to the Council Resolution dated 16.04.2018, Letter of Acceptance was also issued by the third respondent to the applicant on 18.04.2018.

5. As per the aforesaid Letter of Acceptance dated 18.04.2018 issued to the applicant by the third respondent, the contract was for a period of five years (excluding six months installation period). It also stipulated that last six months of the concession period would be construed as the Project Transition Period to the Greater Chennai Corporation.

6. Pursuant to the above, a Concession Agreement dated 20.02.2019 was signed between the applicant and the respondents.

7. The aforesaid Concession Agreement dated 20.02.2019 defines the expression “Commencement Date” and “Commercial Operations Date” as follows:-



WEB COPY

“Commencement Date” means the date stipulated by GCC for commencement of the operations by the Service Provider under the Service Provider Agreement and shall not be earlier than 90 days from the date of signing of Service Provider Agreement. The Service Provider shall make available 100 percent of the manpower by the commencement date in operational readiness along with supporting maintenance infrastructure.

“Commercial Operations Date” or “COD” is the actual date on which the Parking Management and Operations will begin to serve users under the Service Contract.”

8. The concession period under the aforesaid Concession Agreement dated 20.02.2019 is five years from the date of start of commercial operations, which does not include mobilization, procurement, installation, training and testing period which is restricted to a maximum period of six months before the start of commercial operations.

9. The applicant was to operate, maintain and manage the complete parking solution as designed and built under the Tender Document throughout the concession period in accordance with the Tender Document.



WEB COPY

10. Clause 5.5 of the Tender Document reads as under:-

“5.5.Concession Period :

Total Concession Period is five (5) years from the date of start of commercial operations. This does not include the mobilisation, procurement, installation, training and testing period which is restricted to a maximum period of six (6) months before the start of commercial operations.

The Service Provider shall operate, maintain and manage the complete parking solution as designed and built under this Tender Document, throughout the concession period in accordance with this Tender Document.”

11. Paragraph 5.15 of the Tender Document also stipulates the transition and closure. It reads as under:-

“5.15.Transition and Closure :

During the closure of the contract, in order to provide a seamless experience for the citizens, GCC shall decide that a period no greater than 6 months shall be identified as an overlap period or a transition period where in the project can be moved on to the next service provider or transitioned to the staffs deputed by GCC. This will be the last 6 months of the contract duration. During this period depending on the quality of service record and roll-out plan for the next parking management plan, the vendor may be asked to at GCC's discretion to either extend the service for a year of wind up operations in a phased manner .”

12. It appears that the Greater Chennai Corporation was unhappy with



O.A.No.238 of 2024

the work awarded to the applicant. On the other hand, it is the case of the applicant that soon after/immediately after the signing of the Concession Agreement dated 20.02.2019, the applicant was unable to get the fruits of contract awarded due to outbreak of Covid-19 pandemic up to March 2022 and therefore the respondents Greater Chennai Corporation should have extended the period of concession proportionately.

13. It is submitted that the request of applicant for extension of concession period was wrongly rejected by the first respondent vide communication dated 06.02.2024. It is further submitted that the applicant thus moved this Court under Article 226 of the Constitution of India in W.P.No.4361 of 2024.

14. Taking note of Clause 14 of the Concession Agreement dated 20.02.2019, for resolution of dispute through arbitration, this Court disposed the writ petition with the following reliefs:

“4. It is informed that the Petitioner has already taken up the matter with the Respondents and in the event that the parties are not able to resolve the disputes amicably, the Petitioner would resort to arbitration including the right to seek interim measures. In that backdrop, in order to enable the Petitioner to work out its rights in the meanwhile the impugned order dated



WEB COPY



O.A.No.238 of 2024

06.02.2024 insofar as it directs the Petitioner to close all operations with immediate effect shall be kept in abeyance till 12.03.2024, which shall be without prejudice to the rights and contentions of both parties. It is needless to add here that no view has been expressed by the Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition is disposed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.”

15. Hence, the learned Senior Counsel for the applicant would submit that the applicant be given atleast extension for a period of six months.

16. On the other hand, the learned Advocate General who appears for the Greater Chennai Corporation would submit that the period has expired and process have started for awarding contract under a fresh tender. He therefore submitted that there is no scope for extending period of contract to the applicant.

17. That apart, it is submitted that the services provided by the applicant was not up to the mark and therefore the Greater Chennai Corporation was constrained to not to extend the period of contract.



O.A.No.238 of 2024

18. After the case was heard on 27.03.2024, the learned Senior Counsel for the applicant submitted that the case may be adjourned to 28.03.2024 for the applicant to approach the Greater Chennai Corporation as to whether they are willing to extend the period of contract by another six months.

19. Today i.e., on 28.03.2024, when the case was taken up for hearing, the learned Advocate General for the Greater Chennai Corporation submitted that there is no scope for extending the period of contract to the applicant as there is no provisions under the provisions of the Tamil Nadu Transparency in Tenders Act, 1998, permitting such extension.

20. That apart, it is submitted that there are serious allegations against the applicant for collecting parking charges beyond the rates prescribed and the services provided by the applicant was not satisfactory.

21. In my view, there cannot be a positive direction to the Greater Chennai Corporation to extend the period of contract as was prayed for the applicant today by the learned Senior Counsel for the applicant.

22. Since the contract has not been renewed, the applicant can at best



O.A.No.238 of 2024

seek redressal of its grievance under the machinery prescribed for resolution of dispute through Arbitration.

23. Considering the same, this Original Application is liable to be dismissed.

24. This Original Application stands dismissed with liberty to the applicant to workout their remedy before the Arbitral Tribunal in accordance with Clause 14 of the Concession Agreement dated 20.02.2019. There shall be no order as to costs.

18.04.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
arb



WEB COPY



O.A.No.238 of 2024

C.SARAVANAN, J.

arb

O.A.No.238 of 2024

18.04.2024