



O.A.No.845 of 2023

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C.SARAVANAN, J.

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This Original Application has been filed under Order XIV Rule 8 of the Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996, praying for an ad-interim injunction to restrain the respondents from terminating the contract that was awarded to the applicant pursuant to Agreement dated 03.04.2023. The duration of the contract was 179 days from the date of handing over of the site.

2. The site was handed over to the applicant on 24.02.2023. The work i.e., transportation of 4.42 LT lignite from Mine-IA lignite Bench to Mine-II Lignite Bunker, value of Rs.3,09,17,900/- was to be completed within 147 effective working days out of total period of 179 days from the date of handing over of the site.

3. The 147th effective working day was expired on 20.07.2023. The 179th day was expired on 21.08.2023. At the fag end of the contract period, the applicant sent a letter on 20.06.2023 informing the respondents about the road conditions resulting in damages to the vehicles and the difficulty faced by the drivers while transporting lignite under the Agreement dated



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4. The respondents have proceeded to issue a Show Cause Notice dated 18.09.2023 to the partners of the applicant who had signed the Agreement with the respondents. Thereafter, a fresh Show Cause Notice has been issued on 03.10.2023 to which, the applicant has also replied on 11.10.2023. It is, at this stage, the applicant has moved this Original Application on 06.10.2023 and secured interim order from this Court on 09.10.2023.

5. The specific case of the applicant appears to be that the road conditions were not conducive and motorable and therefore the respondents themselves asked the applicant to stop the transportation on two occasions between 21.07.2023 and 31.07.2023 and once again between 31.06.2023 and 06.08.2023 and therefore the respondents were not justified in issuing notice dated 18.09.2023 followed by a fresh notice dated 03.10.2023 to terminate the contract.



6. The respondents defend their conduct and have drawn attention to the typed set of papers filed by them which contains several reminders sent to the applicant to rectify the faults/to maintain minimum rate of transportation of lignite. It is submitted that the work was stopped only for short duration for rectifying the faults as mentioned above. However, the applicant was unable to maintain the minimum requirement as per the Schedule to the Agreement.

7. It is submitted that as per the Schedule to the Agreement, the applicant was required to transport 3000 tonnes of lignite per day. However, there was a failure on the part of the applicant to maintain the minimum requirement and thus, the Show Cause Notice dated 18.09.2023 followed by a fresh Show Cause Notice dated 03.10.2023 was issued.

8. It is therefore submitted that in view of the *status quo* ordered by this Court, the respondents are unable to proceed/to pass appropriate orders in the show cause proceedings.



9. I have considered the arguments advanced by the learned counsel for the applicant and the respondents.

10. The present original application filed by the applicant was premature and ought not to have been filed. A fresh Show Cause Notice has been issued on 03.10.2023 to which, the applicant has also replied on 11.10.2023.

11. According to the applicant, there was impossibility of performance/frustration of contract. It was therefore open for the applicant to ask for compensation under Section 56 of the Indian Contract Act, 1872. Under Section 14(d) of the Specific Relief Act, 1963, where the contract is determinable, there cannot be an order of injunction.

12. Therefore, interim order passed by this Court earlier on 09.10.2023 stands vacated. The respondents are however directed to not to terminate the contract with the applicant before passing appropriate orders in the Show Cause Proceedings initiated against the applicant.



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13. It is also open for the applicant to invoke jurisdiction under the Agreement for resolving the dispute with the respondents in terms of the Agreement.

14. This Original Application stands dismissed with the above observations.

02.01.2024

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