IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

O.P. Nos. 782 & 1032 of 2017

O.P.No.782 of 2017
M/s.Akbar Trading Company
No.6, Thandavaraya Street,
Ariyalur-621 704.
Rep. by its Partner AR Akbar Sharieef

Petitioner(s)

Vs

Tamilnadu Civil Supplies Corporation Ltd.,
Rep. by its Managing Director,
12, Thambusamy Road,
Kilpauk, Chennai-10.

Respondent(s)

PRAYER Petition filed under Section 34 of the Arbitration and Conciliation Act, to set aside the award dated 15.06.2017 and award the claim of the Petitioner as prayed for and thus render justice.

For Petitioner(s): Ms.Deeptha Devi
Mr.Vasudevan and

For Respondent(s): Mr.P.Kumaresan
Additional Advocate General
assisted by
Mr.J.Kannikainathan
Standing Counsel

OP No. 1032 of 2017

Tamil Nadu Civil Supplies Corporation,
rep. by its Managing Director,
12, Thambusamy Road,
Kilpauk, Chennai-600 010.

Petitioner(s)

Vs

M/s.Akbar Trading Company
No.6, Thandavaraya Street,
Ariyalur-621 704.

Respondent(s)

PRAYER Petition filed under Section 34 of the Arbitration and Conciliation Act, to set aside Arbitral Award passed by the Arbitrator, dated 15.06.2017 in Arbitration Case No.12/2011/SV in so far as setting aside the recovery order passed by the petitioner to recover Rs.1,18,80,000/- as well as setting aside the order of the petitioner in black listing the respondent for 5 years in concerned.

For Petitioner(s): Mr.P.Kumaresan
Additional Advocate General
assisted by
Mr.J.Kannikainathan
Standing Counsel

For Respondent(s): Mr.Vasudevan and
Ms.Deeptha Devi

ORDER

These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as ' the Act'), challenging the Award passed by the sole Arbitrator dated 15.06.2017, wherein, the claim made by the petitioner in O.P.No.782 of 2017 was rejected intoto and in the same manner, the counter claim made by the respondent who has also filed a petition in O.P.No.1032 of 2017, also came to be rejected.

2.The respondent Corporation which is an undertaking of the Government of Tamil Nadu floated a tender for supply of Toor Dhall in order to supply the same to the card holders under the Special Public Distribution System. To ensure uninterrupted supply under the Special Public Distribution System, a short tender was floated for the purchase of 6000 MTs of Toor Dhall as per the Agmark specification. Totally seven tenderers participated including the petitioner in O.P.No.782 of 2017 and out of the same, six tenderers fulfilled the conditions as stipulated in the tender condition. The Committee considered the report submitted by the Tender Scrutiny Committee on eligibility criteria and accepted the tender. The Tender Scrutiny Committee compared the prevailing market rates and after negotiation, the final rate was fixed at Rs.51,400/- per MT. for the supply of 6000 MTs. of Toor Dhall. Insofar as the petitioner in O.P.No.782 of 2017, the petitioner was supposed to supply 1500 MTs of Toor Dhall at Rs.51,400/- per MT. The same was accepted by the petitioner and directions were issued to the petitioner to remit security deposit of Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand only) becides executing the agreement. It was made clear that the entire supply of 1500 MTs has to be made on or before 02.02.2011. The petitioner also remitted the required security deposit and executed the Agreement on 06.01.2011.

3.The petitioner in O.P.No.782 of 2017 was not able to supply the Toor Dhall, since there was unexpected weather conditions in the cultivation area and therefore, the petitioner sought for extension of time vide letter dated 02.02.2011. Since the petitioner did not supply the Toor Dhall on time, a Show Cause Notice dated 28.02.2011, came to be issued to the petitioner to cancel the contract. On receipt of the same, the petitioner gave a reply dated 08.03.2011, once again seeking for extension of time by thirty days in order to supply the Toor Dhall once again citing adverse weather conditions as the reason for the delay in supply.

4.The Corporation did not extend the time and Recovery Notices were issued to the petitioner claiming for damages of Rs.1,18,80,000/- (Rupees One Crore Eighteen Lakhs and Eighty Thousand only) towards the differential value of the Toor Dhall. That apart, the security deposit that was given by the petitioner to the tune of Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand only) was also forfeited and the petitioner was also blacklisted for a period of five years.

5.It is under these circumstances, Arbitration Proceedings were initiated by the petitioner in line with Clause 20 which is the Arbitration Clause provided under the Agreement.

6.The petitioner had sought for setting aside the Recovery Order dated 30.06.2011. The petitioner had also sought for the refund of the security deposit of a sum of Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand only). The petitioner had also claimed for business loss to the tune of Rs.35 Lakhs and the recovery of damages of Rs.15 Lakhs towards loss of reputation due to black listing. The decision taken by the Corporation to blacklist the petitioner for a period of five years was also put under challenge.

7.The Corporation filed a reply and also made a counter claim for a sum of Rs.1,18,80,000/- (Rupees One Crore Eighteen Lakhs and Eighty Thousand only) towards the differential value of Toor Dhall.

8.The learned Sole Arbitrator considered the claim and also the counter claim made by the Corporation and passed an Award dated 15.06.2017, dismissing both the claim made by the petitioner as well as the counter claim made by the respondent. Insofar as blacklisting the petitioner for a period of five years, the learned Arbitrator found that principles of natural justice has not been followed and therefore, came to a conclusion that the order of respondent blacklisting the petitioner is not legal.

9.Aggrieved by the Award passed by the sole Arbitrator, both the claimant as well as the Corporation are before this Court.

10.The learned counsel for the claimant submitted that there is patent illegality in the findings of the leaned Arbitrator, since the Arbitrator has given contradictory findings. The learned counsel submitted that the claimant was able to establish before the learned Arbitrator that there was *force majeure*/act of God which prevented the claimant from performing the contract. The learned Arbitrator has also concluded that there was infact an act of God which prevented the claimant from performing the contract. However, the learned Arbitrator has also given a finding to the effect that the claimant has failed to perform the contract by not supplying any dhall and these two findings are contradicting each other and cannot be sustained. The learned counsel for the claimant further submitted that the learned Arbitrator has given a clear finding that extension of time was given to two of other tenderers and whereas, the request made by the claimant was rejected and therefore, there was discrimination. In spite of rendering such a finding, the learned Arbitrator failed to see that if the claimant had also been given extension of time, he would have fulfilled his obligation under the contract. Therefore, there was absolutely no justification in the Corporation forfeiting the security deposit and atleast the security deposit ought to have been directed to be refunded to the claimant. The learned Arbitrator after having found that there was impossibility of performance due to act of God, should have considered the claim made by the claimant atleast for the refund of the security deposit.

11.The learned Additional Advocate General appearing on behalf of the Corporation submitted that even on the day when the contract was entered into by the Corporation on 06.01.2011, the claimant must be ready to supply the Toor Dhall and when the purchase order was issued on 20.01.2011, by then, the claimant should have made arrangements for supply of Toor Dhall. The last date was on 02.02.2011 and by then the claimant ought to have supplied 1500 MTs of Toor Dhall and nothing was supplied by the claimant by then. Therefore, there was a clear violation of the Agreement and therefore, under Clause 8, the Corporation was entitled to forfeit the security deposit, since the claimant had violated the terms and conditions of the Agreement.

12.The learned Additional Advocate General further submitted that there was no discrimination in this case as was claimed by the claimant. The learned Additional Advocate General submitted that the other two tenderers viz., Thirupathi Industries and Ambica Pulses, had started supplying in small quantities and therefore, the request made by them for extension of time was granted. But however, in the case of the claimant, nothing was supplied and therefore, there was no scope for any extension of time. The learned Additional Advocate General submitted that as per Clause 6(iv) of the Agreement, the claimant should have atleast supplied proportionate quantity till 02.02.2011 and if the claimant had shown bonafides, the Corporation would have extended the time as was done for the other two tendereres. Hence, it was submitted that the Corporation was completely justified in forfeiting the security deposit as per the terms of the Agreement.

13.The learned Additional Advocate General submitted that since the claimant did not make any supply of Toor Dhall, the Corporation was forced to call for a re-tender and as a result, it incurred loss and therefore, the Corporation was entitled to claim damages from the claimant for the differential value of the Toor Dhall. This crucial aspect was not considered by the sole Arbitrator and the sole Arbitrator went wrong in rejecting this claim which is liable to be interfered by this Court. The learned Additional Advocate General further submitted that the grounds that have been raised by the claimant are unsustainable and the petition filed by the claimant is liable to be dismissed.

14.This Court has carefully considered the submissions made on either side and the materials available on record.

15.The submissions made on either side centres around the only ground available under Section 34 and which is the ground of patent illegality. It will be relevant to first take note of the latest judgement of the Apex Court in this regard and proceed to deal with the Award passed by the learned Arbitrator in the light of the submissions made on either side. The Apex Court in ***Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Private Limited*** reported in ***2024 6 SCC 357*** has succinctly captured as to what grounds will make out a case for patent illegality. It was held that this ground is available for setting aside the domestic Award, if a decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at such conclusion or the construction of the contract is such that no fair or reasonable person would take a decision as was taken by the Arbitrator or that the view taken by the Arbitrator is not even a possible view. Likewise, a finding based on no evidence at all or an Award which ignores vital evidence in arriving at a decision would be perverse and it is liable to be set aside under the head of patent illegality. Similarly, an Award without reasons would suffer from patent illegality.

16.Keeping the above judgement in mind, this Court will now go into the facts of the present case.

17.It is not in dispute that the claimant and the Corporation entered into an Agreement dated 06.01.2011. As per the Agreement, the claimant was expected to supply 1500 MTs of Toor Dhall at the rate of Rs.51,400/- on or before 02.02.2011. As per Clause 6(iv), it is also open to the supplier to complete the entire supply by supplying proportionate quantity and complete the entire supply by 02.02.2011. The contract also provided that normally no extension of time for the supply of dhall beyond the last date originally fixed will be granted. But, in exceptional circumstances and if it is sufficiently proved that the delay in supply is due to circumstances beyond the control of the supplier, extension of time will be granted at the discretion of the Managing Director subject to certain conditions.

18.The learned counsel for the claimant harped on the above clause contained in the Agreement and submitted that in the case in hand, there was clearly a *force majeure* which was acting against the claimant from supplying the Toor Dhall and that was sufficient reason for the Corporation to extend the time for the supply of Toor Dhall.

19.The first purchase order dated 18.01.2011 which was received only on 20.01.2011, mandated the claimant to supply 1500 MTs of Toor Dhall by 02.02.2011.

20.The main ground that was raised by the claimant for not being able to supply the Toor Dhall is that there were unexpected weather conditions in the cultivation area and therefore, the claimant had to seek for extension of time through letter dated 02.02.2011.

21.The learned Arbitrator while dealing with this issue has taken into consideration the materials that were placed by the claimant in terms of news reports and the learned Arbitrator has come to a conclusion that an extraordinary situation prevailed due to act of God which provided a valid ground for extension of time line as per Clause 10(ii) of the Agreement. Therefore, the claimant was able to establish before the learned Arbitrator that an extraordinary situation had in fact prevailed, which prevented the claimant from supplying the Toor Dhall, within the time stipulated.

22.The next issue pertains as to whether the claimant was entitled for any extension of time for supply of the Toor Dhall. The fact that the learned

Arbitrator came to a conclusion that extraordinary situation was prevailing and that the Corporation must have extended the time for supply of Toor Dhall, by itself is a ground to justify the claim made by the claimant for extension of time. In fact, the first issue that was decided by the learned Arbitrator is as to whether sufficient time was given to the claimant for supply of the Toor Dhall. The learned Arbitrator takes into consideration the grounds raised by the claimant and comes to a conclusion that the claimant was not given sufficient time for supply of Toor Dhall.

23.Thus it is seen that the learned Arbitrator had held in favour of the claimant regarding the first issue and also the issue regarding *force majeure*.

24.After having held the above issues in favour of the claimant, the learned Arbitrator goes into the issue as to whether there was discrimination as between the tenderers wherein, for two of the tenderers, extension of time was in fact granted by the Corporation. While dealing with this issue, the learned Arbitrator has given a categoric finding that the claimant has been discriminated and that the extension of time that was granted in favour of Thirupathi Industries and Ambica Pulses, was not extended to be claimant.

25.The learned Additional Advocate General appearing on behalf of the Corporation submitted that such extension of time was granted to the said Thirupathi Industries and Ambica Pulses, since they supplied small quantities over a period of time and therefore, the Corporation was inclined to grant extension of time. However, in the case of the claimant, nothing was supplied and therefore, there was no question of granting any extension of time for the claimant.

26.The above submission made by the learned Additional Advocate General does not hold water. It is an admitted case that all the tenderers will have to make their entire supply by 02.02.2011. Insofar the Thirupathi Industries is concerned, their first supply was only on 15.02.2011 and thereafter, it has been extended atleast on four occasions. Similarly, insofar as Ambica Pulses is concerned, their first supply was only on 08.03.2011 and thereafter, it has been extended atleast on three occasions up to 29.03.2011. There is absolutely no material available before the Arbitrator to substantiate that those two tenderes had made the request for extension of time much before 02.02.2011 which was the time fixed under the Agreement. Therefore, once the claimant was able to establish before the Arbitrator by means of securing information under Right to Information Act from the Corporation to the effect that extension of time was in fact granted for two other tenderers, the burden of proof is upon the Corporation to justify as to why extension of time was granted only to two of the tenderers and the same benefit was not extended to the claimant.

27.The learned Arbitrator was perfectly justified in coming to a conclusion that the claimant had been discriminated by not being given extension of time to complete the supply of Toor Dhall and whereas such extension of time was given to two other tenderers who were equally placed.

28.From the above discussion, it is seen that the learned Arbitrator has found that the claimant did not have sufficient time for making the supply and that due to act of God, the claimant was prevented from making the supply and the Arbitrator also finds that the claimant has been discriminated and extension of time was not granted in spite of their being justifiable reasons to grant such extension of time and such extension of time was granted for two other tenderers who were equally placed. After rendering all these findings, the learned Arbitrator has also given a finding that the claimant did not make any supply of Toor Dhall up to 28.02.2011 when the Show Cause Notice was given and even thereafter, he sought for time on 08.03.2011 for one month and therefore, the claimant failed to perform his part of the contract. As a consequence, the learned Arbitrator has upheld the forfeiture of the security deposit in accordance with Clause 8 of the Agreement.

29.The above finding of the learned Arbitrator certainly suffers from patent illegality. The above finding is completely in contradiction with the earlier three findings that were given in favour of the claimant. If there were justifiable reasons for the claimant for not being able to supply the Toor Dhall and situation warranted an extension of time to supply Toor Dhal and such extension was given to two other tenderers and whereas, it was denied to the claimant, obviously, the Arbitrator cannot come up with a completely contradictory finding to the effect that the claimant failed to perform his part of the contract. This finding of the learned Arbitrator cannot be sustained in the light of the three earlier findings rendered in favour of the claimant. Therefore, this finding of the Arbitrator cannot be considered as a possible view and in fact, it is not even a plausible view which could have been rendered by the learned Arbitrator.

30.There was no possibility for the claimant to make any supply beyond 02.02.2011, unless the period is extended by the Corporation. The claimant through a letter dated 02.02.2011, seeks for extension of time. There is no reply for this letter and what was received by the claimant was only a Show Cause Notice dated 28.02.2011. Therefore, it is clear that the claimant was not given extension of time and the Show Cause Notice was issued and therefore, even if the claimant wanted to supply beyond 02.02.2011, he could not have made any supplies. Therefore, to blame the claimant that he did not make any supply till 28.02.2011 is a finding which ignores the vital evidence that has been collected by the Arbitrator and thereby renders the finding perverse.

31.In the light of the above discussion, this Court is inclined to interfere with the finding of the learned Arbitrator insofar as the forfeiture of the security deposit of a sum of Rs.77,10,000/- (Rupees Seventy Seven

Lakhs and Ten Thousand only). Insofar as the claim made by the claimant for business loss or loss of reputation, there are no materials available to substantiate the same and there is no evidence to quantify the amount. Therefore, there is no ground to interfere with the Award insofar as not granting the business loss or the damages towards loss of reputation. This is more so since the learned Arbitrator has held that the act of blacklisting the claimant is in violation of principles of natural justice and cannot be sustained.

32.Insofar as the counter claim made by the Corporation, they are seeking for a sum of Rs.1,18,80,000/- (Rupees One Crore Eighteen Lakhs and Eighty Thousand only) towards the differential value of Toor Dhall. The last day for the supply of 1500 MTs. of Toor Dhall was 02.02.2011. As already stated, the claimant sought for extension of time. The Arbitrator as well as this Court has already given a finding that *force majeure* was acting against the claimant and hence, the claimant was not able to supply the Toor Dhall. The learned Arbitrator as well as this Court has also found that the claimant was entitled for extension of time as was granted to two other tenderers. In such a case, there was no justification for the Corporation to go ahead with the fresh tender on 08.02.2011 and award the fresh tender. This hastiness shown on the side of the Corporation does not justify the claim made by them for the differential value of Toor Dhall. Therefore, the learned Arbitrator was perfectly justified in rejecting the counter claim made by the Corporation.

33.The up short of the above discussion is that Arb.O.P.No.782 of 2017 is partly allowed and Arb.O.P.No.1032 of 2017 is dismissed. The Award dated 15.06.2017 passed by the sole Arbitrator is interfered only insofar as confirming the forfeiture of the security deposit to the tune of Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand only) and there shall be a direction to the Corporation to pay the security deposit of a sum of Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand only) to the claimant with interest at the rate of 7.5% per annum from the date it became due and payable till the date of actual payment. The payment shall be made to the claimant, within a period of four weeks from the date of receipt of copy of this order. No Costs.

18-09-2025

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

To

The Managing Director,
Tamilnadu Civil Supplies Corporation Ltd.,
12, Thambusamy Road,
Kilpauk, Chennai 600 010.

N.ANAND VENKATESH J.

ssr

OP Nos. 782 & 1032 of 2017

18-09-2025