
(1997) 12 MAD CK 0142

In the Madras High Court

Case No : O.S.A. No. 374 of 1997 C.M.P. No. 18805 of 1997

E.C.Bose and Co. Pvt. Limited

APPELLANT

Vs

Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Citation : (1997) 12 MAD CK 0142

Hon'ble Judges : K. Natarajan, J;J. Kanakaraj, J

Bench : Division Bench

Advocate : G. Suubramanian, for Mr. G.R. Swaminathan, for the Appellant; V. Rengabashyam for T.N.E.B., Mr. Mohan Parasaran for Respt. 4, Mr. Somyajee, for Mr. Rengarajan, for the Respondent

Judgement

J. Kanakaraj, J.—By consent of both the parties, we are passing Final order in the O.S. Appeal itself. C.M.P. No. 18805 of 1997 is for

passing of an order of interim directions, directing the respondents 1 and 2 to maintain the status quo as on to-day and consequently prevent the

3rd respondent from in any manner seeking to handle the operations in coal in accordance with the tender specifications.

2. Before passing final orders, it is necessary to give a resume of the case. The respondents 1 and 2 viz., The Electricity Board floated a tender

relating to the handling of coal by (Rail-cum-Sea) route from the various collieries through load ports of Haldia, Paradip and Visakapatinam and

from the discharge ports of Chennai and Tuticorin to the thermal power stations at Ennore, North Chennai, Mettur and Tuticorin.

3. The prayer in the suit is to declare the entire process viz., the evaluation, finalisation of the tenders/bids received in pursuance of the said tender

Notification as illegal, arbitrary and unconstitutional and for a mandatory

injunction to direct the respondents 1 and 2 (defendants 1 and 2) to call for fresh tenders in respect of the contract. Pending disposal of the suit in O.A.635/97, an application was filed seeking interim injunction restraining the respondents 1 and 2 from processing, evaluating, finalising and awarding the contract. By an order dated 27-10-1997, the learned Single Judge of this Court, granted a limited interim injunction only to the extent of confirming the award of contract to respondents 3 and 4. The appeal in this case is by the applicant/plaintiff themselves. Therefore, a preliminary objection is taken that an appeal under clause 15 of the Letters Patent will not at all lie. We will refer to this objection little later.

4. Before us, both the counsel for the petitioner and the respondents have made their submissions respectively. It is not seriously disputed that after the said limited interim order, the matter was argued before the learned Single Judge on 18-11-1997, at the instance of the Electricity Board. It transpires that the Electricity Board contended that the Board was incurring a loss of Rs. 10.71 crores every month because of the difference in price of the previous contractors and price charged by respondents 3 and 4. In other words, if the tender of the 3rd and 4th respondent is to be accepted, the rate will work out to Rs. 140/- per tonne as against the 2.20 per tonne charge by the earlier contractors. Thereupon it is stated by both the parties that the learned Single Judge pointed out that his interim order was only against the confirmation of the award. It is also stated that the learned Judge had also observed that the consequence would be that the contract could be awarded by the Electricity Board to the successful tenderers.

5. We are clearly of the opinion that no written order of the Court can be varied by making observations, one way or the other. The fact remains that on 26-11-1997 and on 29-11-97 the Electricity Board had awarded the contract in favour of the 3rd respondent in respect of the Ports of Madras, Tuticorin, Visakapatinam, Paradip and Haldia and in respect of the Tuticorin port, the contract was awarded to the 4th respondent. What is more, there is a letter dated 27-11-97 from the 3rd respondent seeking the delivery of all the coal stocks available at dumps, ships and rails to the account of the Electricity Board. In other words, the successful contractors were trying to implement the contract. Here, we had put a specific

question to the counsel for the 3rd respondent, to say whether the contract was being implemented. We are told that the contract is being

implemented. In our opinion (sic) the terms of the interim injunction granted by the learned Single Judge on 27-10-1997 the contract cannot at all

be implemented until further orders are passed in the said O.A.635 of 1997.

6. It is further pointed out that arguments were heard in the said application O.A.635/97 between 24-11-1997 to 8-12-1997 and all the parties

had taken part in the arguments through their respective counsel. Orders had been reserved in O.A.635/97 by the learned Single Judge, on 8-12-

1997.

7. It is in these circumstances that the above appeal has been filed. The arguments revolve around the oral observations said to have been made by

the learned Single Judge. But, unfortunately, we are confronted with the orders awarding the contract to respondents 3 and 4 on 26-11-1997 and

29-11-1997 as well as the attempt to implement the contract by the letter of the 3rd respondent dated 27-11-1997. It is these subsequent events

which compel us to admit the appeal and pass orders in the interest of justice,

8. It is now time to consider the preliminary objection advanced on behalf of the third respondent. Though there are two Division Bench Judgments

holding that an appeal shall not lie against interim orders. The Judgment of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and

Another, is an authority which is binding on us. In para-115 of the Judgment, the Supreme Court refers to three types of Judgments against which

an appeal could lie. We do not want to elaborate the matter and it is quite sufficient to quote the following passage:

Thus, in other words every interlocutory order cannot be regarded as a Judgment but only those orders would be judgments which decide matters

of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

9. In other words, where the order causes prejudice to one of the parties in such a manner that the suit itself is practically decided, an appeal is

certainly maintainable. Therefore in this case having regard to the plaint prayer and the attempt to implement the contract pending disposal of the

suit, we are satisfied that a final substantial decision had been rendered by the learned Single Judge based on the subsequent observations and

developments.

10. On the question of passing orders in this appeal, we are of the opinion that the parties shall be governed by the final order of the learned Single

Judge on in O.A.635/97. But till final orders are passed having regard to the order of the learned Single Judge dated 27-10-1997, the contract

awarded to respondents 3 and 4 shall not be implemented. A grievance is made that if the contracts are not implemented, the Board will suffer loss

to the tune of Rs.10 crores per month. This can be adequately taken care of, by directing the Electricity Board to request the earlier contractors to

operate the handling of coal, if they so desire, only at the negotiated rates in respect of suit lender notifications given in respect of each port as

follows:

This will be a temporary arrangement, and it will be in force till the learned Single Judge passes final orders in O.A.635 of 1997. As and when final

orders are passed in O.A.635/97 in C.S.617/97, the said final order will alone govern the parties and not the present order in this appeal.

RR/VCS