

(2007) 01 MAD CK 0280

In the Madras High Court

Case No : CRP (PD) No. 1020 of 2004 and C.M.P. No. 10370 of 2004

Indian Oil Corporation Ltd.

APPELLANT

Vs

Andhra Cargo Transport

RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2007) 01 MAD CK 0280

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : P.N. Radhakrishnan, for the Appellant; No Appearance, for the Respondent

Judgement

S. Ashok Kumar, J.—As against the dismissal of the Interlocutory Application to for staying the proceedings in the suit and to refer the matter to Arbitral Tribunal, this CRP has been preferred by the defendant.

2. The respondent/plaintiff filed the suit for the reliefs of (a) declaration declaring the defendant's communication dated 26.3.1996 making an illegal demand under the guise of malpractice said to have been committed by him on 4.12.1995 as illegal; (b) for rendition of accounts for the period from April 1995 to January 1996 in respect of loading and unloading regarding Tank Truck No: TMF 109; and for (c.) permanent injunction restraining the defendants and their men from interfering with the peaceful operation and running of the Tank Truck No:TMF 109 belonging to the respondent/plaintiff.

3. According to the respondent/plaintiff, the defendant Indian Oil Company illegally demanded a sum of Rs. 5,38,078.87/= being the recovery for the liability on allegedly being found possession of forged dip rod fitted with the plaintiff's Tank Truck on 4.12.1995 when loading Aviation Turbine Fuel from Tondiarpet Terminal. The plaintiff denies the alleged malpractice and finds fault with the defendant for not measuring the quantity by meter reading at the appropriate places with metes and for not giving proper opportunity before

imposing the fine amount. Hence the suit.

4. Pending the suit, the defendant filed the Interlocutory Application contending that the plaintiff is legally prevented from approaching the Civil Court in view of the arbitration clause 36 found in the contract agreement entered between the parties and in fact the plaintiff has suppressed such arbitration clause by not filing the Bulk Transport Contract Agreement.

5. The plaintiff resisted the said application contending that by virtue of the fact that clause 36 provides for arbitration, the same will not preclude the plaintiff from maintaining the cause of action independently with reference to the decision already taken and communicated in the form of demand and accordingly with reference to the deeds already decided and communicated by way of recovery and invoking penal provision, it is only the civil court that go to the jurisdiction to probe into the matter regarding the validity and legality and propriety and correctness of the illegal demand.

6. However, the learned Trial Judge, dismissed the said Interlocutory Application holding that the civil court has jurisdiction since the relief sought for is in the nature of declaration and for permanent injunction. Aggrieved by the same, the present revision has been filed.

7. Heard the learned Counsel appearing for the revision petitioner/defendant. There is no representation for the respondent/plaintiff.

8. Learned Counsel for the revision petitioner referred to the Arbitration Clause viz., Clause 36 of the Bulk Transport Contract Agreement, dated 7.8.1995 which contains the following provision:

36:ARBITRATION: (a) Any dispute or difference of any nature whatsoever or regarding any rights, liability act, omission on account of any of the parties hereto arising out of or in relation to the agreement/contract shall be referred to the sole arbitration of the Chairman and Managing Director/Director (marketing) of the corporation or some officer of the Corporation who may be nominated by them. The contractor will....

(b) xx xx xx xx (c.) xx xx xx xx (d) xx xx xx xx...

9. A bare reading of the above provision would itself make it clear that the dispute regarding the liability of the plaintiff for the alleged loss caused to the Corporation by attempting to transport 520 ltrs of excess Aviation Turbine Fuel and the rights of the plaintiff to defend the allegation would fall within the scope and ambit of a dispute for being referred to an Arbitrator. The contention of the learned Counsel for the revision petitioner merits acceptance.

10. Further as per the terms and conditions of the contract viz., as per conditions D3(a) read with 3(n) (ii), the plaintiff has undertaken that he will not indulge in any malpractice including those listed under Clause D, which includes, tampering with calibration by false dip/proof levels etc., The said clauses stipulate that "In

case the tank truck/(s) is/are found to indulge in malpractice resulting in carrying of quantity in excess of calibrated quantify or short delivery at destination as per valid calibration chart, the corporation shall recover the cost of excess/short delivery of the product carried by the tank trucks with effect from the last date calibration or from the date of commencement of transportation work by the tank/(s) whichever is later."

11. In the present case according to the revision petitioner even at the loading of ATF in the Tondiarpet Terminal, when the Meteorological Departmental Officials checked the dip on 4.12.1995 it was found that the Tank Truck crew were in possession of a falsified dip rod filing excess quantify of ATF and during the check was going on both the tank truck driver and the tank truck helper ran away from the terminal and they were chased and caught. Thereafter after investigation a report was prepared in which the driver and the helper have also signed and thereafter only the liability was assessed and demanded by the communication and orders. This will only go to show that the dispute is clearly falls u/s 8 of the Arbitration and Conciliation Act and since the parties have agreed for arbitration under Clause 36 of the Bulk Transport Contract Agreement, the dispute is to be referred only to the Sole Arbitrator and the civil court is specifically barred to decide such issues. In fact the dispute is relating to the violation of the terms and conditions of the said Contract Agreement and under the guise of seeking declaration for declaring the demand of liability of the contractor/plaintiff for such violation which has been demanded after making thorough investigation into the dispute, such prayer for declaration as null and void and permanent injunction will not alter or change the character of the dispute.

12. It is also alleged by the revision petitioner that the plaintiff has even suppressed the Contract Agreement by not submitting a copy of the same before the trial court which would only indicate that the plaintiff has filed the suit solely as a ruse to circumvent the provisions of the Arbitration Clause in the agreement and the remedy available under the agreement.

13. Under the above circumstances, this Court directs the trial court to stay the proceedings in the pending suit in O.S.No: 5487 of 1996 and direct the parties to refer the dispute to the Arbitral Tribunal as provided in Clause 36 of the Bulk Transport Contract Agreement entered between the parties.

14. With the above direction, this CRP is disposed of. Consequently, connected CMP is closed.