
(2004) 04 MAD CK 0041

In the Madras High Court

Case No : Writ Appeal No. 1808 of 2002 and WAMP. No. 3097 of 2002

Neyveli Lignite Corpn. Ltd.

APPELLANT

Vs

Eswari Enterprises

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Citation : (2004) 04 MAD CK 0041

Hon'ble Judges : P.K. Misra, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : N.A.K. Sarma, for the Appellant; A.R.L. Sundaresan, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The appellant viz., Neyveli Lignite Corporation Limited, is a Government of India Enterprise, having

registered office at No.135, Periyar E.V.R. High Road, Chennai-10. Its main activities are mining of lignite and generation of power by using the

lignite and in that process of generation of power in Thermal Stations, some unburnt lignite particles (hereinafter referred to as UBL) arise and

these are washed off and carried through channels to the specified ash bunds. There are 3 such ash bunds known as ACD Bund Sector-I, ACD

Bund Sector-II and "H" Bund of the Thermal Station No.1. These bunds are so designed and constructed that the UBL in the slag, settled in the

respective Bunds, is given away by auction for a consideration. Tenders were floated during early 2001 for retrieval, removal and disposal of UBL

with respect to these bunds and also for the removal and disposal of some heaped UBL on the Eastern side of the H Bund. So far as the removal

and disposal of some heaped UBL on the Eastern Side bank of the H Bund, there was no offer and hence, the corporation decided to do it by

itself. In respect of other three bunds, auction was conducted. The respondent/petitioner was the successful bidder in respect of two auctions while

one M/s. R.R. Chemicals Limited was in respect of the third one.

2. In the earlier proceedings, that is, in W.P. No.16699 of 2001, a learned single Judge of this Court, by an order dated 15.10.2001, considering

the facts and circumstances and also the hardships that will be put to the prospective successful tenderer and the Neyveli Lignite Corporation,

passed an order that the petitioner/respondent may be awarded contract for all the three bunds subject to certain conditions. Three separate Letter

of Licences were issued and agreements were also entered into.

The licences were granted to the respondent to retrieve the UBL for 180 days from 13.11.2001 which should mean, that period would end by

11.5.2002. The Tender Schedule, the Letter of Licence and the Agreement containing various terms and conditions, were duly accepted by the

respondent/writ petitioner. All the three agreements contained identical clauses. We are here-under quoting some important clauses in one

agreement:-

The retrieval of the unburnt lignite shall be done only during day time and between 7.00 a.m. and 5.00 p.m. The retrieval and collection inside the

bund will be permitted on all days. However, transportation shall be done only on working days and will not be permitted on Sundays and

holidays. However if the last day of the contract happens to be either a Sunday or a Holiday, transportation will be permitted on that day as a

special case.

The right will be for the entire quantity of retrievable unburnt lignite from the "H" bund for a period of 180 days commencing from the date of

entering into a contract.

The successful bidder will be permitted to retrieve and store the unburnt lignite inside the bund. But, however, before removing the unburnt lignite

he has to get the approval from the Tamilnadu Pollution Control Board (TNPCB) for the transport and disposal. Obtaining the authorisation from

TNPCB will be the responsibility of the successful bidder and no extension either for remitting the payment as per the schedule prescribed and

entering into contract or contract period will be allowed on account his delay in getting such approval.

The contract automatically expires on the date and time mentioned in the order of Acceptance/Agreement. No request for the extension of period

of contract shall be entertained by the Corporation. The decision of the corporation in this regard shall be final and binding on the successful

tenderer and the same shall not be called in question in any Judicial Forum.

From the above, three things are evident, viz.,

(i) that there will be no extension beyond 180 days under any circumstances;

(ii) getting clearance from the Pollution Control Board is the duty of the tenderer, and extension will not be granted if any delay occurs in getting clearance;

(iii) the transportation shall be permitted on all days except Sundays and Holidays.

3. Just a few days before the expiry of the term of 180 days (the last date was 11.5.2002) the respondent/writ petitioner filed W.P. No.16051 of

2002 on 08.05.2002, before the Vacation Court, seeking extension of period by 101 days. An ex-parte order of interim injunction was granted

for four weeks. Between 12.05.2002 and 12.6.2002, according to the appellant, the respondent removed about 465 truck-loads of UBL without

making any payment or bank guarantee. Even on 15.5.2002, the appellant moved a Miscellaneous Petition before the second Vacation Court,

opposing extension of the interim injunction already granted. On 4.6.2002, the interim injunction expired. However, on 6.6.2002, the interim

injunction was extended by another two weeks, that is, till 20.06.2002. Even at that time, no conditions were imposed with regard to payment.

The appellant, finding that it is incurring heavy loss, filed W.A. No.1689 of 2002. On 12.06.2002, the Court passed the following order.

We have heard the learned counsel appearing for both the parties in the writ appeal which arises out of an order passed in an interlocutory

application. Having regard to the fact that the learned single Judge is now seized of the adjudication in the writ petition, we are of the considered

view that merits of the case need not be gone into. But, at the same time, the balance of convenience warrants imposition of some kind of security

from the respondent Company in the event of the writ petition going against the

respondent company.

2. In the circumstances, the writ appeal is disposed of with a direction to the respondent company to furnish bank guarantee for an amount of

Rs.10,00,000/- (Rupees ten lakhs only), so as to enable them to go on with their business of retrieving and removing the unburnt Lignite for a

period of eight days reckoning from tomorrow, ie., from 13.6.2002 to 20.6.2002. Furnishing of bank guarantee shall be a condition precedent for

retrieval and removal of the unburnt Lignite. Consequently, the connected miscellaneous petition is closed.

4. W.P. No.16051 of 2002 was disposed of by a learned single Judge, granting two weeks time to the respondent herein, from the date of receipt

of the copy of the order, to make a detailed representation to the appellant for extension of time for the clearance of the materials, and directing the

appellant to pass orders thereon and till such time, the parties were directed to maintain status quo on condition that the respondent should deposit

a consolidated sum of Rs.3.5 lakhs for the additional clearance.

5. As against the said order, the appellant filed this Writ Appeal. The writ appeal was admitted and in the Miscellaneous Petition, the following

order was passed,

At this interlocutory stage, pending disposal of this Interlocutory Application, having heard both the learned counsel, having regard to the facts

and circumstances of the case and balance of convenience, and taking into account the view that un-burnt material cannot be allowed to

accumulate as it affects the public revenue, apart from the space problem, the respondent shall be allowed to retrieve the un-burnt lignite on

condition of their depositing a sum of Rs.5 Lakhs in cash and furnishing a bank guarantee for an amount of Rs.7,25,000/-. This is for the period of

exploitation from 21.6.2002 to 30.6.2002, both days inclusive. We make it clear that should the interlocutory application does not come up for

further orders, then the respondent shall be entitled to retrieve the un-burnt lignite by depositing Rs.50,000/- in cash in advance for that day and

furnishing a bank guarantee for an amount of Rs.75,000/-.

It is stated that after 11.5.2002, the respondent did not remove any stock.

6. Learned counsel, appearing for the appellant, contended that it was specifically agreed that the respondent could retrieve the UBL for 180 days

from 13.11.2001 and, for no reason, the period would be extended and that any delay on his part in getting the Pollution Control Board's

Clearance would not help him. Respondent's claim for extension of time is totally without any basis and, that apart, the respondent has unjustly

enriched himself to the extent of more than one and a half crores of rupees, taking advantage of the various orders passed and the pendency of the

writ appeal. According to the learned counsel for the appellant, the respondent is liable to make good the loss.

7. On the other hand, learned counsel, appearing for the respondent, would contend that the respondent could not clear the stock on all the days,

as gate-passes were not issued and because of heavy rain, and which only prompted it, to seek for extension of time.

8. While narrating the case, we have already extracted the relevant clauses of the Tender Schedule, the Letter of Licence and the agreement. It has

been made known clearly to the respondent that no extension of time will be granted beyond 180 days and that it is for the respondent to get

clearance from the Pollution Control Board and that stocks could be transported on all days, during particular hours, except on Sundays and

Holidays. Now, what is claimed by the respondent is,

(i) there was a couple of weeks delay in getting the clearance;

(ii) it was not granted gate passes which prevented its transportation of the stocks on Sundays; and

(iii) because of heavy rain, it was not able to do the operation.

9. As far as the first two reasons are concerned, in view of the clear understanding between the parties as reflected in the agreement, this Court has to brush aside the same.

As far as the claim that there was heavy rain is concerned, the appellant has categorically denied the same. The agreement clearly recites that under

no circumstances the period will be extended.

10. It requires no discussion for us to lay down that the parties are bound by the agreement. This Court cannot, considering the reasons given by

the respondent, re-write the contract. We are clearly of the view that the learned single Judge ought not to have entertained W.P. No.16051 of

2002 and granted the interim order and later extended the same, ultimately ordering status quo. This has resulted in a very serious loss to the

Corporation. There is considerable force in the submission of the appellant that by virtue of the order dated 12.06.2002 in W.A. No.1689 of

2002, it was put to serious loss and hardships.

11. We specifically asked the learned counsel for the respondent what is it that he would like to urge in this writ appeal. The counsel only

submitted that the authorities ought to have accepted the respondent's request for extension of time by 101 days, which was made by him,

pursuant to the order of the learned single Judge in W.P. No.16051 of 2002. Then we asked the learned counsel for the appellant as to what

happened to the representation submitted by the respondent. We are shocked to know that the respondent has not so far given any representation

pursuant to the order in W.P. No.16051/2002 dated 14.6.2002. Though the learned counsel for the respondent states that a representation was

given, nothing has been produced before this court to show that one such representation was, in fact, given.

12. In these circumstances, we are of the view that the order passed by the learned single Judge is liable to set aside. Accordingly, We do so.

13. The Writ Appeal stands allowed with costs of Rs.5,000/- (Rupees five thousand only). Connected Miscellaneous Petition stands closed.

14. We make it clear that whatever stock removed by the respondent on and from 12.5.2002, it is liable to make good the loss to the

Corporation. The respondent cannot be heard to say that the stocks were removed by it only pursuant to the orders by this Court and since

conditions imposed by the Court had been fulfilled, the Corporation cannot make any claim for damages or otherwise in respect of stocks already

removed by it subsequent to 12.5.2002. It is stated that between 12.5.2002 and 12.6.2002, the respondent removed about 465 truck-loads of

UBL, 415 truck-loads between 22.06.2002 and 1.7.2002 and 2340 truck-loads between 5.7.2002 and 11.6.2003. The appellant/Corporation is

at liberty to value whatever the stocks removed and, after deducting the amount paid by the respondent pursuant to the orders of this Court, to

initiate proceedings to recover the balance.

According to the corporation, on a conservative estimate, a truck-load of UBL would fetch Rs.7,000/- or so and on that basis, the cost of 3220

truck-loads removed by the respondent, after expiry of the contract period,

works out to Rs.2,25,40,000/-. Of course, with regard to the claim of the appellant that 2340 truck-loads were removed between 5.7.2002 and 11.6.2003, learned counsel for the respondent submitted that he has to verify from his client before he could make any statement before court. Now that this Court is not deciding about the stock removed between 5.7.2002 and 11.6.2003 and the value of the same, this Court is of the view that it is not necessary to adjourn the matter.