



2023/KER/52403

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 18TH DAY OF AUGUST 2023 / 27TH SRAVANA,

1945

AR NO. 25 OF 2023

PETITIONER:

M/S. ANANTHAM ONLINE PVT. LTD.,
REGISTERED OFFICE (OLD) AT VP XX/843-B,
GOWREESAM, PRWA 142-A, NAGAKKODU LANE,
PULIYARAKONAM, THIRUVANANTHAPURAM,
KERALA, PIN - 695573
REGISTERED OFFICE (NEW) AT HOUSE NO.3,
NORTH GIRINAGAR, KADAVANTHRA, COCHIN,
KERALA.PIN - 682020
REPRESENTED BY ITS DIRECTOR MS.NEETHU
RAJASEKHARAN.

BY ADVS.
BIJU BALAKRISHNAN
V.S.RAKHEE
K.R.SUNIL
AJMAL P.
GOPIKA P.J.

RESPONDENT:

THE SENIOR DIVISIONAL COMMERCIAL MANAGER,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM
DIVISION, THYCAUD, THIRUVANANTHAPURAM, PIN
- 695014.

BY ADV S. BIJU - SC

THIS ARBITRATION REQUEST HAVING COME UP FOR
ADMISSION ON 18.08.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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ORDER

The petitioner is stated to be a Private Limited Company and assert that they have entered into a contract with the respondent, for the purpose of operating the Vehicle Parking Facility at Thiruvananthapuram Central (Main Entry) Railway Station, for a period of two years. They say that disputes have arisen between the parties regarding execution of the said work contract because, the respondent did not take any action to remove and stop unauthorised parking of vehicles in the vicinity of the Railway Station; and therefore, that they were constrained to request them to guide appropriately with respect to future course, as evident from Annexures A13, A14 and A15 Communications.

2. The petitioner says that, however, instead of considering their request in its proper perspective, the respondents have now issued Annexure A19, terminating the contract itself and asking them to hand over the list of vehicles parked in the facility. They say that they have been thus constrained to approach this Court through this Arbitration Request because, Annexure A1 - which is the intrinsic part of



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the contract, mandates that all disputes between the parties be resolved only through the process of arbitration, under the provisions of the Arbitration and Conciliation Act,1956.

3. Sri.S.Biju - learned Standing Counsel for the respondents, however opposed the afore submissions of Sri.Biju Balakrishnan - learned counsel for the petitioner, asserting that there has been no concluded contract between the parties and pointed out to Annexure A16 in substantiation. He argued that, as is evident from the said document, even though the petitioner was directed to execute the agreement within a week of its date - namely 03.10.2022, no action had been taken; and therefore, that they cannot now seek arbitration of the alleged disputes based on a non-existent arbitration clause. He thus prayed that this Arbitration Request be dismissed.

4. An evaluation of the afore rival submissions of the parties would certainly require this Court to go through the documents produced in some detail.

5. It is without contest that the respondents had invited tenderers to operate the Vehicle Parking Facility at Thiruvananthapuram Central (Main Entry) Railway Station,



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through Annexure A1. The said document, vide Clause 19(1) thereof, provides that, in case of any delay in execution of the agreement, “the terms of the tender notification”, as also “the Letter of Acceptance (LOA)”, will be binding and will be treated as an agreement. It then goes on to say, as per its Clause 57, that, in case of disputes arising between the parties, provisions of the Arbitration and Conciliation Act, 1956 and its amendments from time to time, as also the conditions in the GCC - which obviously refers to the “General Conditions of Contract” - will apply.

6. Pertinently, in response to the tender furnished by the petitioner pursuant to Annexure A1, Annexure A2 - “LOA” was admittedly issued by the respondents, accepting the same and making it clear that the period of contract will be reckoned either from the actual date of starting of management of the Vehicle Parking Facility, or from the 30th day of the said document, whichever is earlier. It is, therefore, manifest that the “LOA” deemed the contract to begin from either of the afore days, without the parties having to enter into a formal agreement; though, in Clause 3 thereof, it was mandated that such be executed in a non-judicial stamp paper of Rs.500/-,



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within 15 days from its date.

7. That said, it is beyond contest that a formal agreement, as required in Annexure A2 - "LOA", had not been entered into by the parties; but Annexures A3 and A4 would limpidly show that the terms of the "LOA" had to be abide by the petitioner, by making the requisite payment and security deposit.

8. Interestingly, pursuant to the afore, Annexure A6 - "Letter of Award" was issued by the respondents on 05.05.2022, without requiring the petitioner to enter into a formal contract, as was mentioned in "LOA", but making it clear that the General Conditions and Special Conditions of Contract already notified to them, along with Annexure A1 - Tender Notification and Annexure A2 - "LOA", "*shall be followed scrupulously*"(sic).

9. It is apodictic from further correspondence between the parties, that the activities of the Vehicle Parking Facility was thus begun by the petitioner in terms of the requirements in Annexure A2 - "LOA" and Annexure A6 - "Letter of Award"; but controversy arose when they allegedly found that there were unauthorised parking in the vicinity of the Railway

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Station, which was eroding into their profits. They appear to have then addressed Annexures A13, A14 and A15 letters to the respondent, asking “guidance” in this regard; which was, however, responded to by the respondents through Annexure A16 dated 03.10.2022, informing that they had not remitted their license fee for the second quarter and then making a further demand that they execute the formal agreement within a week. The petitioner replied to this through Annexures A17 and A18, but it was met by Annexure A19 letter of the respondents dated 04.11.2022, terminating “*the contract awarded to you to manage the vehicle parking area at Thiruvananthapuram Central (Main Entry) Railway Station*”(sic); and that it “*stands terminated from 00:00 hours of 06/07-11-2022*”(sic).

10. The sum total of the afore would luculently, therefore, establish that, though a formal agreement had not been entered into between the parties, they bound themselves to certain specified terms and conditions, under which the petitioner was obligated to operate the Vehicle Parking Facility; and this is virtually conceded because, the respondents also admit that, the license fee for the first quarter had been



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remitted by the petitioner along with all other requirements being satisfied. It is only quad hoc the second quarter of the license fee that Annexure A16 communication of the respondent relate to; and this is further fortified by the fact that, in Annexure A19, they refer specifically to a “contract”, which according to them, stood terminated with effect from 06/07-11-22.

11. That apart, as I have already said above, Annexure A1 makes it clear that, in case there is delay in execution of the agreement, the terms contained in it, as also that in the “LOA” will be binding on the parties; and this is further made manifest by Annexure A6 - “Letter of Award”, in which same is reiterated. In fact, Annexure A6 makes it explicitly limpid that a “contract” had been awarded and that the general conditions and special conditions of the contract *“already notified to you (petitioner) along with a tender and LOA, which shall be followed scrupulously”* (sic).

12. I, therefore, fail to understand the purport of the argument of the respondent that, there was no concluded contract between the parties because, in the scenario where even a formal agreement had not been entered into, Annexure



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A1 makes it unequivocally evident that terms of the “LOA”, as also any other which may be imposed later, would apply and that parties will have to scrupulously follow the same. Since Annexure A6 reiterates this, as also the fact that “contract” has been awarded to the petitioner on certain specified conditions, I cannot countenance the contra argument that there is no concluded contract between the parties.

13. This is more so because, as is also said above, Annexure A19 refers to such a contract and says that it stands terminated from a particular time, on a particular date.

14. That being said, the only other question is whether parties have bound themselves through an arbitration clause. As noticed above, even though there is no formal agreement, Annexure A1 and Annexure A2, read along with Annexure A6, make the terms of the tender notification and the “LOA” binding and applicable to both the parties. There can be little doubt about this because, Annexure A6 - as already recorded above, makes it indubitable that both the parties shall be governed by the General Conditions and Special Conditions notified in Annexure A1 - tender notification and Annexure A2 - “LOA”.



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15. Proceeding further, when one examines Annexure A1, particularly Clause 57 thereof, it mandates that any dispute between the parties shall have to be adjudicated and resolved through the process of the Act, adhering to the conditions in the "GCC" also. It is without doubt, and as is admitted, the "GCC" contains provisions for arbitration between the parties, though copy of the same has not been made available to this Court by either of the parties in spite of sufficient opportunity having been offered to them.

In the afore circumstances, I am left without any doubt that this Arbitration Request is deserving of being allowed and therefore, do so in the following manner:

Consequently, this Arbitration Request is allowed in the following manner:

(a) I nominate Advocate.K.K.Raziya, SRRRA 131, Sheen Shenoy Road, Kaloor, Cochin - 682 017, as the sole Arbitrator to adjudicate and resolve the disputes and differences between the parties to this case arising from Annexure A1 tender notification.

(b) The Registry is directed to communicate a copy of



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this order to the learned Arbitrator, within a period of two weeks from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

(c) Once the Disclosure Statement is obtained from the learned Arbitrator, the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.

(d) The fees of the Arbitrator shall be governed by the Fourth schedule to the Arbitration and Conciliation Act, 1996.

(e) The parties to this case are *ad idem* that they will share the arbitration costs and fees equally and it is so recorded.

(f) In order to enable the Arbitrator to commence the proceedings without delay, I direct the parties to mark appearance before him at 11 am on 02.09.2023.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

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APPENDIX OF AR 25/2023

PETITIONER ANNEXURES

- Annexure A1 PHOTOSTAT COPY OF THE TENDER DOCUMENT FOR TENDER NO. VC-300-VP-TVC-M-2022, DT.21-02-2022.
- Annexure A2 TRUE COPY OF THE LETTER OF ACCEPTANCE OF OFFER NO.THIRUVANANTHAPURAM DIVISION-COMMERCIAL/VC-300-VP-TVC-2022/10524630052999, DT.19-04-2022.
- Annexure A3 TRUE COPY OF THE LETTER DT.04-05-2022 OF THE PETITIONER TO THE RESPONDENT.
- Annexure A4 TRUE COPY OF THE E-MAIL DT.04-05-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A5 TRUE COPY OF THE SUBSEQUENT E-MAIL DT.04-05-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A6 TRUE COPY OF THE LETTER OF AWARD NO.V/C.300/VP/TVC (MAIN ENTRY)/2022, DT.05-05-2022, ISSUED BY THE RESPONDENT TO THE PETITIONER.
- Annexure A7 TRUE COPY OF THE E-MAIL DT.06-05-2022.
- Annexure A8 TRUE COPY OF THE E-MAIL DT.13-05-2022.
- Annexure A9 TRUE COPY OF THE E-MAIL DT.16-05-2022.
- Annexure A10 TRUE COPY OF THE LETTER DT.01-06-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A11 TRUE COPY OF THE LETTER DT.25-07-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A12 TRUE COPY OF THE E-MAIL DT.26-06-2022.
- Annexure A13 TRUE COPY OF THE LETTER DT.24-08-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A14 TRUE COPY OF THE E-MAIL DT.24-08-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A15 TRUE COPY OF THE LETTER DT.20-08-2022 SENT BY THE PETITIONER TO THE RESPONDENT.



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- Annexure A16 TRUE COPY OF THE LETTER NO.V/C-300/VP/TVC (MAIN ENTRY)/2022 DT.03-10-2022 SENT BY THE RESPONDENT TO THE PETITIONER.
- Annexure A17 TRUE COPY OF THE LETTER DT.14-10-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A18 TRUE COPY OF THE E-MAIL DT.18-10-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A19 TRUE COPY OF THE TERMINATION LETTER NO.V/C.300/VP/TVC (MAIN ENTRY)/2022 DT.04-11-2022 SENT BY THE RESPONDENT TO THE PETITIONER.
- Annexure A20 TRUE COPY OF THE LETTER DT.07-11-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A21 TRUE COPY OF THE LETTER NO.V/C-300/VP/TVC (MAIN ENTRY)/2022 DT.03-11-2022 SENT BY THE RESPONDENT TO THE PETITIONER.
- Annexure A22 TRUE COPY OF THE E-MAIL DT.11-11-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A23 TRUE COPY OF THE NOTICE DT.19-12-2022 SENT BY THE PETITIONER TO THE RESPONDENT.
- Annexure A24 TRUE COPY OF THE LETTER NO.V/G 300/VP/TVC (MAIN ENTRY)/2022, DT.17-01-2023.