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In the High Court of Judicature at Madras

Dated : 23.04.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.17 of 2015

A.Radhakrishnan & P.Veeraraghavan (JV) .. Petitioner

-vs-

The General Manager
Southern Railway,
Park Town, Chennai.

.. Respondent

Petition filed under Sections 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent and impartial Arbitrator to hear and decide the claims of the petitioner arising out of the contract agreement dated 07.10.2009.

For Petitioner : Mr.K.K.Muralitharan

For Respondents : Mr.A.P.Srinivas

* * * * *

O R D E R

The petitioner participated in the tender called for by the respondent for the work relating to Gauge Conversion Works from Pollachi - Palghat Town - Transportation of BG prestressed concrete sleepers, rails, permanent way materials, special size sleepers, etc., including linking of track dumping of ballast and other connected works from 22/5 to 54 km in between Meenatchipuram and Palghat town in Reach II. The petitioner's was the lowest tender and thus,



the work was awarded to the petitioner vide Letter of Acceptance dated 27.05.2009.

2. Disputes have arisen inter se the parties after the contract and both the parties blamed each other for lapses and finally, the respondent foreclosed the contract without liability. The case of the petitioner is that the final measurements have been signed under protest and protested at the foreclosure of the contract without liability to pay. A request was made for refund of E.M.D. and to discharge and return the Performance Bank Guarantee. The respondent took the stand that nothing was due.

3.The petitioner invoked the arbitration clause No.64 (3) (a) (i) of the General Conditions of Contract vide letter dated 05.12.2012 making various claims, which was received by the respondent on 07.12.2012. There was no immediate response to this notice, however, a reply was given on 05.03.2014 refusing to refer the dispute to arbitration on the plea that the claims were excepted matters. Consequently, the present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

4.Learned counsel for the respondent concedes that in view of the judgment rendered in **M.Rajkumar vs. The General Manager, Southern Railway** (2015 (2) CTC 353), the disputes are liable for arbitration, subject to the plea of

the respondent that they being excepted matters, the same



would be examined by the Arbitrator. However, it is simultaneously submitted that the mechanism provided under the arbitration clause should be followed, as the plea of the petitioner did not remain unanswered, but was rejected and thus, there is no need for this Court to appoint any other person as an Arbitrator.

5. On the other hand, learned counsel for the petitioner submitted that even after the refusal of the respondent to refer the dispute to arbitration, the petition having been filed thereafter and no Arbitral Tribunal having been constituted till date, the respondent have lost the opportunity to appoint the Arbitrator. In this behalf, once again reliance is placed on the judgment of this Court in **M. Rajkumar**'s case, cited supra.

6. I am in agreement with the submission of the learned counsel for the petitioner that the respondent have lost the right to appoint the Arbitrator in the aforesaid facts and circumstances of the case, given the legal principle laid down and thus, the disputes would have to be referred by this Court to an Arbitrator. Learned counsel for the parties agree for conducting of arbitration under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

7. Thus, by consent of learned counsel for parties, I appoint **Mr. Justice G.M. Akbar Ali**, a retired Judge of this Court, as the Sole Arbitrator, to enter upon the reference



and adjudicate the disputes inter se the parties under the
ageis of the Madras High Court Arbitration Centre and the
parties will be governed by the Rules of the Centre.

8.The original petition is, accordingly, allowed,
leaving the parties to bear their own costs.

Sd/. (S.K.K., CJ.)
23.04.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/08.07.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.