

**In the High Court of Judicature at Madras**

**Dated : 18.06.2015**

**Coram :**

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

**O.P.No.313 of 2015**

M/s.Nellai Concrete Products &  
Construction Co. (P) Ltd., Rep. by  
its Managing Director, Mr.K.Jacob. ... Petitioner

-vs-

1.Union of India,  
Rep. by its Secretary,  
Ministry of Railway,  
Rail Bhawan, Rafi Marg, New Delhi.

2.The Deputy General Manager,  
Head Quarters Officer,  
General Branch, Southern Railway,  
Park Town, Chennai.

3.Rajesh K.Gupta .. Respondent

Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the 3<sup>rd</sup> respondent as Arbitrator issued vide Proceedings No.G.16/DGM/ARB/2014/33 dated 04.09.2014 by the 2<sup>nd</sup> respondent and to appoint an independent Sole Arbitrator to adjudicate and resolve the disputes and differences that have arisen between the petitioner and the respondents in respect of Agreement no.W.503/CN/TF/OT/2012-13/327 dated 10.09.2013 entered between the petitioner and the respondent, within a reasonable period of time.

For Petitioner : Mr.A.Jenasenan

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : Mr.P.T.Ramkumar

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**O R D E R**

The petitioner entered into a contract with the respondents for manufacture and supply of 100 sets of Pre-stressed Mono-block Concrete Sleepers, vide agreement dated 10.9.2013, being the successful tenderer. The respondent is stated to have issued a letter dated 11.09.2013, specifying the conditions regarding the delivery and inspection. However, certain disputes are stated to have arisen in respect of the terms of the contract, that resulted in the petitioner invoking the arbitration clause in the agreement inter se the parties, vide letter dated 23.01.2014.

2.The clause governing the parties is 2900 of the Indian Railways Standard Conditions of Contract. The relevant portion reads as under:

"(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the Special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal

*Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organization in respect of contracts entered into by the other Organizations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract."*

3. Since no arbitrator was appointed, the petitioner approached this Court by filing O.P.No.173 of 2014. After the filing of the petition, the Arbitrator was appointed on 07.08.2014. However, the petitioner sought to canvass that the respondents had lost the opportunity of appointing an Arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), which position was disputed by the learned counsel for the respondents, as the communication had not been addressed to the authority concerned. On this issue, the Court found favour with the respondents and thus, gave the benefit to the respondents on account of the failure to

address the invocation letter to the authority which appoints the Arbitrator, by an order dated 05.09.2014.

4.It is important to note that in terms of a letter dated 04.09.2014, the Arbitrator appointed was called upon to publish the award within six months from the date of receipt of the communication. However, apparently, the Arbitrator did nothing qua even the first sitting of the arbitration, despite being repeatedly called upon by the petitioner. The petitioner had conveyed vide letter dated 09.09.2014 their acceptance for the appointment of the Sole Arbitrator, but in the absence of any activity on the part of the Arbitrator, addressed a communication dated 30.12.2014 to the Deputy General Manager/GL, Head Quarters Office, who is the person who had issued letter on behalf of the appointing authority appointing the Arbitrator. This was followed up with a letter dated 18.02.2015 to the appointed Arbitrator pointing out that five months had elapsed out of six months fixed for publishing the award. Despite of this, neither the appointing authority nor the Arbitrator did anything and thus, the petitioner has been constrained to file the present petition under Section 11 (6) of the said Act.

5.The counter filed by the respondents does not

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dispute the aforesaid position, but seeks to justify the

delay due to handing over and taking over of new position and clearing all files of urgent nature. I am of the view, this can hardly be a justifiable explanation, especially in the background of earlier litigation. The Arbitrator only woke up after the present proceedings were instituted and the learned counsel for the respondents has entered appearance while issuing a letter dated 29.04.2015, which is really beyond the period of six months fixed for publishing the award. Thus, the first date fixed by the Arbitrator is after the time period fixed by the appointing authority had lapsed and thus, the mandate of the Arbitrator was over by then.

6. Learned counsel for the respondents suggests that now that the arbitrator has been appointed, he should be permitted to continue.

7. I am unable to persuade myself to agree with the submission, in view of what has been recorded aforesaid. On the technical defect of the letter of the petitioner not being addressed to the appointing authority, the petitioner lost out earlier, even though the respondents ought to have attended to the letter of the petitioner. The Arbitrator appointed thereafter was given the mandate to publish the award within six months, but did not even begin the proceedings till the mandate period was over. Thus,

neither is there any efficiency in appointing the Arbitrator nor thereafter with the Arbitrator in conducting the proceedings. The dispute resolution mechanism through an Arbitrator has been enacted to have expeditious disposal of commercial disputes, which itself is fundamentally belied by the conduct of the parties. Hence, I am of the view that it is a fit case to exercise jurisdiction of appointing an Arbitrator.

8. There has been some argument on the issue whether it should be only a technical person, but keeping in mind the nature of dispute, the present is not one such dispute where really a technical expert is required. In any case, the Arbitrator can always get the opinion of any expert if required.

9. In view of aforesaid, as proposed and agreed, I appoint **Mr. Justice S. Rajeswaran**, a retired Judge of this Court, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. As agreed by the learned counsel for the parties, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

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

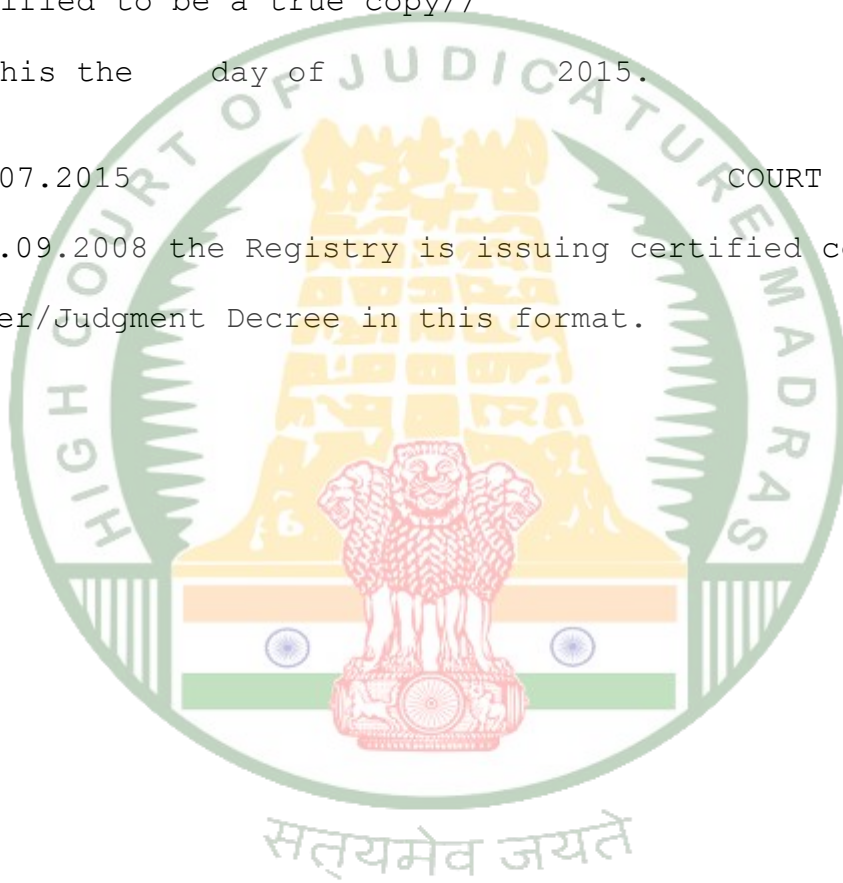
Sd/.(S.K.K., CJ.)  
18.06.2015

//Certified to be a true copy//

Dated this the       day of JUDICATURE 2015.

R.s/29.07.2015 COURT OFFICER

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the Order/Judgment Decree in this format.



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