

In the High Court of Judicature at Madras

Dated : 18.12.2015

Coram :

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

O.P.No.929 of 2015

and

Original Application No.1279 of 2015

M.Mohandoss

.. Petitioner

-vs-

- 1.The Union of India,
rep. by the General Manager,
Southern Railway, Park Town,
Chennai-600 003.
- 2.The Chief Engineer/Construction/Central,
Construction Office,
Southern Railway,
Egmore, Chennai-600 008.
- 3.The Deputy Chief Engineer-II,
Gauge Conversion, Southern Railway,
State Bank Road,
Opp. to Hotel Arun,
Tiruchirapalli-620 001.
- 4.Shri.David Kumar (Presiding Arbitrator),
Chief Motive Power Engineer/Diesel,
Head Quarters Office, Southern Railway,
NGO Annexe Building,
6th Floor, Park Town,
Chennai-600 003.
- 5.Shri.J.S.Garg (Arbitrator),
Chief Materials Manager/SGT/Perambur,
Office of the Controller of Stores,
Southern Railway, Ayanavaram,
Chennai-600 023.

6.Shri.T.Veluswamy (Arbitrator),
Dr. FA & CAO,
Golden Rock Workshops,
Southern Railway,
Golden Rock,
Tiruchirappali-620 004.

.. Respondent

Petition filed under Sections 14 & 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (Comprising of the 4th , 5th and 6th respondents) and appoint an Independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement No.109/HQ/Dy.CE/GC/II/TPJ dated 31.03.2011 to arbitration.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.T.Ramkumar for R1 to R3

ORDER

The Original Petition has been taken up by consent of parties, as the petitioner has filed an application (O.A.No.1279 of 2015) for interim relief, in view of the Arbitral Tribunal proceeding with the matter. The petitioner has also not deposited the costs and the learned counsel for the petitioner undertakes to deposit the costs on or before 22nd December, 2015.

2. The settlement of dispute clause *inter se* the parties provides for a panel of three proposed members to be suggested by the respondent/Railways, out of which the petitioner can pick two members, out of which one can be picked by the respondent/Railways and two others appointed by the respondent/Railways. The Arbitral Tribunal was accordingly constituted on 14.08.2014.

3. The occasion to file the present petition arose, as the chosen arbitrator of the petitioner being Mr.J.S.Garg was transferred and thus, had to be replaced by an another arbitrator.

4. As to how the arbitrator is to be replaced is provided in clause 64 (3) (a) (iii), which reads as under:-

"If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in

which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s)."

5. It is the submission of the petitioner that the aforesaid procedure has not been followed and unilaterally the respondent/Railways have nominated Mr.Anil Kumar, CE/CN/E/MS, as the arbitrator.

6. The contention of the respondent/Railways is that in order to avoid delay, since the two arbitrators suggested by the petitioner originally are Mr.S.Garg and Mr.Anil Kumar and it is the respondent/Railways who picked Mr.J.S.Garg, it was considered expedient to appoint Mr.Anil Kumar in his place, who was in fact one of the arbitrators from the panel picked by the petitioner out of the choice communicated on 24.6.2014.

7. On the other hand, the learned counsel for the petitioner submits that the appointment of an arbitrator as per clause 64 (3) (a) (iii) has not taken place.

8. On a Court query as to whether the petitioner has any specific objection to the appointment of Mr.Anil Kumar, especially as he was one of the initially proposed

nominees, the learned counsel submits that he has an objection to appoint Mr. Anil Kumar and also to the manner in which the Tribunal proceeded. But nothing has been set out in the petition.

9. On hearing the learned counsel for parties, it does appear that really a technical objection is sought to be raised by the petitioner arising from the alleged non-compliance of clause 64 (3) (a) (iii) since the petitioner himself had picked Mr. Anil Kumar as one of his proposed nominees when he proposed two names, out of which the respondent/Railways had to pick one. Be that as it may, the petitioner is entitled to raise an objection.

10. It may be noted that the respondent/Railways themselves are the creators of the contract and the clause, does not provide that in case one of the nominated arbitrators of the petitioner retired or has to be replaced, the other selected one can in place be appointed. The clause quoted aforesaid provides the process to be done again. Though on fact apparently there is hardly any reason for the petitioner to object to the appointment of Mr. Anil Kumar, strictly speaking, the nomination is not as per the terms of the contract.

11. In view of the aforesaid, it is directed that

instead of Mr.J.S.Garg, being substituted by Mr.Anil Kumar, the process envisaged in clause 64 (3) (a) (iii) be followed strictly.

12. The Original Petition is allowed in terms aforesaid, leaving the parties to bear their own costs. The matter need not be listed again on 08.1.2016. Consequently, O.A.No.1279 of 2015 is dismissed as infructuous.

13. Later, the learned counsel for the respondent-Railways has appeared and points out that he has instructions to state that the Tribunal has signed the Award today. But that will not take away the effect of the aforesaid order. The proceedings upto the stage of the original constitution of the Tribunal thus would naturally be preserved and the new Tribunal to proceed from that stage.

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

18.12.2015

//Certified to be a true copy//
Dated this the day of

2016

R.s/02.02.2016

COURT OFFICER

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