

In the High Court of Judicature at Madras

Dated : 11.12.2015

Coram :

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

O.P.No.941 to 947 of 2015

M/s.Om Spun Pipes & Concrete Works,
rep. by its Proprietor K.Satyanarayana Raju,
PRR Colony, Kovur, Nellore District,
Andhra Pradesh

.. Petitioner in all OPs

-vs-

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.
- 2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.
- 3.R.R.Pratap (Presiding Arbitrator),
Senior Divisional Mechanical Engineer (Dsl),
Southern Railway,
Erode.
- 4.B.Ilangovan (Arbitrator),
Deputy Financial Advisor &
Chief Accounts Officer (Workshops),
Southern Railway, New Joint Office,
Ayanavaram, Chennai-23.
- 5.S.Nazeer Ahmed (Arbitrator),
Senior Divisional Electrical Engineer/General,
Southern Railway,
Trivandrum.

.. Respondents 1 to 5
in OP.941&942/2015

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.
- 2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.
- 3.B.Santhanamahalingam (Presiding Arbitrator),
Deputy Chief Engineer (Bridge Line),
Southern Railway,
Park Town, Chennai-3.
- 4.Anupam Chawhan (Arbitrator),
Deputy Chief Mechanical Engineer/Diesel,
Southern Railway,
Park Town, Chennai-3
- 5.Prema Sripathy Rao (Arbitrator),
Deputy Financial Advisor &
Chief Accounts Officer/Traffic,
Southern Railway, Moore Market Complex,
7th Floor, Park Town, Chennai-3.

.. Respondents 1 to 5
in OP.943/2015

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.
- 2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.
- 3.P.Jayakumar (Presiding Arbitrator),
Chief Engineer (Construction Branch),
Southern Railway,
Ernakulam.
- 4.C.Hamza (Arbitrator),
Financial Advisor & Chief Accounts Officer,
Metropolitan Transport Project/Railways,
Southern Railway, Egmore,
Chennai-8.

5.T.Venkatasubramanian (Arbitrator),
Chief Rolling Stock Engineer/Coaching,
Southern Railway,
Chennai-3.

.. Respondents 1 to 5
in OP.944/2015

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.
- 2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.
- 3.M.Ramakrishnan (Presiding Arbitrator),
Senior Divisional Electrical Engineer/Coaching,
Southern Railway,
Park Town, Chennai-3.
- 4.B.Ilangovan (Arbitrator),
Deputy Financial Advisor & Chief
Accounts Officer/Workshops,
Southern Railway, New Joint Office,
Ayanavaram, Perambur, Chennai-23.
- 5.P.Ravindra Babu (Arbitrator),
Deputy Financial Advisor &
Deputy Chief Mechanical Engineer/Corrosion & Repair,
O/o Chief Workshop Manager/Carriage Workshop,
Southern Railway, Moore Market Complex,
Perambur, Chennai-23.

.. Respondents 1 to 5
in OP.945/2015

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.
- 2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.
- 3.Amalraj (Presiding Arbitrator),
Deputy Chief Engineer (Construction Branch),
Southern Railway,
Egmore, Chennai-8.

4.B.Ilangovan (Arbitrator),
Deputy Financial advisor &
Chief Accounts Officer/Workshops,
Southern Railway, New Joint Office,
Ayanavaram, Perambur, Chennai-26.

5.Sameer Dighe (Arbitrator),
Senior Divisional Electrical Engineer/Operations,
Divisional Railway Manager's Office,
Southern Railway, Moore Market Complex,
6th Floor, Southern Railway,
Park Town, Chennai-3.

.. Respondents 1 to 5
in OP.946/2015

1.The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3.

2.The Divisional Railway Manager (Works),
Chennai Division, Southern Railway,
Park Town, Chennai-3.

3.G.Rajasekaran (Sole Arbitrator)
Senior Divisional Signal &
Telecommunication Engineer,
Chennai Division, Southern Railway,
Park Town, Chennai-3.

.. Respondents 1 to 3
in OP.947/2015

Original Petition No.941 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.SA/206 dated 13.7.2010 to Arbitration.

Original Petition No.942 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.SA/205 dated 13.7.2010 to Arbitration.

Original Petition No.943 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.110/CTR/East/MAS, dated 09.10.2008 to Arbitration.

Original Petition No.944 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.88/West/MAS, dated 24.09.2007 to Arbitration.

Original Petition No.945 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.84/West/CTR/MAS, dated 14.09.2007 to Arbitration.

Original Petition No.946 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the 3rd, 4th and 5th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.85/West/CTR/MAS, dated 14.09.2007 to Arbitration.

Original Petition No.947 of 2015 filed under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the third respondent) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.827/E/MAS dated 15.02.2008 to Arbitration.

For Petitioner : Mr.Amalaraj
in all OPs
For Respondents : Mr.P.T.Ramkumar
in all OPs

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COMMON ORDER

The petitioners have been compelled to approach this Court on account of failure to issue the modified Terms of Reference, even after the directions have been passed by this Court on 28.04.2015.

2. The affidavit filed by the first respondent suggests that there was delay in issuance of the certified copy as the order in one of the matters passed on 28.04.2015 was made available only on 11.09.2015, after a delay of four months and in six other matters, it was made available on 23.07.2015, a delay of three months and the copy of the order was communicated by the petitioner on 16.09.2015, and received in the office of the General Manager on 18.09.2015.

3. The process thereafter followed as set out in paragraphs 5 and 6 as under:-

“5. I submit that the earlier order passed by this Honourable Court was received in the Office of the General Manager on 18.09.2015 along with Petitioner's representation. Immediately the Office of the General Manager transmitted this to the Office of the Principal Chief Engineer for necessary action. The Principal Chief Engineer marked the papers to Chief Engineer/Works on

29.09.2015. On 05.10.2015, the Chief Engineer/Works forwarded to the concerned officials dealing with the Arbitration proceedings advising to include all the claims as directed by the Hon'ble High Court and issue a modified Terms of Reference. On 06.10.2015 the concerned Officials dealing with the files, after modifying the Terms of Reference sent it to Deputy General Manager/General for issuance of the same. After perusing the records, the Office of the General Manager felt to obtain certain clarifications from Law Branch regarding the issue of modified Terms of Reference in full compliance of the order of this Hon'ble High Court. Hence, file was forwarded by Engineering Branch to Law Branch on 04.11.2015. On 17.11.2015, Law Branch forwarded the file to Engineering Branch advising to include all the claims as directed by the Hon'ble High Court vide order dated 28.04.2015.

6. I submit that on 24.11.2015 the Engineering Branch sent the files to Deputy General Manager/General for issuance of modified Terms of Reference. On receipt of the said file the Office of the General Manager has issued the modified Terms of Reference (addendum) on 26.11.2015. A corrigendum was also issued on 09.12.2015 rectifying an inadvertent error with regard to OP number in one of the cases.”

4. A perusal of the aforesaid paragraphs shows that the matter was processed and on 06.10.2015, it reached the table of the Deputy General Manager (General) for issuance of the Terms of Reference. But the office felt it necessary to obtain clarification from the Law Branch regarding the issuance of modified Terms of Reference. However, it took almost one month for that the letter be forwarded on 04.11.2015, and the Law Branch gave its opinion on 17.11.2015. The modified Terms of Reference are stated to have been issued on 26.11.2015 with a corrigendum on 09.12.2015 in one case, rectifying an inadvertent error

5. The petitioner has filed the additional affidavit in response suggesting that the order has been pre-dated in view of the directions passed by this Court on 27.11.2015 in the present matter requiring the General Manager to be present, if no reference is made till that date. In this behalf, it is averred that on 28.11.2015, a telephonic call was received from an employee of the administration enquiring as to why seven cases had been filed and he called upon the petitioner to withdraw them, failing which some officers may face disciplinary proceedings. An assurance was given to the petitioner/deponent-K.Satyanarayana Raju that the reference would be issued soon from the office of the first respondent. But the petitioner declined to withdraw the petitions. Apprehending that the first

respondent would have prepared documents which are pre-dated, the petitioner did not even open the covers which were received on 07.12.2015, which were despatched on 01.12.2015 and delivered to the petitioner on 07.12.2015 (envelop has been produced in Court and returned to the learned counsel for the petitioner).

6. The result of the aforesaid is that in so far as the grievance in the present petitions of not having made the modified Terms of Reference is concerned, the same stands redressed.

7. The fact, however, remains that there is an unexplained delay of almost one month in the office of the Deputy General Manager (General) even eliciting the opinion of the Legal Branch. This delay has compelled the petitioner to approach the Court and I find no reason why the petitioner should bear the costs of the present proceedings which had to be unnecessary initiated on account of the delay on the part of the Deputy General Manager (General). I, thus, consider it appropriate to grant costs of Rs.11,000/- to the petitioner for all the petitions together.

8. There is also another aspect to the matter emerging from the affidavit filed by the petitioner. An endeavour has been allegedly made to

some how save the skin of some officers so that no action is taken at the higher level. That is an aspect which is required to be looked into by the General Manager, Southern Railway, Chennai. Some suspicion is raised on account of the fact that an order was passed by the Court on 27.11.2015 F.N. and the first respondent has allegedly passed the order on 26.11.2015 and it takes five days thereafter to despatch the same, on 01.12.2015. The learned counsel for the petitioner is agreeable to provide better particulars of the allegations as to who had telephoned the petitioner and at what time. These details be handed over in a sealed cover to the learned counsel for the respondents who would make it available to the General Manager, so that he may look into the matter and if some one is found at fault, to take proper disciplinary action to ensure that no one is able to hide his inadequacies for non-performance.

9. I am also surprised at the delay four months and three months in issuance of the certified copies of such a short order. The Registrar (Judicial) of this Court to look into the matter and submit a report on the administrative side.

10. The Original Petitions, accordingly, stand disposed of.

(S.K.K., CJ.)
11.12.2015

Index : Yes/No
Internet : Yes/No
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The Hon'ble Chief Justice

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