

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.S.A.No.214 of 2015
and
M.P.No.1 of 2015

J K S Construction Pvt. Limited,
rep. by its Executive Director J.Saravanan,
No.2B, Sai Sananda Apartments,
51, Velacherry Main Road,
Velacherry,
Chennai-600 042.

... Appellant

Vs.

1.The Chief Engineer (Air Force),
Military Engineering Services,
No.2, DC Area, MES Road,
Yeshwanthpur post,
Bangalore-560 022.

2.The Garrison Engineer,
Military Engineering Services,
Air Force Station,
Tambaram,
Chennai-600 016.

... Respondents

Appeal filed under Clause 15 of the Letters Patent read
with Order XXXVI, Rule 1 of Original Side Rules against the
order made in O.A.No.542 of 2015 dated 10.09.2015.

For Appellant .. Mr.AR.L.Sundaresan
Senior Counsel
for
Ms.R.Varalakshmi

For Respondents .. Mr.S.Rathinasabapathy
SPCCG for R1 and R2

* * * * *

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

After some arguments, the learned Senior Counsel for the appellant, on instruction, does not press the appeal and seeks to withdraw the same, but states that the observation in the impugned order to the extent that the appellant was not serious of pursuing the arbitration remedy is not correct as in terms of the arbitration clause, the eventuality of going to the arbitration is possible only when an alternative arrangement had been finalised by the respondents. Endorsement has been made.

2. The relevant portion of the arbitration clause reads as under:-

70. Arbitration.- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos.55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos.52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

3. In view of the aforesaid, there is prima facie impediment to invocation of arbitration, for which the appellant cannot be blamed.

4. It transpires that the respondents after termination have floated e-tender but the bid has not been opened. The learned counsel for the respondents/caveators submits that the bid has to be opened on 20th of this month.

5. Thus, it is agreed that the appellant is free to invoke the arbitration clause after 20th of this month and the respondents will promptly appoint an Arbitrator in terms of the arbitration clause.

6. The appeal is, thus, dismissed as withdrawn in the aforesaid terms. Needless to say that all the contentions are opened to both sides to be raised in the arbitration proceedings. No costs. Consequently, M.P.No.1 of 2015 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bbr

Copy to:

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

+1 cc to Mr.S.Rathinasabapathy, Advocate sr.57223

+1 cc to M/S.R.Varalakshmi, Advocate sr.57485

O.S.A.No.214 of 2015

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