

In the High Court of Judicature at Madras

Dated : 30.01.2015

Coram :

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

O.P.No.414 of 2012

A.Chockalingam

.. Petitioner

-VS-

1.The Union of India
Rep. by the General Manager,
Integral Coach Factory, Madras.

2.B.G.Mallya (Presiding Arbitrator)

3.H.Srinivasan (Arbitrator)

4.Anil Ramteke (Arbitrator)

.. Respondents

Petition filed under Sections 14 and 15 read with 11 of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the present Arbitral Tribunal (comprising of the second, third and fourth respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No.ICF/776 dated 05.06.1997 to Arbitration.

For Petitioner : Mr.Amalaraj S.Penikilapatti

For Respondents : Mr.M.Udhayakumar

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ORDER

The petitioner was awarded the contract by the first respondent, i.e., Integral Coach Factory of the Union of India at Chennai, vide agreement No.ICF/776 dated 05.06.1997, for construction of 84 units of Type-I quarters at ICF South Colony including internal and external sanitary and water supply arrangements. It is the case of the petitioner that the contract work has got delayed on account of omission and commission on part of the respondent including issuance of Foundation drawings and designs, etc. On account of the breaches by the respondent, the petitioner suffered losses and issued a letter dated 26.12.2003 demanding compensation/damages under various heads for Rs.42,33,516/- plus interest.

2.Since the respondent did not oblige, the petitioner sought reference of disputes to arbitration vide letter dated 02.04.2004 and a reminder dated 28.10.2004.

3.It is finally on 08.03.2005 that a Three member Arbitral Tribunal was appointed, which was re-constituted on 02.08.2005 by replacing the Presiding Arbitrator on his transfer. The arbitration did not conclude and another Arbitrator was transferred and thereafter, the Tribunal was re-

constituted on 25.09.2007, who are respondents 2 to 4.

4.The petitioner makes a grievance that the arbitration has not proceeded thereafter also, despite lapse of 7 years time from the date of initial appointment of the Tribunal and 5 years from the date of constitution of the instant Tribunal and thus, leads to loss of mandate as per Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'). The relevant provisions relied upon are as under:

14. Failure or impossibility to act. -

(1) The mandate of an Arbitrator shall terminate if -

(a) He becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay;

..

15. Termination of mandate and substitution of arbitrator. - (1) ..

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

.. "

5.The petitioner has filed the present petition under Sections 14

and 15 read with 11 of the said Act, seeking termination of the mandate of the Tribunal and appointment of an independent Arbitrator by this Court.

6. In the counter-affidavit filed, the merits of the claim had been denied, which is not germane for this Court, as that is within the scope of the work of the Arbitrator. It is admitted that there were transfers of earlier Presiding Arbitrator / Arbitrator and as on date, all the three Arbitrators stand transferred and are not available. No alternative panel was suggested to the petitioner even though this affidavit has been filed in March, 2014, two years after the petition was filed. The alternative panel has been suggested only in September, 2014, for the petitioner to nominate a Tribunal.

7. It is trite to say that the mode of arbitration as an alternative dispute resolution mechanism is for expeditious disposal of a lis. It is such conduct of the respondent, which negates its very basis of mode of resolution of disputes through arbitration by frustrating the arbitration on account of the departmental persons being appointed as Arbitrators and on their transfer, the persons being substituted. The arbitration drags on for years and this is one such case. The petitioner is stated to be 80 years old and he has filed this petition through his son-in-law, who is also nearing 70 years. The petitioner would naturally like to see an end to the dispute

during his lifetime.

8.I am of the view that the mode and manner in which the respondent has been appointing arbitrators from the department and they being transferred and the replacements not being provided, requires appointment of an Arbitrator by this Court, as there is loss of mandate on account of extraordinary delay in the present case.

9.Learned counsel for the petitioner has drawn the attention of this Court to a similar approach adopted in different proceedings qua the Railways itself in O.P.No.660 of 2002 (between Ms.Rajdhani Road Lines and Union of India, Southern Railway and others) decided on 25.11.2005, O.P.No.43 of 2008 (between M/s.Lakshmi Construction, rep. by its Partner and Union of India, Southern Railway and others) decided on 07.08.2009 and O.P.No.826 of 2007 (between A.Chockalingam and Union of India, Southern Railway and others) decided on 15.09.2011, substituting the Arbitral Tribunal by appointing a Sole Arbitrator. It appears, this is nothing new for the Railways.

10.In view of the aforesaid, I appoint Mr.Justice A.K.Rajan, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them,

pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

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

(S.K.K., CJ.)
30.01.2015

sra

The Hon'ble Chief Justice

(sra)

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