



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

O.P.No.46 of 2013

M.Rajkumar

... Petitioner

Vs.

The General Manager,
Southern Railway, Park Town,
Chennai 600 003.

... Respondent

Prayer:

Petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996, praying to (a) appoint an independent and impartial arbitrator to hear and decide the disputes between the Petitioner and the Respondent arising out of the contract dated 13.10.08 as setout under details of claims in Para 14 above, (b) direct the Respondents to pay the cost of this Petition.

For Petitioner	: Mr.K.K.Muralitharan
For Respondent	: Mr.A.P.Srinivas

O R D E R

Heard Mr.K.K.Muralitharan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the Southern Railways.

2.This petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an



Arbitrator to hear and decide the disputes between the petitioner and respondent arising out of the contract dated 13.10.2008 as set out in the petition more particularly in paragraph no.14 listing out the claims.

3.The petitioner was awarded a project vide letter of acceptance dated 29.07.2008, pursuant to which a contract agreement was entered into between the petitioner and the Deputy Chief Engineer (Construction), Gauge Conversion on 13.10.2008. The value of the contract was fixed at Rs.4,17,27,732/- and the work was to be completed within ten months from the date of award of contract. The other details pertaining to the work done need not be traversed for the purpose of passing an order in this petition since this petition relates to only appointment of Arbitrator to arbitrate upon the dispute between the petitioner and the respondent under the General Conditions of Contract (GCC) dated 13.10.2008.

4.In terms of the GCC, disputes have to be referred to arbitration and the relevant Clause being Clause 64 (3) a (ii). Under the said Clause, the respondent was to appoint an empanelled Arbitrator/ Railway Arbitrator within 60 days from the date when a written and valid demand for arbitration is received from the contractor. The petitioner requested to initiate arbitration proceedings



the respondent from among their panel stood foreclosed in terms of several pronouncements on this aspect.

7.The learned Standing Counsel appearing for the Southern Railways/ respondent would submit that in the instant case, the final bill has already been settled and the need to refer the matter for arbitration does not arise. Infact such stand was not taken by the respondent at any earlier point of time or intimated as such to the petitioner. Even assuming so, it cannot be a reason to decline to appoint an Arbitrator, if according to the respondent they plead accord and satisfaction, such issue is also an arbitrable dispute.

8.Hence, for all the above reasons, this original petition is allowed and I appoint,

Mr.Justice M.Vijayaraghavan,

High Court Judge (Retd)
No.2/15, Dr.T.V.Naidu Road,
Flat No.2B, Abirami Foliage,
Chetpet, Chennai 600 031.

Mobile No.9003268968

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 a copy of this order. The learned Arbitrator is at liberty



to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondents not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

9.The Original Petition is accordingly allowed, leaving the parties to bear their own costs.

sd/.T.S.S.J

24.07.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/29.12.2015

COURT OFFICER

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