

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

O.P. No.544 of 2013

Tiruchendur Murugan Builders
Rep. By its Partner Mr.R.C.Meignanamani,
6/259, Shanmuga Nagar,
Dadhagapatti,
Salem - 636 006. ... Petitioner

Vs

1.The Chief Engineer,
Works Branch,
Headquarters Office,
Southern Railways,
Chennai - 600 003.

2.The Divisional Railway Manager (Works),
Salem Division,
Southern Railway,
Salem - 636 006. ... Respondents

Prayer :- Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to determine the dispute between the petitioner and the respondent in respect of the Agreement No.SA/145 dated 18.05.2010.

For petitioner .. Mr.T.Naveen Kumar

For Respondents .. Mr.V.Hari Babu

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint the sole Arbitrator to adjudicate upon the dispute between the petitioner and the respondents/Railway Administration in respect of an Agreement No.SA/145 dated 18.05.2010.

2.The petitioner was allotted work by the Railway Administration vide agreement dated 18.05.2010 for a value of Rs.1,16,09,140/-. It is stated that the petitioner did not complete the work within the stipulated period of eight months time and he sought for extension of time.

3.According to the respondents, the petitioner had completed only 60% of the work in the original currency period and during the extended currency period i.e., 2 ½ times of the currency period. In the course of proceeding, the petitioner lodged a claim before the respondents, under eight heads, with a request to refer the matter for arbitration, in terms of the General Condition of Contract entered into between the parties.

4.The respondents/Railway Administration vide communication dated 29.01.2013, informed the petitioner that the terms of reference was issued on 09.01.2013 but, without reference to six claims as elucidated in the said

communication, on the ground that they are exempted matters as per Clause 26 of Special Conditions of Contract and Clause 63 of the General Conditions of the Contract. In the light of the above stand taken by the Railway Administration, the petitioner has approached this Court by way of this Original Petition for appointment of Arbitrator to consider all the claims of the petitioner.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials including the counter affidavit filed by the Divisional Engineer/Central, Southern Railway, Salem. The only issue which falls for consideration in this Original Petition is as to whether the respondents Railway Administration was justified in restricting the terms of reference and refusing to refer all the claims made by the petitioner on the ground that certain claims were excepted matters. It is no longer res integra that the claims which may fall within the excepted matters are also arbitrable.

6. In fact, this Court in several decisions has held that even in cases where the respondents take a stand that a particular claim is an excepted matter, the same is also an arbitral issue and hence, the stand taken by the respondents Railway Administration in the communication

dated 29.01.2013 is not in accordance with law.

7.From the counter affidavit, it is seen that already an Arbitrator has been appointed namely, Shri.Anil Kumar CE/CN/East/MS to adjudicate this arbitration vide Lr.No.G.16/DGM/ARB/2013/01 dated 09.01.2013, for the claims that are arbitrable as per the applicable rules. However, it is not known as to whether the said Chief Engineer is still in the same region. Therefore, this Original Petition is disposed of with the following directions:-

"The respondents Railway Administration is directed to appoint Shri.Anil Kumar CE/CN/East/MS as the Sole Arbitrator to enter upon the reference in respect of all claims made by the petitioner and consider the claims in terms of the contract, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne equally by both the parties. In the event Shri.Anil Kumar is not continuing as CE/CN/East/MS, the General Manager, Southern Region of the respondent Railway Administration shall nominate

another Officer in his place, within a period of three weeks from the date of receipt of a copy of this order. It is made clear that it is open to the petitioner to raise all the contentions and the Railway Administration is also entitled to raise the contention that certain claims are excepted matters before the Arbitrator."

sd/.T.S.S.J

11.09.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/01.02.2016

COURT OFFICER

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

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