

In the High Court of Judicature at Madras

Dated : 17.04.2015

Coram :

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.P.No.615 of 2013

S.Rukmangathan

.. Petitioner

-VS-

1.The General Manager
Southern Railway,
Park Town, Chennai-3.

2.The CSTE Construction
Southern Railway,
Egmore, Chennai 600 008.

3.The Dy. CSTE/Construction
Southern Railway,
Tambaram, Chennai 600 045.

.. Respondents

Petition filed under Sections 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent and impartial Arbitrator to hear and decide the disputes between the petitioner and the respondents arising out of the Agreement No.W/337/1/73/1/SG/CN/CONT/MS-TBM/SUB-GC/AFTC dated 15.7.2004 and to direct the respondents to pay the cost of this petition.

For Petitioner : Mrs.K.Aparna devi

For Respondents : Mr.M.udhyakumar

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ORDER

This Petition has has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an independent and impartial Arbitrator to hear and decide the disputes between the petitioner and the respondents.

2.Heard the learned counsel for the parties and perused the materials placed on record.

3.The facts which are necessary for the disposal of the petition is that the petitioner was awarded the contract for execution of the provisions of automatic signalling arrangements incorporating audio frequency track circuit on Chennai Egmore -Tambaram Section of Chennai Division by the second respondent.

4.The letter of acceptance awarding a contract was issued on 26.05.2004 and the value of the contract was Rs.3,05,15,970/-. The period of completion as per letter of acceptance is six months and has to be completed on or before 25.11.2004. It is stated that the respondents granted extension of time upto 27.02.2006 under clause 17(a)(ii) of the General Conditions of Contract (GCC). The petitioner is

stated to have executed the work to the total value of Rs.2,91,47,385/- against the awarded value of Rs.3,05,45,971/- and submitted seven bills.

5.It is submitted that the petitioner has completed the work in all respects in addition to the extra work ordered to the value of more than three lakhs as a new item and some other extra works for providing GI pipes in the rock area at Guindy Station for cable line purpose was executed and completed before March, 2005 and the railway had paid as a separate work order bill CCI & Final during March, 2005 to the value of Rs.88,023/-.

6.Various other averments have been made by the petitioner stating that as per clause 51 and clause 61 of GCC, as soon as the works are completed, the petitioner is entitled to receive the final bill value with claims, if any and also refund of Security Deposit. However, even after completion of the work, there was delay on the part of the officials of the respondents in remitting payment. Hence, the petitioner submitted a representation dated 14.05.2009 to the General Manager, South Railways/first respondent for appointment of an Arbitration Tribunal as per Clause 63 and Clause 64.6 of GCC.

Accordingly, after a lapse of six months, the General Manager, appointed the Arbitral Tribunal consisting of following Officers vide his Terms of Reference dated 17.11.2009 to adjudicate and to resolve the disputes containing the claims made by the petitioner.

1. Shri. Sadeep Kumar
Senior District Signal & Telecommunication
Engineer/I/Divisional Office, Chennai Dvn.,
Park Town, Southern Railway, Chennai.
.. PRESIDING ARBITRATOR
2. Shri K. Rajakumar
Senior Electronic Data Processing Manager
M.M. Complex, Southern Railway
Park Town, Chennai 600 003.
.. ARBITRATOR
3. Shri B.V. Raju
Senior Divisional Safety Officer
Southern Railway, Trivandrum Division
Trivandrum.
.. ARBITRATOR

7. Though such an order was passed on 17.11.2009, the Tribunal did not commence the proceedings and publish the award in terms of the reference within six months from the date of the order of the General Manager, and the General Manager, after a lapse of ten months, under his revised Terms of Reference dated 24.09.2010, substituted the Presiding Arbitrator by appointing Mr. Nagamaleswara Rao, Senior Divisional and Signal & Telecommunication Engineer,

Salem Division, Southern Railway, Salem. However, the petitioner's grievance has not been redressed even after a lapse of 1 ½ years from the date of his representation.

8. Further more, once again the Tribunal was reconstituted by substituting the existing Arbitrator namely Mr.K.Rajkumar by another Officer Mr.K.Pandian, Deputy Chief Accounts Officer/Cash & Pay, Headquarters Office, Southern Railway, Park Town, Chennai-3, vide General Manager's revised Terms of Reference dated 13.08.2012 and they have also not commenced and concluded the proceedings and hence, the petitioner approached the Chairman, Railway Board, by submitting a representation dated 10.07.2010, but the petitioner's grievance was not settled. With these facts, the petitioner has come forward with this Petition.

9. Considering the peculiar facts and circumstances of the case and the time taken by the Arbitration Tribunal appointed by the General Manager, Southern Railways, itself is sufficient to hold that the respondents have abdicated the powers under the agreement in constituting the Arbitration Tribunal. The long lapse of time from the date on which the terms of reference were referred to the Arbitration

Tribunal is sufficient to hold that the respondents have lost their right to nominate the Arbitrator. Further more, even prior to the filing of the above Petition, respondents have not constituted any fresh Arbitration Tribunal.

10.In the result, I appoint,

Mr.D.Arulraj, District Judge (Retired),
No.36, Circular Road, Amman Nagar,
Ramapuram, Chennai 600 089.

Mobile No.94441 45289

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. 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.

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17.04.2015

T.S.SIVAGNANAM, J.
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