

In the High Court of Judicature at Madras

Dated : 17.04.2015

Coram :

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

O.P.No.630 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.TBM/SG/CN/1/87/Vri-Atu dated 27.10.2005 and to direct the respondents to pay the cost of this petition.

For Petitioners : Mrs.K.Aparna devi

For Respondent : 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 a contract for execution of the signalling arrangement at various Railway stations viz. Vridhachalam, Mukhasa parur, Kuttakudi, Pukkirivari, Chinnasalem, Thalaivasal, Attur at Vridhhalam – Salem section, by the second respondent.

4.The letter of acceptance awarding the contract was issued on 01.08.2005 and the value of the contract was Rs.2,50,22,267. The period of completion as per letter of acceptance is six months and has to be completed on or before 31.01.2006. It is stated that the respondents granted extension of time upto 31.1.2008 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.2,26,96,408/- against the awarded value of Rs.2,50,22,267/-. The petitioner submitted eight bills. In addition to that the final bill is said to be pending from the date of filing of the Original Petition.

5. Various other averments have also been made by the petitioner stating that there was delay on the part of the officials of the respondents in the project etc. Ultimately, the petitioner made a request to the General Manager, South Railways/first respondent on 27.01.2009, to appoint an Arbitrator and submitted a claim statement. The General Manager, Southern Railways vide proceedings dated 26.02.2009, submitted that they have constituted an Arbitration Tribunal consisting of three members namely,

- (1) Shri. Bholu Singh,
C.E.(Con-West), Southern Railway
Egmore, Chennai-8.
- (2) Shri M.A. Inbarasu
CME (Planning), Southern Railway
HQ, Park Town, Chennai-4.
- (3) Shri. Karunaker Menon
Dy. FA & CAO (GEN)
HQ, Southern Railway, Chennai-3.

Though such an order was passed on 26.2.2009, 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. Therefore, the petitioner submitted representations on 19.11.2009, 26.12.2009 and 08.02.2010. However, the Tribunal did not commence the proceedings even after a lapse of two years. Therefore, the petitioner sent a representation to the General Manager on 06.07.2010 to re-constitute the Tribunal. Subsequently, the Tribunal was re-constituted by replacing the Presiding Arbitrator with Mr. Deepak Bhalla vide order dated 17.6.2011. The petitioner would state that even after a lapse of one year, the revised Tribunal did not conduct any proceedings and finally on 14.6.2012, the first sitting was made and thereafter the matter did not proceed. Therefore, the petitioner made representations to the General Manager and the second sitting was held on 23.01.2013, after more than six months of the first sitting.

6. Thus, it is seen that four years have lapsed after the first Tribunal was constituted by the General Manager, Southern Railways in 2009, subsequently, by order dated 23.5.2013, the General Manager informed the petitioner that the Presiding Arbitrator

Mr. Deepak Bhalla, could not continue as Presiding Arbitrator, since he has been posted to the Section in which the dispute in question gets attached and requested the General Manager to revise the Arbitration Tribunal by substituting another officer as Presiding Arbitrator. With these facts, the parties are before this Court.

7. Considering the peculiar facts and circumstances of the case and the time taken by the Arbitration Tribunal initially constituted 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.

8. 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.

17.04.2015

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T.S.SIVAGNANAM, J.
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