

In the High Court of Judicature at Madras

Dated : 04.09.2015

Coram :

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

O.P.No.767 of 2013

Karuppudayar

.. Petitioner

-vs-

- 1.The Union of India
Rep. by the General Manager,
Southern Railway, Chennai.
 - 2.The Divisional Engineer,
Ponmalai, Tiruchirappalli,
Southern Railway, Tiruchy.
 - 3.Praveenkumar Chauhan
(Presiding Arbitrator), Deputy Chief
Electrical Engineer/Loco Works,
Perambur, Southern Railways, Chennai.
 - 4.S.Killivalavan (Arbitrator)
Deputy Chief Engineer (General),
Southern Railways, Head Quarters Office,
Park Town, Chennai.
 - 5.K.Kalyanaraman (Arbitrator),
Formerly the Deputy Chief Accounts Officer/
Budget, Southern Railways,
Head Quarters Office, Park Town, Chennai.
- .. Respondents

Petition filed under Sections 14 and 15 read with

Section 11 (6) of the Arbitration and Conciliation Act,
1996, to terminate the mandate of the present Arbitral
Tribunal (comprising of third, fourth and fifth
respondents) and appoint an independent Arbitrator and

<https://hcservices.ecourts.gov.in/hcservices/> refer all the disputes arising out of the Agreement No: TPJ

01/06 dated 05.01.2006 to Arbitration.

For Petitioner : Mr.Amalaraj S.Penikilatti

For Respondents : Mr.V.G.Sureshkumar for RR 1 and 2
 : For R-3 given up
 : For R-4, served - no appearance
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O R D E R

The petitioner stated to be 81 years of age is still to see the beginning of the process to adjudicate his disputes, as the Tribunal appointed by the respondents has remained non-functional.

2.The disputes arise out of the tender floated by the first and second respondents for GOC-Shop-Construction of Room for the centralised overhauling facilities for GE Turbo Charges in DSL POH shop and proposed Auditorium adjacent to the existing basic Training Centre, in which the petitioner was the successful bidder and a letter of acceptance was issued to him on 11.09.2005 followed by an agreement between the petitioner and the second respondent dated 05.01.2006 for a contract value of Rs.33,82,456/-. There were admittedly delays in execution of the contract and the petitioner lays the blame on the respondents. The result was that the contract could not be concluded. The failure of the respondents had been set out in the petition, but that is not germane for deciding the present

<https://hcservices.ecopet.gov.in/hcservices/> filed under Section 11(6) of the Arbitration and Conciliation Act, 1996. Suffice to say that in view of the

existence of the arbitration clause, the petitioner filed O.P.No.878 of 2006 before this Court, which resulted in the respondents constituting the Arbitration Tribunal in accordance with the terms of the contract.

3.The petitioner lodged his statement of claim with documents under the covering letter dated 12.06.2009 and the arbitration proceedings continues to be at the same stage, six years down the line. No counter statement has been filed by the respondents despite the notice dated 09.01.2010, which prayed for re-constitution of the Tribunal, if there was unwillingness on part of the Arbitrators to proceed with the arbitration.

4.The respondents are stated to have then informed the Arbitral Tribunal vide letter dated 03.02.2010 requesting the Tribunal to finalise such cases within six (6) months as it was found that the Tribunal was yet to enter upon reference. Even this is stated to have had no effect and the matter languished at the same stage.

5.In the meantime, one of the Members of the Tribunal retired. There is some internal correspondence placed on record over resolving the issue by re-constituting the Tribunal as per documents of the respondents, but nothing fructified.

6.The present petition was filed in the year 2013 and the counter-affidavit has been filed on 22.12.2014, which only relates a saga of no action of the Tribunal and no re-constitution of the arbitration Tribunal.

7.The aforesaid facts clearly show that the very purpose of having an alternative dispute resolution mechanism is sought to be frustrated by the conduct of the respondents. The Arbitral Tribunal constituted as far back in the year 2010 failed to act, yet the re-constitution of the Tribunal was made only four years later, after filing of the present petition. It may be noticed that this is not the only case of its kind so far as the Southern Railways are concerned and this Court has been repeatedly called upon to comment on the failure of the Arbitral Tribunal to proceed or for its lack of constitution or re-constitution. In this behalf, reference may be made to the orders passed in O.P.No.808 of 2014 decided on 03.07.2015 (between **Y.Chinna Reddy vs. Union of India, rep. By General Manager, Southern Railway**), O.P.No.313 of 2014 decided on 18.06.2015 (between **M/s.Nellai Concrete Products & Construction Co. (P) Ltd., Rep. by its Managing Director, vs. Union of India, Rep. by its Secretary, Ministry of Railway and Ors.)** and O.P.No.414 of 2012 decided on 30.01.2015 (between **A.Chockalingam vs. Union of India, Rep. By General Manager, Integral Coach Factory**). This Court adopted the procedure of appointing

an independent Arbitrator as there had been failure of the mechanism through which the respondents were to appoint the Arbitrator. Inordinate and inexplicable delay was opined to be fatal in such a situation. In fact, in O.P.No.808 of 2015, para 6, is reproduced as under:

6.This Court, inter alia, has dealt with this issue in O.P.No.313 of 2015 (**between M/s.Nellai Concrete Products & Construction Co. (P) Ltd., Rep. by its Managing Director, vs. Union of India, Rep. by its Secretary, Ministry of Railway and Ors.**) decided on 18.06.2015, albeit slightly on different aspect. The fact remains, the said case is also one of gross neglect of Arbitral Tribunal proceeding in the context of the letter appointing them stipulating a period of six months to conclude the arbitration proceedings. This is not so in the present case. There is yet another case similar to the case on hand, being O.P.No.414 of 2012 (**between A.Chockalingam vs. Union of India, Rep. by the General Manager, Integral Coach Factory and Ors.**) decided on 30.01.2015. The very same issue of re-constitution of Arbitral Tribunal was dealt with in that case and the attention of this Court was drawn to different proceedings qua the Railways itself. The present case is also one of gross neglect of the Tribunal, having failed to perform its functions right from the year 2010 till date. Five years have elapsed with only pleadings being completed. This defeats the very

purpose of arbitration.

8. In view of aforesaid position, as agreed and proposed by learned counsel for the parties, I appoint **Mr. Justice R.S.Ramanathan**, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and adjudicate the dispute inter se the parties. As requested by the learned counsel for parties, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

9. The original petitions are, accordingly, allowed, leaving the parties to bear their own costs.

Sd/ (S.K.K., CJ.)
04.09.2015

//Certified to be a true copy//

Dated this the day of 2015.

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.