

In the High Court of Judicature at Madras

Dated : 15.07.2016

Coram :

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

O.P.No.212 of 2016

M/s.Mohan Projects (Pvt.) Ltd.,
No.9, "Pampa Bhavana",
Pampa Mahakavi Road, Shankarapuram,
Bangalore 560 004.

.. Petitioner

-VS-

- 1.Union of India
Southern Railway,
Rep. by its Chief Commercial Manager,
Southern Railway, Park Town,
Chennai 600 003.
- 2.Mr.M.Sivanandam
Presiding Arbitrator, Chief Transportation
Planning Manage, Office of Chief
Operations Manager, Southern Railway,
Park Town, Chennai 600 003.
- 3.Mr.A.Selvaraj
Arbitrator, Financial Adviser and
Chief Accounts Officer/G,
Headquarters Office, Southern Railway,
Park Town, Chennai 600 003.
- 4.Mr.Pradeep Ambare
Arbitrator, Chief Material Manager/HQ,
New Joint Office, Southern Railway,
Ayanavaram, Chennai 600 023.

.. Respondents

Petition filed under Sections 11 (4), 14 and 15 of the

Arbitration and Conciliation Act, 1996, to remove the defunct respondents 2 to 4 as arbitrators in CTPM/ARB/2011/Multi Colour vide DGM/G/MAS/Letter No.G.16/DGM/ARB/2011/29 dt. 03.08.2011 and consequently, appoint a sole Arbitrator / Arbitrators to hear and decide the disputes between the parties arising out of the Arbitral Agreement dated 04.11.2008.

For Petitioner : Mr.S.Pugalenth

For Respondents : Mr.V.G.Suresh Kumar

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O R D E R

The petitioner participated in the tender floated by the respondent for works contract for printing advertisement in multi-colour on the obverse and reverse of computerized unreserved passenger tickets. This contract was to be for a period of three years and the petitioner was the successful tenderer and was awarded the contract on 04.11.2008 for a total value of Rs.5,17,46, 526/-. The petitioner claims to have acted in pursuance to the tender, but disputes arose inter se the parties on account of allegedly the respondent reducing the space over which the advertisements were to be published. These disputes could not be resolved and thus, the

petitioner laid the claim on the respondents and sought reference of disputes to arbitration as per clause 50 of the agreement dated 04.11.2008 and clause 35 of the tender conditions. The Arbitral Tribunal was constituted and began its proceedings from August, 2011. Some progress was made, but it is alleged that since the year 2013, there has been no progress and the entire proceedings have come to a standstill. It is, thus, the case of the petitioner that the very concept of having speedy resolution of disputes through arbitration has been belied and the present petition has been filed under Sections 11 (4), 14 and 15 of the Arbitration and Conciliation Act, 1996.

2. In the counter-affidavit, the respondent did not dispute the aforesaid factual position, but in so far as the conduct of the arbitration proceedings is concerned, it has been averred that one of the Arbitrators retired from service and in his place, another person was appointed as Arbitrator by observing the conditions of the arbitration clause. The lack of further progress is stated to be on account of the Presiding Arbitrator also retiring from service and the fresh panel of arbitrators was sent to the petitioner to select any two officers from the panel in terms of the letter dated 26.02.2016. It is

also averred in the counter that due to alleged breach of clauses of the agreement by the petitioner, termination proceedings were also initiated.

3.The aforesaid facts leave no manner of doubt that on account of retirement of officers or otherwise, the arbitration had practically not moved beyond completion of pleadings. It is the arbitration of five years old. This is not the only case where such a problem has been faced by the contractors with the Railways. In **O.P.No.426 of 2015 (between M/s.Unique Builders vs. Union of India, Rep. by General Manager, Southern Railway and Others)** decided on 09.10.2015, this Court held as under:

*"8.As aforesiad, this court has been faced with the similar position of inaction of the Tribunal in O.P.No.414 of 2012 decided on 30.01.2015 (between **A.Chockalingam vs. Union of India, Rep. by the General Manager, Integral Coach Factory and Others**), O.P.No.313 of 2015 decided on 18.06.2015 (between **M/s.Nellai Concrete Products & Construction Co.(P) Ltd. vs. Union of India, Rep. by its Managing Director, Ministry of Railway and Others**) and O.P.No.808 of 2014 decided on 03.07.2014 (between **M/s.Y.Chinna Reddy vs.***

Union of India, Rep. by the General Manager, Southern Railway). The prevalent position is reflected in the order dated 03.07.2014 in OP.No.808 of 2014 in the following terms:

"4.If it may be said, the respondents have done it again ! There are numerous cases which have come up before this Court where the Arbitral Tribunal constituted by the respondents completely neglected to perform their duties. It may possibly be because the serving officers are appointed as Arbitrators and they find little time for arbitration process. Possibly the fallacy lies in appointing serving officers as Arbitral Tribunal members.

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*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.*

9.The tragedy of arbitration proceedings in our country permeates the present matter with

disputes seeing no light of the day. If one may say, there is hardly any beginning, as only pleadings have been exchanged in the present matter. On account of the inordinate and inexplicable delay coupled with now even the transfer of one of the officers constituting the Tribunal, it is a fit case where the mandate of the present Tribunal should be terminated and an Arbitrator be appointed by this Court.

4. In view of the aforesaid, as proposed and agreed by learned counsel for parties, I appoint **Mr. Justice K. Venkataraman, a retired Judge of this Court**, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested, 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.

5. The records before the earlier Tribunal be transmitted forthwith to the Arbitration Centre.

6. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., C.J.)
15.07.2016

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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