

In the High Court of Judicature at Madras**Dated : 11.11.2016****Coram :****The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice****O.P.No.665 of 2016**

M/s.NAPC Limited,
a Company incorporated under the
Companies Act, 1956,
having its registered office at
184/214, Royapettah High Road,
MMPDA Tower 2nd Floor,
Royapettah,
Chennai-600 014. .. Petitioner

-vs-

The Superintending Engineer,
National Highways,
TNSCC Complex, Jai Nagar,
No.206/N, Jawaharlal Nehru Salai,
Opp. Moffusil Bus Stand,
Chennai-600 006. .. Respondent

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to arbitrate over the disputes regarding settlement of claims between the petitioner and the respondent arising out of the agreement No.1/2010 dated 19.04.2010.

For Petitioner : Mr.Arun C.Mohan

For Respondent : Mr.M.Venugopal
Spl. Government Pleader (CS)

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ORDER

Agreement No.1 of 2010 dated 19.04.2010 was entered into *inter se* the parties for the petitioner to construct a

two lane bye pass around Kancheepuram, connecting NH4 and Kancheepuram-Vandavasi Road, including construction of a major bridge.

2. The petitioner claims that though the initial period stipulated for execution of the contract was 24 months, the same was extended on account of omission and commission of the respondent and the work was completed on 18.04.2013.

3. It is out of this contract, the petitioner claims that the amount dues have not been paid, despite exchange of correspondence, and the respondent had refused to honour the claim of the petitioner.

4. The agreement contains Clause 50 in the General Conditions of Contract, in terms whereof the respondent failed to communicate their decision and hence, the arbitration Clause was invoked.

5. It is the case of the petitioner that the respondent appointed Mr.T.Rajendran as the Arbitrator, who was then the Divisional Engineer and incharge of the execution of the work. The petitioner, thus, disputed the competency of the Arbitrator to continue and called upon the Arbitrator to withdraw from the proceedings. Mr.T.Rajendran, ultimately retired from service.

6. It may be noticed that the petitioner filed O.P.No.419 of 2016, in which the stand of the respondent was noted that since that the Arbitrator was retiring from service on 31.07.2016, in any case, new Arbitrator would have to be appointed and three weeks' time was granted for the said purpose vide order dated 22.07.2016.

7. It is stated that now vide communication dated 23.09.2016, beyond the period of the said three weeks, an Arbitrator is sought to be appointed, who is the Superintending Engineer (NH), Madurai - an employee of the respondent, that too after the filing and notice in the present petition.

8. On the query of the Court posed to the learned Special Government Pleader (CS) as to how an employee could be appointed as an Arbitrator in view of the amendment to the Arbitration and Conciliation Act, 1996, the learned Special Government Pleader (CS) fairly concedes that it could not have been so done, apart from the fact that it is beyond the time stipulated by this Court for appointment of an Arbitrator and thus, the respondent in any case has lost his right to appoint an Arbitrator.

9. In view thereof, I appoint Er.K.Srinivasan, (Mobile No.9444620305), C2 Block I, Mayfair Apartment, ZA LIC Colony Main Road, Velacherry, Chennai-600 042, 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.

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

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

11.11.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/25.11.2016

COURT OFFICER

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