

In the High Court of Judicature at Madras

Dated : 25.10.2016

Coram :

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

O.P.No.768 of 2016

M/s.Indian Oil Corporation Limited,
Rep. by its Chief Divisional Manager,
Mr.C.Sharat Kumar (Marketing Division).

.. Petitioner

-VS-

The Commissioner,
Udumalpet Municipality,
Udumalpet, Tiruppur District.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to hear and decide the dispute between the parties arising out of the lease deed dated 05.08.2010.

For Petitioner : Mr.M.Ravindran, Sr. Counsel
for Mr.V.Anantha Natarajan

For Respondents : Mr.A.S.Thambuswamy

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O R D E R

A Lease Deed was executed on 05.08.2010 between the petitioner-Corporation and the respondent / Udumalpet Municipality in respect of a land measuring 9080 sq.ft. situated in S.F.No.143/1, T.S.No.10, Ward F, Block No.1 of Udumalpet Municipality, Udumalpet Taluk, Tiruppur District, for a period of nine years at the rate of rents specified for a three sets of three years each. In the currency of the lease, a notice was sent by the respondent to the petitioner dated 04.03.2016 alleging that the respondent leased out the land to the petitioner-Corporation without any auction and thus, requested to vacate the land and hand over the possession to the respondent, as the lease expired on 31.03.2013 on the expiry of the first three years period and that no steps were taken to renew the lease. This was replied to by the petitioner-Corporation as they had a registered lease deed in their favour for a period till 31.03.2019 and they being the Public Sector Undertaking, are exempted from taking the lease under public auction. The respondent replied to vide letter dated 23.03.2016 not accepting the position.

2.The petitioner-Corporation then filed W.P.No.14091 of 2016 under Article 226 of the Constitution of India seeking quashing of the

impugned order dated 23.03.2016 and obtained an interim protection. The writ petition was partly allowed on 15.06.2016, with liberty to the respondent-Municipality that if the land in question is required for a public interest, fresh notice could be issued.

3.Fresh show cause notice was issued by the respondent-Municipality dated 20.06.2016 as to why the land cannot be resumed for public purpose. It was disputed by the Corporation, but a final adverse order was passed on 15.07.2016 by the respondent.

4.The aforesaid lease deed contains an arbitration clause, which reads as under:

"III. (d) Any dispute and/or difference of any nature what so ever or regarding any right or liability act, omission on account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation, or of some officer of the corporation who may be nominated by the Director (Marketing). It is known to the parties to the Agreement that the Arbitrator so nominated is an employee of the corporation and may be a shareholder of the corporation. In the event of the Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable act for any reason, the Director (Marketing) as aforesaid at the time of such transfer or vacation of office or inability to act, may

designate another officer of the corporation to act as Arbitrator in accordance with the terms of the Agreement. Such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this agreement that no person other than the director (marketing) or a person nominated by such director (marketing) of the corporation as aforesaid shall act as Arbitrator hereunder. The award of the arbitrator as appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modification of or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause."

5.The petitioner-Corporation, however, realised that in view of the amendments to the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), dated 23.10.2015, the Designated Arbitrator could not act as an Arbitrator and thus, invoked the arbitration clause by filing the present petition under Section 11 (6) of the said Act.

6.The principal contention of the respondent in so far as the jurisdiction of this Court is concerned is that the invocation is not in terms of the arbitration clause and in fact, the learned counsel states that the petitioner should first have nominated their Arbitrator. The

other matters on merits are not to be examined by this Court.

7.I am of the view that the defence raised to the reference of disputes to arbitration is not sustainable as the petitioner acted as such in view of the amendment to the said Act. Thus, the disputes are liable to be referred to arbitration.

8.Learned counsel for the respondent did seek to raise the issue of where the arbitration should be and that it should be conducted at Udumalpet, but then it is pointed out that the Designated Arbitrator was based in Chennai and thus, the respondent can hardly have any objection to the arbitration proceedings being conducted at Chennai.

9.I am, thus, of the view that the Arbitrator has to be appointed by this Court in the aforesaid facts and circumstances, as disputes have arisen inter se the parties, the disputes are governed by an arbitration clause and the jurisdiction is of this Court.

10.I, thus, appoint, as proposed and agreed, **Mrs.Justice Chitra 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.

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

(S.K.K., CJ.)
25.10.2016

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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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