

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P.NO.568 OF 2017

M/s. Cauvery Constructions,
represented by its Partner
K.J.Duraisamy,
No.54, Eranian Street,
Valimurugan Nagar,
Erode 638 009.

Petitioner

Vs

1. The Union of India,
represented by the General
Manager,
Southern Railways,
Park Town, Chennai-3.
2. The Divisional Railway Manager(Works),
Palaghat Division,
Southern Railway, Palaghat.
3. The Divisional Railway Manager (Works),
Salem Division, Southern Railway,
Salem.
4. Mr.P. Kamban (Presiding Arbitrator),
Senior Divisional Finance Manager,
Southern Railway, Salem Division,
Salem.
5. Mr. P.K. Selvan (Arbitrator),
Deputy Chief Electrical Engineer/OHE,
Construction Office,
Southern Railway, Egmore,
Chennai-8.
6. Mr. D.Seran Senguttuvan (Arbitrator),
Deputy Chief Materials Manager,
Construction Office,
Southern Railway,
Controller of Stores Office,
Chennai -23.

Respondents

Petition filed under sections 14, 15 r/w.11 of the Arbitration and Conciliation Act, 1996 praying to terminate the mandate of the illegal Tribunal (comprising of the 4th, 5th and 6th respondents) and appoint an independent Arbitrator and refer all the disputes arising out of the Agreement No:No:J/344 dated 11.11.2002.

For Petitioner : Mr. Amalraj S.Penikilapatti
For Respondents : Mr. P.T.Ramkumar

ORDER

This petition is filed in terms of Sections 14 and 15 r/w.11 of the Arbitration and Conciliation Act, 1999 praying for termination of the mandate of the arbitral tribunal comprising of the 4th, 5th and 6th respondents and appointment of an independent Arbitrator to adjudicate upon the disputes arising out of Agreement No.J/344 dated 11.11.2002.

2. Heard Mr.Amalraj S.Penikilapatti, appearing for the petitioner and Mr.P.T.Ramkumar, appearing for the respondents who opposes the petition.

3. The sequence of dates and events in this matter are relevant.

(i) The agreement between the parties is dated 11.11.2002 and the demand of the petitioner to invoke arbitration is dated 14.10.2008.

(ii) Since the railways were not forthcoming to appoint an arbitrator, O.P.No.737 of 2009 was filed and this Court, vide order dated 3.6.2014 directed the constitution of an arbitral tribunal.

(iii) Pursuant thereto, the 1st respondent, i.e., the General Manager, Southern Railways, by letter dated 10.3.2015, constituted an arbitral tribunal

and issued terms of reference in terms whereof, the Tribunal has to deal with the claims as well as counter claims raised by both parties.

(iv) The tribunal was requested to pronounce the Award within a period of six months from the date of receipt of letter dated 10.3.2015.

(v) The statement of claim of the Contractor was filed on 30.9.2015 before the arbitral tribunal.

(vi) The tribunal was reconstituted in view of the transfer of the Presiding Arbitrator. The 1st respondent, vide letter dated 6.1.2016 stated that a substitute was to be named in place of Mr. V.Babu, Dy. CSTE/P&D/M4S who was proposed to be sent on deputation with M/s IRCON to Sri Lanka.

(vii) Pursuant thereto, reconstitution of the tribunal was effected under communication dated 29.12.2016. The order of re-appointment dated 29.12.2016 provided that all other terms of the initial order of constitution of Tribunal dated 10.3.2015 were to remain unaltered.

(viii) Pursuant to the re-constitution of the tribunal on 29.12.2016, the 1st sitting was held on 18.05.2017. The claimant expressed his inability to appear for the hearing on 18.5.2017 citing health reasons and sought a postponement thereof.

(ix) On the representation of the respondent who was present at the hearing on 18.5.2017, the panel perused the statement of facts and the claim statement that had been filed earlier by the claimant and directed that a fresh claim statement filed along with supporting documents be filed serving the same on both the respondent as well as the Arbitral panel within 15 days. The

respondent was directed to prepare and submit the defence statement within 30 days thereafter. The next hearing was fixed for 26.07.2017.

(x) Prior to the next hearing of the tribunal, the petitioner has approached this Court on 20.07.2017 with the present petition seeking a termination of the Mandate of the Arbitrators and an appointment of an independent arbitrator to adjudicate upon the disputes between the parties in terms of sections 14 and 15 of the Arbitration and Conciliation Act r/w. section 11 thereto.

(xi). After having approached this Court by way of the present petition, an objection appears to have been filed by the petitioner before the Arbitral Tribunal objecting to the appointment of the Arbitrators stating that they were disqualified in terms of section 12(5) of the Act.

(xii) At the sitting of the tribunal on 26.07.2017, the petitioner brought the present petition to the notice of the Tribunal. The tribunal, it appears, has proceeded with the matter reiterating its direction to the parties to file claim as well as defence statements and concluded the hearing for the day stating that the next sitting would be intimated to the parties shortly.

4. Mr. Amalraj would rely upon a decision of this Court in O.P.No.418 of 2016 dated 9.9.2016 where the Chief Justice considers a matter where there is significant delay on the part of the Railway in carrying out the procedure for appointment of an arbitrator and getting along with the proceedings. In the present matter as well there has no doubt been inordinate

delay in appointment of the Arbitrator. However, the present petition is filed in terms of section 14 and 15 of the Act on the ground that the Arbitrator is disqualified in terms of section 12(5) of the Act from assuming his mandate as an Arbitrator.

5. The claimant, has rightly approached the tribunal by way of an objection under section 12(5) of the Act which shall be adjudicated upon by the tribunal as a jurisdictional objection, on priority. In fact, the terms of the reference at page 23 itself refers to the admissibility, maintainability, applicability and arbitrability of the various claims raised by the parties to be decided by the tribunal as a preliminary issue prior to going into the merits of the claims and counter claims. That apart, any objection in terms of sections 12 to 15 of the Act would, in effect challenge the mandate/jurisdiction of an arbitrator and are liable to be raised before the Tribunal in terms of section 16 of the Act to be addressed as a preliminary objection. In the light of the aforesaid discussion, I am not inclined to consider the prayer of the petitioner seeking to terminate the mandate of the re-constituted tribunal.

6. The parties are directed to appear before the tribunal as and when the matter is fixed for hearing and the tribunal is requested to complete the entire hearing including the objections on assumption of jurisdiction within a period of four months from the first sitting since the matter relates to a contract executed in the year 2002.

DR. ANITA SUMANTH, J.

msr

7. Petition is disposed of in the above terms. No costs.

22.09.2017

Speaking Order/non-speaking order
Index:yes/No
msr



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