

In the High Court of Judicature at Madras

Dated : 10.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.87 of 2017

M.Subramanian
Government Contractor,
No.49/1, Indira Nagar,
Mahalingapuram,
Pollachi-642 002. ... Petitioner

-vs-

- 1.The Union of India,
rep. by the General Manager,
Southern Railway,
Chennai - 3.
- 2.The Divisional Railway Manager (Works)
Divisional Office, Salem Division/
Southern Railway, Suramangalam,
Salem - 636 005.
- 3.Shri R.R.Pratap,
Senior Divisional Mechanical Engineer,
Southern Railway,
Diesel Loco Shed,
Erode - 638 002.
- 4.Shri C.Somasekaran,
Dy. Chief Engineer/Arbitration,
Office of the Chief Administrative Officer
Construction, Southern Railway,
Poonamallee High Road,
Chennai.
- 5.Smt.Prema Sripathy Rao,
Dy. Financial Advisor & Chief Accounts
Officer/Traffic, Headquarters Office
Southern Railway, Moore Market Complex,
Park Town, Chennai - 600 003. .. Respondents

Petition filed under Sections 14 & 15 and Section 11

<https://hcservices.ecourts.gov.in/hcservices/> (6) of the Arbitration and Conciliation Act, 1996, to

terminate the mandate of respondents 3 to 5 and appoint an

independent and impartial Arbitrator/Arbitrators to adjudicate, settle and resolve the disputes between the petitioner and the 1st and 2nd respondents arising out of the Contract dated SA/81 dated 26.09.2008.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Mr.P.T.Ramkumar

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ORDER

This petition has been filed seeking to terminate the mandate of respondents 3 to 5 and appoint an independent and impartial Arbitrator to adjudicate the disputes between the petitioner and respondents 1 and 2 arising out of the contract dt. 26.09.2008.

2. The case of the petitioner is that he was awarded with the work of "Unjalur station - proposed medium level platform No.2, proposed extension of bridge No.261 and Bridge No.262 at URL Yard and an agreement was executed on 26.09.2008 with the completion period of six months. The petitioner completed all the works by 14.08.2009 to the satisfaction of the Railway Administration. However, there were certain claims are pending and the petitioner by invoking arbitration clause, issued a terms of reference on 17.9.2012 and the Arbitral Tribunal was constituted. The petitioner filed its claim statement and the respondent filed its counter. On 18.7.2014, the Arbitral Tribunal was

re-constituted. Even after re-constitution, the Arbitral Tribunal has not done anything between 18.7.2014 and 27.08.2015. Therefore, petitioner issued a legal notice on 28.8.2015. In response to the said notice, the Arbitral Tribunal fixed its first sitting on 25.09.2015 and the Tribunal directed the respondent to process for early sanction of funds before 06.11.2015 in view of the admissions made by the respondents. The Arbitral Tribunal unilaterally decided to adjourn the further proceedings and posted the matter on 04.12.2015. Thereafter, nothing was happened. Hence, the present petition.

3. The respondents have not filed any reply.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The learned counsel for the petitioner submits that after 06.11.2015, no further proceedings were held. He further submits that the Arbitral Tribunal has failed to perform its function and there is a clear case of inability on the part of the members of the Tribunal to proceed in the matter and seek termination of the mandate and to appoint Sole Arbitrator.

6. On a perusal of the petition, *prima facie*, shows that the arbitration clause is failing because the

Arbitrators either retired or do not proceed with the matter. In the reply filed before the Arbitrators, it is stated that the payment for the final bill will be arranged as soon as getting sanction from the Headquarters. It is the say of the petitioner that the payment legally due to the petitioner was not paid by the respondents.

7. When there is a failure on the part of the Arbitral Tribunal to act and it is unable to perform its function either *de jure* or *de facto*, it is open to a party to the arbitration proceedings to approach the Court to decide on the termination of the mandate. Therefore, it would be appropriate to substitute the Arbitral Tribunal by appointing a Sole Arbitrator.

8. I, thus, by consent appoint Mr.G.Dharmaraj, a retired District Judge, (Mobile 9841704448) E3, E Block Lake View Apartment, Anna Nedun Salai, Perungudi, Chennai-96, as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the 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. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High Court

Arbitration Centre is fixed on 03.04.2017 at 10.30 A.M.

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

Sd/. (H.G.R., ACJ.)
10.03.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/19.04.2017

COURT OFFICER

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



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