

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.2.2017.

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Review Application No.75 of 2008

M/s.Allwyn Builders,
No.69/2469, 1st Street,
Aganagam Agan Nagar,
Arakkonam, Vellore District.

Petitioner

vs.

1. Union of India,
rep. by its Division Railway Manager/
Works/Chennai,
Southern Railway,
Park Town, Chennai-3.

2. The Senior Divisional Engineer,
Coordination, MAS
Southern Railways, Park Town,
Chennai-3.

Respondents

Review Application filed under Order 47 Rule 1 CPC seeking to review the order made in W.P.No.22189 of 2007 dated 4.12.2007.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.V.Haribabu

ORDER

This order is in the review petition. The matter pertains to a Railway contract.

2. Rescinding of a contract by the Railways was called in question by the Contractor by filing a writ petition in W.P.No.22189 of 2007.

3. In the writ petition, the Railways took a stand that there is an arbitration clause between the parties. A learned Single Judge of this court, after examining the documents, came to the conclusion that the contract had not been duly signed by both parties and therefore, it may not be correct to canvass that there is an arbitration agreement. On this premise, the learned Judge disposed of the writ petition by order dated 4.12.2007, holding that the parties can "approach appropriate forum for appropriate relief in this regard".

4. The instant Review Petition has now been filed canvassing that all Railway contracts are governed by a master document which goes by the name "General conditions of Contract" and this was not brought to the notice of the learned Single Judge when the writ petition came to be disposed of.

5. Though there is much to be stated about the scope of Review, in the light of the order I propose to pass, I refrain from expressing any opinion in this regard.

6. It is not in dispute between the parties that all railway agreements are governed by the above said General Conditions of

Contract. Clause 64(1)(i) and (ii) of the said General Conditions of Contract are relevant with regard to arbitration.

7. In the counter affidavit filed by the railways before the learned Single Judge also the said provisions are extracted and the same reads as under:-

"Clause 64(1)(i)-Demand for arbitration:- In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or as to the withholding by the Railway or any certificate to which the Contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' referred to in clause 63 of these conditions, the Contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be

referred to arbitration.

Clause 64(1)(ii): The demand for arbitration shall specify the matters which are in question or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off shall be referred to arbitration and other matters shall not be included in the reference."

8. As all railway contracts are, admittedly, governed by the General Conditions of Contract and in the light of the fact that railways had taken a categorical stand before the learned Single Judge that there is an arbitration clause, I am inclined to agree with the submission of the review petitioner that the above arbitration clause will govern the parties.

9. The learned counsel for the review petitioner also now contends that there is in fact an arbitration clause and he is willing to go for arbitration.

10. In the light of the submissions made at the Bar by the learned counsel for the petitioner and in the light of the stand taken

by the Railways in the counter affidavit in the writ petition, which has been extracted supra, the parties shall be governed by the abovesaid arbitration clause which shall operate as arbitration agreement between the parties.

11. It is open to the review petitioner to trigger of the arbitration, if so advised.

12. All other issues that have been raised in the writ petition are left open to be decided by the Arbitral Tribunal that may be constituted.

13. This order is passed on the basis of the admitted position and stand taken by the Railways in its counter affidavit. Therefore, this shall not be treated as a precedent for any review petition.

14. The review petition is disposed of accordingly.

10.2.2017.

Index: Yes/No.
Internet: Yes/No.
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M.SUNDAR, J.

Ssk.

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