

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.231 of 2018

URC Construction (P) Ltd.
No.119, Power House Road,
Erode-638 001.
Tamil Nadu, India.

.. Petitioner

Vs.

1. The General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai-600 003.

2. The Chief Engineer/Central,
(Construction),
Southern Railway,
Periyar E.V.R. High Road,
Egmore, Chennai-600 008.

.. Respondents

* * *

Prayer: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 praying to appoint an independent and impartial arbitrator to hear and decide the disputes between the petitioner and the respondent arising out of the contract No.69/CN/2013 dated 08.07.2013 as set out under details of claims in Para No.18 above.

* * *

For Petitioner : Ms.Aparna Devi

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways

ORDER

This petition seeks appointment of a Sole Arbitrator to resolve the disputes arisen between the petitioner and the first respondent.

2. The petitioner emerged as successful bidder for the work of "Proposed construction of Major Bridges between Pattukottai and Karaikudi Section" and accordingly, it was given Letter of Acceptance on 11.03.2013. The time stipulated for execution of the work was twelve months. The petitioner had also submitted Performance bank Guarantee, in addition to Earnest Money Deposit. During the execution of the work, the respondents had given certain alterations in the material as well as nature of work, for which the petitioner obliged. Even the request of the respondents to delay the work for want of funds had also been acted upon by the petitioner. In view of the breaches committed by the respondents, enormous delay was caused in the execution of the work, which led to several disputes between the parties. Accordingly, the petitioner issued a notice on 22.01.2018 invoking the arbitration clause. But the respondents did not respond. Hence, the present petition has been filed on 06.03.2018.

3. Learned counsel for the respondents submitted that Clause 64(3)(a)(iii) of the General Conditions of Contract (in short, "GCC") deals with settlement of disputes between the contract and the

Railways, as per which, the dispute shall be referred to the panel of three officers as Arbitrators, who shall within 60 days after receipt of the contractor's representation. It is the case of the respondents that without waiting for the 60 days, the petitioner approached this Court which is premature.

4. Learned counsel for the petitioner submitted that the respondents have no unfettered right to appoint any Arbitrator of their choice, in view of amendment Act, 2015, in particular Section 12(5) of the amended Act. However, it is admitted by the learned counsel that the petition was filed even before the decision of the GM with respect to their claims.

5. In paragraphs 5 and 6 of the judgment in **2016(5) R.A.J 55(SC) [UNION OF INDIA AND ANOTHER -VS- PREMCO-DKSPL (JV) AND OTHERS]**, identical issue was considered by the Hon'ble Supreme Court, which is held as follows:

"5.....Since the notice for appointment of arbitrators dated 12.06.2013 was served on the railways on 14.06.2013, the contractor had to respect the terms of the agreement which was unrepudiated and to wait for a period of at least 60 days before Section 11 application could have been filed. Instead of waiting for 60 days the contractor/respondent preferred such application prematurely on 23.07.2013. The Railways sent a panel of 4 names to

the respondent on 30.07.2013, well within 60 days limit.

"6.....The terms of the Agreement bind the parties unless they have chosen to repudiate the same. Relevant terms, if provided, will be material for deciding when the right of a party to appoint the arbitrator will suffer forfeiture and when the other party would be entitled to give notice and on failure, move application under Section 11(6) of the Act. Such terms deserve respect of the parties and attention of the Court."

6. In view of the undisputed facts, this Court is of the view that the petition is a premature one and it is liable to be rejected on this ground alone.

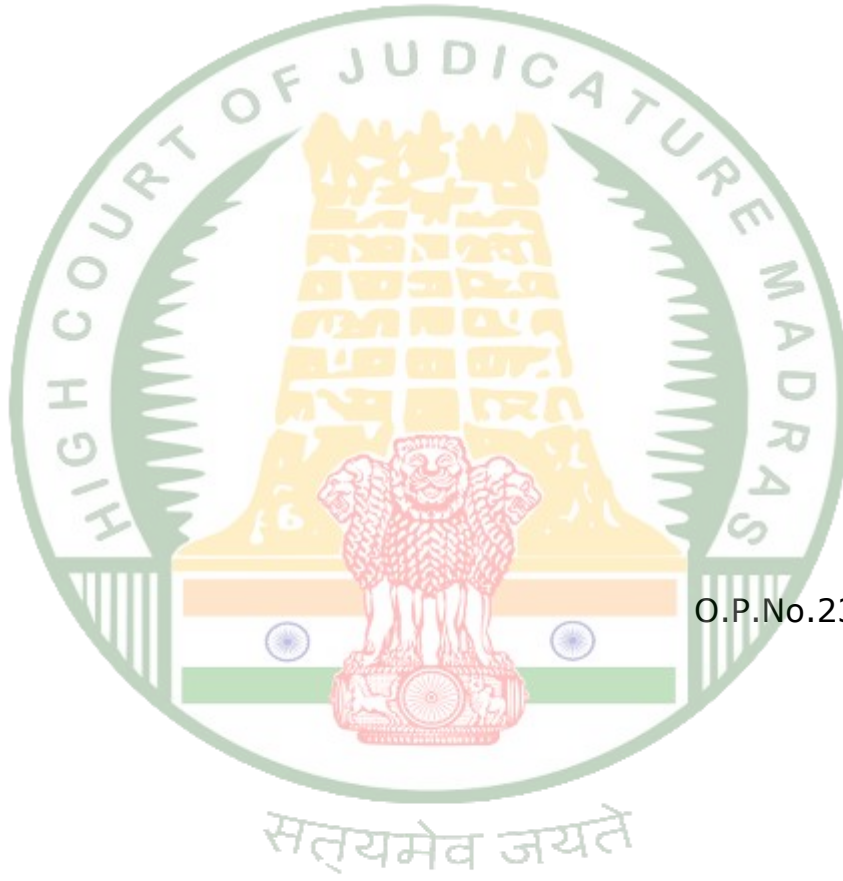
7. Accordingly, the Original Petition is dismissed, leaving the parties to bear their own costs.

8. It is made clear that the respondents may keep in mind the amendments made to the Arbitration and Conciliation Act, 1996, while dealing with the claim of the petitioner.

27.04.2018

PUSHPA SATHYANARAYANA.J

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