

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P. No.239 of 2018

M. Mohandoss

.. Petitioner

-vs-

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

2. The Chief Administrative Officer,
Construction,
Southern Railway,
Periyar E.V.R. High Road,
Egmore, Chennai – 600 008.

3. The Deputy Chief Engineer,
Construction/III,
Southern Railway,
Madurai – 625 016.

.. Respondents

सत्यमेव जयते

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Prayer: Petition filed under Section 11 of the Arbitration & Conciliation Act, 1996 praying to (a) appoint an independent and impartial arbitrator to hear and decide the disputes between the petitioner and the respondent arising out of the contract No.48/Dy.CE/GC/PCO/2009 dated 16.11.2009 as set out under details of claims in Para No.19 ; and (b) to direct the respondents to pay the cost of this petition.

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For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.T.Ramkumar

ORDER

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

2. The respondents floated a tender bearing No.41/CE/CN/MS/2008 (OT), dated 17.12.2008, wherein, the petitioner emerged successful bidder and after negotiations, a Letter of Acceptance dated 21.07.2009 (LOA) was issued in its favour to the value of Rs.4,04,96,400/-. The duration for execution of the contract was fixed at nine months from the date of LOA, i.e., on 20.04.2010. The petitioner submitted a Performance Bank Guarantee and also executed an agreement dated 16.11.2009, besides paying Earnest Money Deposit. Though the petitioner made all arrangements to commence the work at site, since the third respondent failed to handover the worksite, as the other contractor, who was awarded the formation work, did not perform his part of the contract in time, the men and machinery were kept idle without any piece of work. After handing over of the site, the petitioner performed its obligation without any delay at every stage, as per the directions of the respondent. But, since there was no co-operation from the

respondents, after periodical extensions, the work was required to be completed only on 15.02.2013. In view of the enormous delay caused by the respondents and other disputes with respect to the execution of the contract, the petitioner issued the arbitration notice dated 22.12.2017. But the respondents did not respond to the same. Hence, the present petition.

3. The respondents ought to have suggested three names of the arbitrators, as contemplated by clause 64(3)(a)(ii) within a period of 60 days. Since they failed to exercise their nomination within the stipulated period of 60 days, it is fairly conceded by the learned counsel for the respondents that a sole arbitrator may be appointed by this Court.

4. This Court, thus, appoints Hon'ble Mr. Justice K. Venkataraman, a retired Judge of this Court, residing at L-Block No.125, East Anna Nagar, Chennai-600 102, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental

PUSHPA SATHYANARAYANA, J.

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expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

5.The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

rsi/gg

08.06.2018



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