

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.362 of 2018

Project Implementation Agency, Puducherry
rep. by its Project Director,
Emergency Tsunami Reconstruction Project,
5th Floor, A-Block, PKC Educational Complex,
100 Feet Road, Puducherry-605 005.

.. Petitioner

Vs.

Mukesh and Associates,
represented by its Chairman,
No.2/6, Ranganathar Avenue,
Narasodhipatti,
Salem-636 004.

.. Respondent

* * *

Prayer : Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to (a) appoint an Arbitrator in respect of the disputes between the petitioner and the respondent as set out in this petition ; and (b) to direct the respondent to pay the cost of this petition.

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For Petitioner : Mr.T.P.Manoharan, Senior Counsel
for Mr.T.M.Naveen

ORDER

This Original Petition is filed seeking appointment of Arbitrator to resolve the disputes arisen between the petitioner and the respondent.

2. The petitioner establishment is a non-profit society of the Government of Puducherry registered under the Societies Registration Act 1960 for implementing government projects. The petitioner called for Expression of Interest (EOI) from the eligible Consultants for preparing Detailed Project Report and conceptual designs for construction of Modern Hygienic Fish Markets on International Standards and upgrade the existing fish markets in the Puducherry and Karaikal regions under the World Bank's Emergency Tsunami Reconstruction Project. After due evaluation, the respondent was selected for carrying out the consultancy works at the cost of Rs.1,29,82,750/- and entered into a contract dated 28.10.2008. In addition to the above work, the petitioner had also selected (i) M/s.Wilbur Smith Associates Private Limited and (ii) M/s.WAPCOS Limited, as Consultants for the remaining consultancy works in the said project.

3. The petitioner stated that the respondent failed to adhere to the time schedule and it was lethargic, inefficient, slow and failed to deploy adequate staff causing inordinate and unreasonable delay at each and every stage of the work. Consequently, the World Bank closed the Project with effect from 31.12.2011 and stopped the funds provided to the petitioner for the Project, which necessitated the petitioner to dispense with the services of the respondent and two

other Consultants mentioned above. It is also stated by the petitioner that the respondent had accepted the condition that it will not claim any additional cost for services, if any, rendered beyond the period of contract. However, the respondent claimed a sum of Rs.1,99,10,296/- as charges payable to it and also sent a letter dated 04.05.2012 stating that if the said amount is not paid, it will initiate arbitration proceedings.

4. The petitioner has convened a meeting with the respondent and the other Consultants on 18.05.2012 and after negotiation, the respondent agreed to receive a balance sum of Rs.9,47,028/- and also submitted an invoice dated 21.06.2012 for the said amount along with the letter of even date to the petitioner requesting to release the same, which was duly paid to the respondent. Thus, the respondent is estopped from making any claim from the petitioner. However, the respondent, suppressing the receipt of the aforesaid amount as full and final settlement, submitted a Bill along with letter dated 03.08.2012 seeking to pay a sum of Rs.1,99,10,296/- for the extended period of the project.

5. On receipt of the same, the petitioner sent a letter dated 30.08.2012 stating that the claim of the respondent has been fully and

finally settled. Thereafter, the petitioner received a letter from the respondent dated 19.12.2012 demanding the payment of the amount claimed and after one year, the respondent sent another letter dated 30.12.2013 reiterating its demand.

6. It is claimed by the petitioner that the Clause 8.2. of the contract dated 28.10.2008 provides for settlement of disputes by arbitration. Hence, the respondent can only invoke the said clause, as admitted by it in its letter dated 04.05.2012. However, the respondent filed O.S.No.188 of 2014 on the file of the III Additional District Court, Salem, for (a) determining and declaring that the the plaintiff has performed their part of contract in terms of agreements; (b) declaring that the defendants is liable to settle the consultancy fees to the plaintiff as per the terms of agreement ; and (c) consequently directing the defendant to settle the consultancy fees to the plaintiff. Hence, the petitioner filed an application in I.A.No.269 of 2015 under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, "the 1996 Act") seeking a direction to the respondent herein to approach the Arbitral Tribunal for settling the disputes and also filed an application in I.A.No.270 of 2015 seeking to return the plaint for presentation before the proper Court. But the Civil Court, while allowing the application, by order dated 03.12.2015 directed the parties to furnish a list of Arbitrators, and dismissed the application

seeking return of the plaint.

7. Against the order passed in I.A.No.269 of 2015, the petitioner filed C.R.P.(PD) No.51 of 2016 before this Court. This Court, after recording the submission of the learned Additional Government Pleader appeared for the petitioner that the petitioner would move a petition under Section 11(5) of the 1996 Act seeking appointment of an Arbitrator, allowed the civil revision petition setting aside the order of the learned III Additional District Judge, Salem.

8. It is in this background, the petitioner is before this Court with this petition seeking appointment of Arbitrator to resolve the disputes.

9. The learned Senior Counsel appearing for the petitioner submitted that the respondent in their letter dated 04.05.2012 sent to the petitioner stated that they would initiate arbitration proceedings, if the petitioner fails to make payment of the bill amount raised by it, and as such, it is clear that the respondent is agreeable to go before the Arbitral Tribunal. Hence, he sought for appointment of an Arbitrator.

10. Despite service of notice and printing the name of the respondent in the cause list, there is no representation on behalf of the respondent either in person or through an Advocate.

11. In these circumstances, this Court 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 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.

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

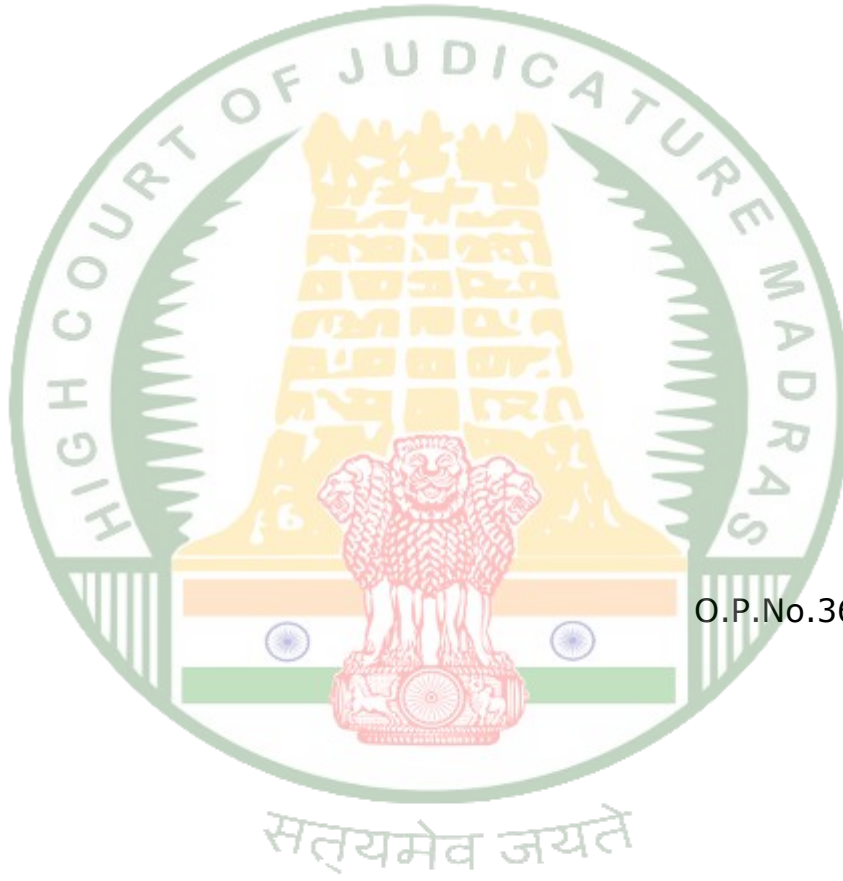
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