

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.01.2018

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.931 of 2017

R.Selvaraj  
Plot No.14, K.K.Garden,  
Mullai Nagar, Suramangalam,  
Salem – 636 005.

.. Petitioner

-vs-

1. The Deputy Chief Engineer, Works, Construction,  
Southern Railway  
Office of the Chief Administrative Officer – Construction,  
Southern Railway, Egmore,  
Chennai – 600 008.
2. The Chief Engineer/Construction,  
Southern Railway  
Office of the Chief Administrative Officer – Construction,  
Southern Railway, Egmore,  
Chennai – 600 008.
3. The Union of India,  
Represented by the General Manager,  
Southern Railways,  
Chennai – 600 004.

.. Respondents

**Prayer:** Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to appoint a Sole competent, independent and impartial Arbitrator to adjudicate the dispute between the parties.

For Petitioner : M/s.P.J.Rishikesh  
P.J.Sri Ganesh

For Respondents : Mr.P.T.Ramkumar

**ORDER**

This application is filed praying for the appointment of a sole arbitrator to adjudicate upon disputes that have arisen between the parties out of an agreement dated 17.03.2014 in respect of Gauge conversion work.

2. The factum of disputes as between the parties is admitted. A request for arbitration was made by the petitioner on 23.06.2017, raising various claims against the Railways, quantified at a sum of Rs.60,21,494/- which was reiterated by letter dated 28.06.2017. The respondents, vide their letter 05.07.2017 have taken up the petitioner's claim for consideration and the General Manager, Southern Railway, issues an interim direction with a copy addressed to the petitioner for examination of the matter on merits by CAO/CN/MS and appointment of Arbitrator as per the guidelines issued by the Railway Board. Thereafter there has been no action from the Railways.

3. A counter has been filed by the Railways to the effect that the request of the petitioner is being considered and will be disposed of as expeditiously as possible.

4. Heard Mr.P.J.Rishikesh, learned counsel appearing for the petitioner and Mr.P.T.Ramkumar, learned counsel appearing for the Railways.

5. In the event of a dispute or difference between the parties, a claim may be raised by the aggrieved party that shall be decided upon within 120 days by the Railways failing which the contractor may within 60 days from the expiry of the period of 120 days make a demand for arbitration in terms of Article 64(1)(i) of the agreement between the parties dated 17.03.2014. Where the sum total of the claims is below an amount of Rs.10,00,000/-, the dispute resolution process is to be conducted by a Sole Arbitrator as provided for in Article 64(3)(a)(i) and such appointment shall be made within 60 days from the day when a written and valid demand for arbitration is received by the respondent. In the present case, the requests for Arbitration have been made on 23.06.2017 and 28.06.2017. However, till date, no Arbitrator has been appointed in terms of Section 64(3)(a)(i) though Mr.Ramkumar would submit that the process for appointment is ongoing.

6. In terms of the agreement, the appointment of the arbitrator ought to have been done within 60 days and clearly, there is failure on the part of the Railways in this regard in the present case.

7. Moreover the reply of the Railways dated 05.07.2017 indicates that even if such appointment had been made in a timely manner, it would have been in accordance with the guidelines issued by the Railway Board as per which a serving officer of the Railways

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would have been appointed. This is impermissible in the light of Section 12(5) read with the Seventh Schedule to the Act, which prohibits an employee of a party to the arbitration to serve as an Arbitrator. In the light of the above discussion, this petition is allowed.

8.I, thus, appoint Mr.Justice.N.Authinathan, Former Judge of this Court, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He is requested to 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.

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

19.01.2018

msv/sl

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