

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 24TH DAY OF OCTOBER 2018

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.P.No.256 of 2018

In the matter of the Arbitration
and Conciliation Act, 1996 and
as amended by the Arbitration
and Conciliation (Amendment)
Act, 2015
and

In the matter of Agreement No.
11/HQ/Dy.CE/GC/N/TPJ dated
21.09.2005.

M.Rajkumar

Contractor

No.2, L.I.C.Colony,

R.M.Colony Road, Nehruji Nagar,

Dindigul - 624 001

Tamil Nadu

... Petitioner

-Versus-

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

2. The Deputy Chief Engineer
Gauge Conversion/II,
Southern Railway, State Bank of India Road,
(McDonells Road)
Opp.to Arun Hotel, Tiruchirapalli 620 001.

3. Shri. K.A.Manoharan
Chief Signal & Telecommunication
Engineer/Construction/North
S & T Construction Wing, II Floor,
No.75, Poonamalle High Road,
Egmore, Chennai 600 008.

4. Shri. Anil Kumar
Chief Engineer/Construction/East,
Office of the Chief Administrative Officer/
Construction,
Southern Railway, Egmore,
Chennai 600 008.

5. Shri.G.Kalyanaraman
Senior Divisional Finance Manager
Tiruchirapalli Division,
Southern Railway, Tiruchirappalli. ... Respondents

Original Petition praying that this Hon'ble Court be pleased to (a) Terminate the arbitration Tribunal and appoint an independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement No. 11/HQ/Dy.CE/II/GC/N/TPJ dated 21.09.2005.

This Original Petition coming on this day before this court for hearing the court made the following order:-

The above application is filed to terminate the arbitration Tribunal and to appoint an independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement No.11/HQ/Dy.CE/II/GC/TPJ dated 21.09.2005.

2. Heard, M/s.K.Aparna Devi, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned standing counsel for the respondents.

3.It is the case of the petitioner that the arbitrators appointed by the respondents have either retired or

transferred. As of now there is no arbitral Tribunal. The employees of the respondents were appointed as arbitrators to resolve the disputes and attempts have been made to re-constitute the arbitral Tribunal with serving employees of the respondents.

4. The proceedings commenced on 21.12.2009 with invocation of the arbitration clause of the petitioner. It is noticed that the respondents also decided to comply with the amendments to the Arbitration and Conciliation Act, 2015 by arbitration amendment in 2015 while reconstituting the arbitration. However, attempts have been made only to appoint the serving employees of the respondents.

5. Under these circumstances, the case was adjourned to find out the parties can arrive consensus for appointment of sole arbitrator by the Court.

6. The learned counsel for the respondents mentioned that the Railway being a statutory body having internal restoration for payment of the fees and for arbitration and therefore cannot afford arbitrators other than their panel arbitrators.

7.Considering the fact that the law has been amended as per Section 12(5) r/w VII Schedule to the Arbitration and Conciliation Act, 1996, it would be a paradox to permit the parties to re-constitute the arbitral Tribunal with the Railway employees again merely because the arbitration proceedings had commenced between the amendment to the Act.

8. I am therefore of the view that the ends of justice will be met if a sole arbitrator is appointed to resolve the disputes between the parties.

9.Under these circumstances, Hon'ble Mrs. Justice Chitra Venkataraman, (Retd) High Court, Madras residing at Old No.17-B, New No.31, IV Main Road, Raja Annamalaipuram, Chennai-28 is appointed as a sole arbitrator to resolve the dispute between the parties.

10. It is made clear that the petitioner will bear the entire expenses for the arbitration and in case the petitioner succeeds will be entitled to recover the cost from the respondents.

11. 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. Accordingly, this original petition is allowed.

Sd/-C.S.N.J

24/10/2018

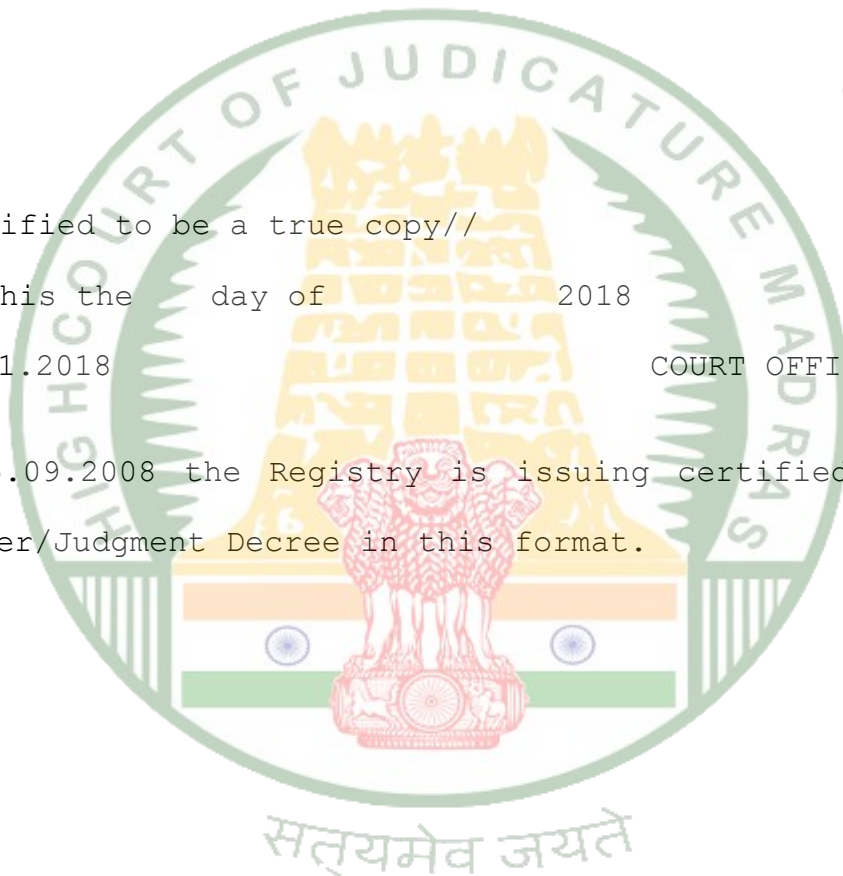
//Certified to be a true copy//

Dated this the day of 2018

JJ 16.11.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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