

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.Nos.788 of 2018

United Construction Company,
Engineering Contractors, V.M.C. Complex,
Wadakkancherry, Thrissur District,
Pincode-680582,
represented by its
Managing Partner, V.C.Elias.

..Petitioner

-VS-

1.General Manager, Southern Railway.
Headquarters Office, Park Town, Chennai,
Pincode-600003.

2.Chief Administrative Officer,
Office of the Chief Engineer(Construction),
Southern Railway, Egmore, Chennai,
Pincode-680008.

3.Chief Engineer, Construction (North),
Office of the Chief Engineer (Construction),
Egmore, Chennai,
Pincode-680008.

4.Union of India, Ministry of Railways, New Delhi,
Rep. By General Manager, Southern Railway,
Head Quarters Office,
Park Town,
Chennai-3.

5. Deputy Chief Engineer (Construction),
Southern Railway,
Podannur, Coimbatore District,
Pincode-641023.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an Arbitrator and refer all the disputes and claims arising out of the Contract Agreement in C.R.Agreement No.46/CN/2013 dated 15.05.2013 to Arbitration and to direct the respondent to pay the cost of the petitioner.

For Petitioner : Mr.M.Venugopal
For Respondents : P.T.Ramkumar

ORDER

This Original Petition is filed by the petitioner seeking to appoint an Arbitrator and refer all the disputes and claims arising out of the Contract agreement in C.R.Agreement No.46/CN/2013 dated 15.05.2013.

2.The petitioner had undertaken to execute certain Gauge conversion work between Pollachi and Palghat Town-Reconstruction of Major Bridge No.150 and other work as per agreement no.46/CN/2013 dated 15.05.2013. According to the petitioner, they have executed the work without any complaints and major work has been completed.. But, due to price variation, as per clause 45 of the special conditions of contract, an amount of Rs,8,49,217/-(Eight Lakh Forty Nine Thousand Two Hundred and Seventeen Only) was due to the petitioner. A final bill

was prepared on 29.08.2016 and an amount of Rs.5,63,261/- was liable to be paid to them. For this they made a claim for a sum of Rs.1,62,82,562/- (Rupees One Crore Sixty two lakh eighty two thousand five hundred and sixty two Only)

3. The applicant made a representation to the respondents for appointment of Arbitrator, by letter dated 20.09.2017. As per the contract, the respondents should have selected the panel of arbitrators and sent it to the petitioner / claimant for selecting the Arbitrator on their side. Even though, the respondents received notice as early as 3rd October 2017, they failed to respond to the same. Hence, the petitioner, approached the High Court of Kerala for appointment of Arbitrator. However, the High Court of Kerala disposed of the petition granting liberty to the petitioner to approach the Jurisdictional Court, namely High Court of Judicature at Madras, by order dated 15.01.2018. Thus, the petitioner has approached this Court by way of the above Original Petition.

4. Till date, the respondent Southern Railways has not sent the panel of Arbitrators to the Petitioner / claimant as per the terms of contract. Since no Arbitrator was nominated by the respondent this Court is inclined to appoint an Arbitrator.

5. I thus appoint **Hon'ble Mr.Justice S.Baskaran, Retd.,**

No.9(NCB), Greenways Road, Chennai-600028, Phone: 9444094414, as the Sole Arbitrator to enter upon reference and

adjudicate the disputes *inter se* the parties. He 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.

6. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

10.12.2018

BKN



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To

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M.GOVINDARAJ, J.

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