

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P. NO.817 OF 2018

K.Narayanan

.. Petitioner

-VS-

1.The General Manager,
Southern Railway,
Head Quarters 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,
Gauge Conversion / I,
Southern Railway,
State Bank of India Road
opp. To Arun Hotel,
Tiruchirapalli - 620 001.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent and impartial

Arbitrator to arbitrate to hear and decide the disputes between the petitioner and the respondent arising out of the Contract No:67/Dy.CE/GC/I/TPJ-ROB/HQ dated 31.05.2017 and to direct the respondents to pay the cost of this petition.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.T.Ramkumar
Standing Counsel for Railways.

* * *

ORDER

This Original Petition is filed by the petitioner to appoint an independent and impartial arbitrator to hear and decide the disputes between the petitioner and the respondent arising out of contract No:67/Dy.CE/GC/I/TPJ-ROB/HQ dated 31.05.2017.

2. The petitioner is a Civil and Transport contractor and entered into an agreement with the respondent for certain works contract.

3. Clause 64 (1)(i) of the agreement specifies resolution of disputes between the parties through Arbitration and clause 64 (3) (a)(ii) defines Arbitration Tribunal, according to which, Railways will send a panel of more than three names of Gazetted Railway Officers and the Contractor will be asked to suggest two names out of the panel for appointment of Contractor's nominee within thirty days, out of which, Railways will appoint an Arbitrator as Contractor's nominee and appoint another Arbitrators either from the panel or from outside the panel, indicating the Presiding Arbitrator from amongst the three Arbitrators.

3. According to the learned counsel for the petitioner, Railways sent panel of Arbitrators by its letter dated 12.06.2018, nominating four retired officers for appointment of an Arbitrator Tribunal. However, the petitioner objected the panel and sent a notice dated 12.07.2018 stating that the panel of retired officers furnished by the Railways are ineligible for appointment of Arbitration Tribunal, in terms of Section 12 (1)(a) and Section 12(5) read with Fifth and Seventh Schedule of the Arbitration and Conciliation (Amendment) Act, 2015. Since there was no reply from the Railways, the petitioner has approached this Court by filing this Original Petition under Section 11 (6) of the Arbitration and Conciliation Act 1996.

4. The respondent Railways have filed a counter stating that the panel of Arbitrators sent by them are eligible and they are competent to Arbitrate the issue.

5. I have considered the rival contention.

6. From a perusal of the panel sent by Railways on 12.06.2018, it is seen that all the officers were retired between 2015 and 2016. The Arbitral panel reads as follows:

1. Shri Arun Bhagra, Retd. AGM/SCR - DOR-2015
2. Shri S. Subrahmanyam, reted. AM9B0/RB-DOR-29.02.2016
3. Dr. Yatindra Pal Singh, reted. AGM/NCR DOR - 31.12.2016
4. Shri Alok Kumar Agarwal reted. COS/CR DOR - 31.10.2016

As per clause 31 of Fifth Schedule, Arbitrators were retired within a period of three years and therefore, they are ineligible as per Section 12(1)(5) of Arbitration and Conciliation (Amended) Act 2015.

7. Under such circumstances, the Original Petition for appointment of Arbitrator is entertained. Accordingly, I appoint **Hon'ble Mr. Justice A.K. Rajan (Retired)**, No. S-79, New No.5, 6th Street, S-Block, Anna Nagar, Chennai - 600040, Mobile:9841052340, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration as well as schedule of expenses which shall be borne by both parties equally. 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.

17.12.2018

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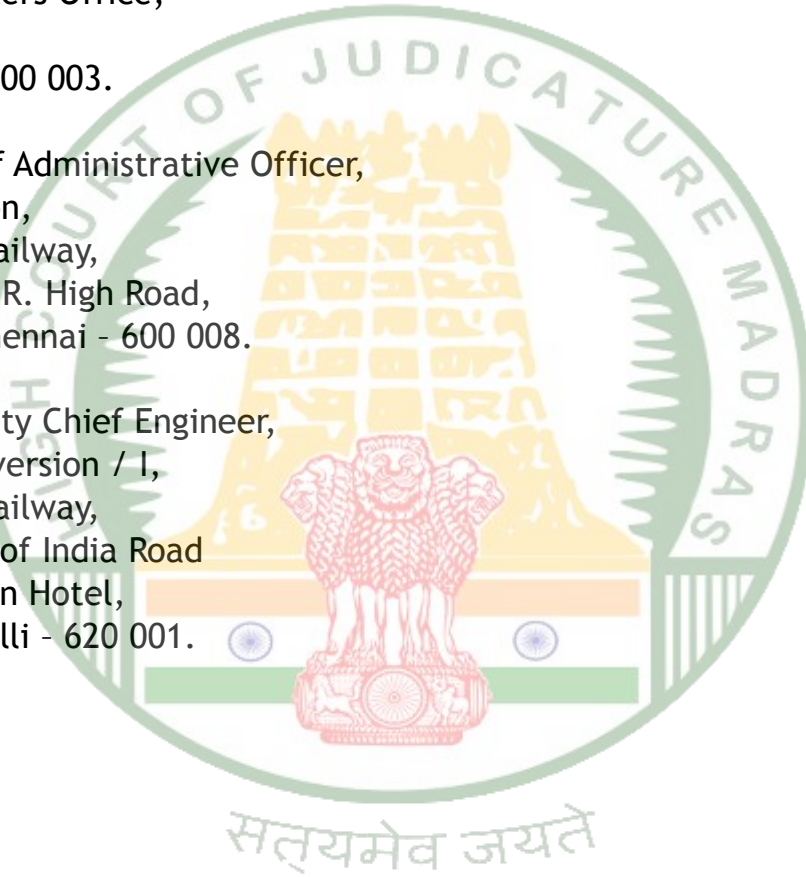
Note: Issue order copy on 31.12.2018.

To

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M.GOVINDARAJ, J.

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