

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NOS.874, 875, 876, 877, 884, 902, 903, 904 AND 905 OF 2018O.P.NO.874/2018

M/s.Ganesh Constructions,
Rep.by its Proprietor Mr.S.Chandrasekaran,
No.23/2A, Chelliamman Koil Street,
Ayanavaram, Chennai - 23. .. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (C&A) West,
Bharat Sanchar Nigam Limited, 'Chennai Telephones',
Presently at No.1, Ganga Nagar,
Kodambakkam Exchange Building, Chennai-24. .. Respondents

सत्यमेव जयते

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated December 1999 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

O.P.NO.875/2018

Telecommunications Consultations India Ltd. (TCIL)
A Government of India Enterprise
Ministry of Communication &
Information Technology
Rep. By its Senior Manager
Southern Regional Office
No.20, Potters Street, Saidapet,
Chennai - 600 015.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager
'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (NP)
Bharat Sanchar Nigam Limited
Chennai Telephones
No.E-5, III Avenue, Anna Nagar East,
Chennai - 600 102.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 24.09.2001 between the parties and to direct the respondents to pay the cost.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.876/2018

M/s.Ganesh Constructions,
Rep.by its Proprietor Mr.S.Chandrasekaran,
No.23/2A, Chelliamman Koil Street,
Ayanavaram, Chennai - 23.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager
'Chennai Telephones'.
No.78, Purasawalkam High Road,
Chennai - 10.

2.The Deputy General Manager (NP)
Bharat Sanchar Nigam Limited
Chennai Telephones
No.E-5, III Avenue, Anna Nagar East,
Chennai - 600 102.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 29.12.2001 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.877/2018

M/s.Ganesh Constructions,
Rep.by its Proprietor Mr.S.Chandrasekaran,
No.23/2A, Chelliamman Koil Street,
Ayanavaram, Chennai - 23.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (C&A) West,
Bharat Sanchar Nigam Limited, 'Chennai Telephones',
Presently at No.1, Ganga Nagar,
Kodambakkam Exchange Building, Chennai-24.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 29.12.2001 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.884/2018

Telecommunications Consultations India Ltd. (TCIL)
A Government of India Enterprise
Ministry of Communication &
Information Technology
Rep. By its Senior Manager
Southern Regional Office
No.20, Potters Street, Saidapet,
Chennai - 600 015.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager
'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (C&A) West,
Bharat Sanchar Nigam Limited, 'Chennai Telephones',
Presently at No.1, Ganga Nagar,
Kodambakkam (Telephone) Exchange,
Chennai-24.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 08.06.2001 between the parties and to direct the respondents to pay the cost.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.902/2018

The RITES Ltd.,
(A Govt. of India Enterprise -
Ministry of Railway)
Rep. By its Senior Deputy General Manager
No.758, Mount Chamber, 1st Floor,
Anna Salai, Chennai - 2.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (C&A) West,
Bharat Sanchar Nigam Limited, 'Chennai Telephones',
Presently at No.1, Ganga Nagar,
Kodambakkam Telephone Exchange
Chennai-24.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 20.03.2001 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.903/2018

The RITES Ltd.,
(A Govt. of India Enterprise -
Ministry of Railway)
Rep. By its Senior Deputy General Manager
No.758, Mount Chamber, 1st Floor,
Anna Salai, Chennai - 2.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (North-West)
Bharat Sanchar Nigam Limited
Chennai Telephones
Presently at No.22, Kellys Road,
Chennai - 10.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 09.01.2002 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.904/2018

The RITES Ltd.,
(A Govt. of India Enterprise -
Ministry of Railway)
Rep. By its Senior Deputy General Manager
No.758, Mount Chamber, 1st Floor,
Anna Salai, Chennai - 2.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (NP)
Bharat Sanchar Nigam Limited
Chennai Telephones
No.E-5, III Avenue, Anna Nagar,
Chennai - 102.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 15.10.2002 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

O.P.NO.905/2018

The RITES Ltd.,
(A Govt. of India Enterprise -
Ministry of Railway)
Rep. By its Senior Deputy General Manager
No.758, Mount Chamber, 1st Floor,
Anna Salai, Chennai - 2.

.. Petitioner

-VS-

1.The Bharat Sanchar Nigam Limited,
Rep.by the Chief General Manager of 'Chennai Telephones'.
No.78, Purasawalkam High Road, Chennai - 10.

2.The Deputy General Manager (O&M) / STM
Bharat Sanchar Nigam Limited
Chennai Telephones
No.16, GST Road, Chrompet,
Chennai - 44.

.. Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to appoint an independent Arbitrator to arbitrate the disputes arising out of the Contract dated 30.01.2001 between the parties and to direct the respondents to pay the cost of the petition.

For Petitioner : Mr.S.Amalaraj
For Respondents : Mr.S.Gopinathan

WEB COPY

COMMON ORDER

These Original Petitions have been filed by the petitioner seeking to appoint an Arbitrator to arbitrate the disputes arising out of the Contracts between 1999 and 2002.

2. The petitioner is a contractor. The petitioner entered into contracts with the respondent between 1999 and 2002. It appears that an Arbitrator was appointed in Arbitration case Nos.10, 11 and 12 of 2007 respectively, and an award was passed on 20.03.2013. The said award was challenged before this Court in O.P.Nos.780, 781 and 782 of 2013 and this Court by its order dated 08.12.2017 set aside the award. Thereafter, the petitioner issued a legal notice dated 01.03.2018 seeking appointment of an independent Arbitrator and the same was acknowledged by the respondent on 05.03.2018. In response to the notice, it appears that on 21.05.2018, the respondent has appointed one Mr.S.Pattabiraman, retired PCE, (Civil) TN as an Arbitrator. However, the materials produced before this Court reveals that the letter dated 21.05.2018 was not communicated to the petitioner herein. Thereafter, by proceedings dated 13.11.2018, the Chief General Manager appointed Mr.S.Patibiraman, retired PCE, (Civil) TN as Sole Arbitrator.

3. In the meantime, the petitioner filed applications for appointment of Arbitrator under Section 11(6) of the Arbitration and

Conciliation Act, 1996, in September 2018. From the letter dated 13.11.2018, it is crystal clear that the appointment of Arbitrator made by the respondents was only after filing the application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator.

4. The learned counsel appearing for the respondents would rely on the Judgment of the Hon'ble Supreme Court in ***SP SINGLA CONSTRUCTIONS PVT. LTD. VS. STATE OF HIMACHAL PRADESH & ANOTHER [CDJ 2018 SC 1212]*** wherein, the Hon'ble Supreme Court has allowed Arbitrator appointed as per the old act to continue regardless of Section 12(5), as amended on 23.10.2015. In that case, the appointment of Arbitrator was made as early as on 11.11.2013 and the first hearing was held on 07.12.2013. Thereafter, several hearings were held. Since the respondent did not appear before the Arbitrator, the Arbitration was terminated as per Section 25 (a) of the Arbitration and Conciliation Act, 1996. The respondents therein sought for appointment of an Arbitrator afresh. The Hon'ble Supreme Court held that there cannot be an appointment of second Arbitrator in respect of the same claim. In view of the same, the termination of the Arbitration was set aside and the Arbitration proceeding was directed to be continued with same Arbitrator as per the unamended provision of the Act.

5. But in the instant case, fresh Arbitrator was appointed on

13.11.2018 as the previous Arbitrator appointed by them was transferred. Secondly, it is not the case of the respondents that Arbitration proceedings was terminated in accordance of Section 25 of the Arbitration Act 1996. Once, an application for appointment of Arbitrator under Section 11(6) was admitted and notice was served on the respondent, the respondents are ceased of the power to appoint an Arbitrator. Further, the Hon'ble Supreme Court has held that the Arbitrator shall be chosen and nominated by the parties from a wider list rather than providing limited option. It is also not clear as to whether the Arbitrator nominated by the respondents are eligible to be appointed in terms of Section 12(5) of the amended provisions of the Act.

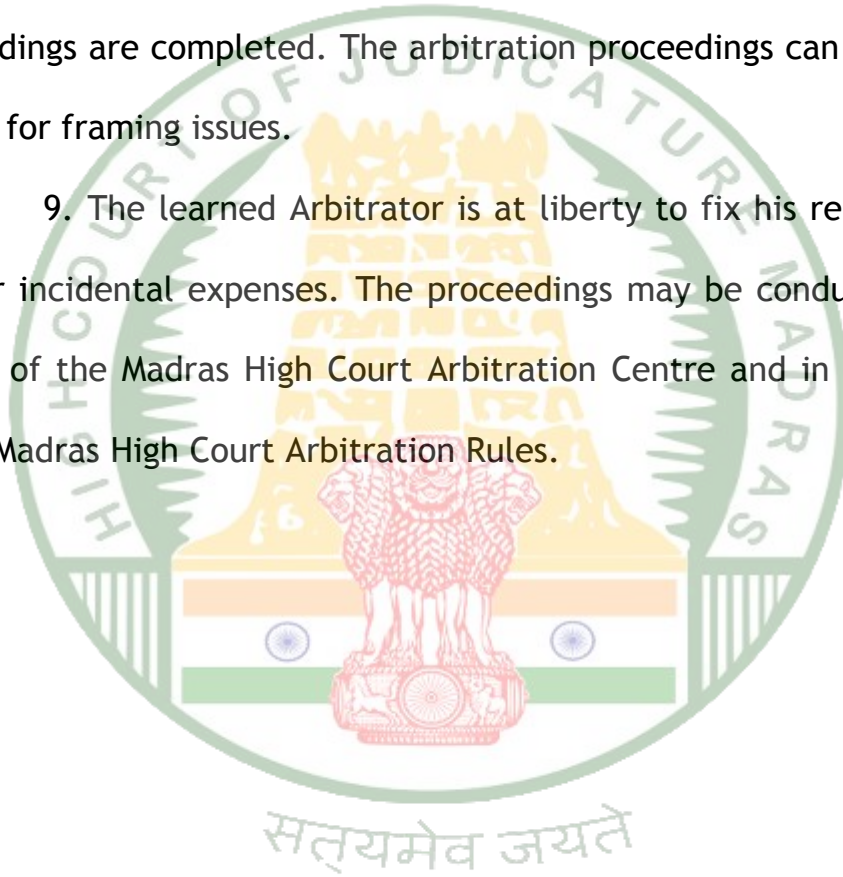
6. It is an admitted fact that there exists an arbitration clause in the agreement entered between the parties and also exists an arbitral dispute which underwent the test in previous round of litigations. Hence in the considered opinion of this Court, an independent Arbitrator can be appointed.

7. Considering the facts and circumstances this Court appoints the Hon'ble Justice Mr.K.Mohanram (Retd. Judge), residing at No.3, Sivakamipuram Second Cross Street, Thiruvannamiyur, Chennai - 41, Phone 9444464646, 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.

8. The learned counsel on both sides submitted that all the case pleadings are completed. The arbitration proceedings can go on from the stage for framing issues.

9. 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.

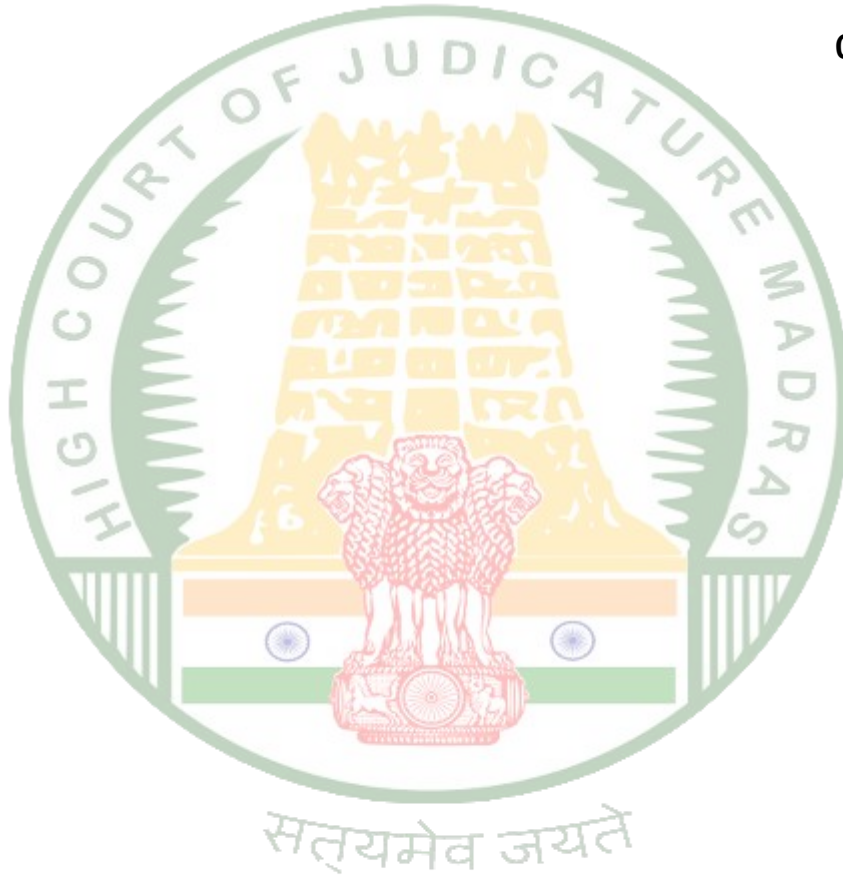


WEB COPY

10. The Original Petitions are ordered accordingly, leaving the parties to bear their own costs.

07.12.2018

BKN



O.P.NOS.874, 875, 876, 877, 884,
902, 903, 904 AND 905 OF 2018

WEB COPY