



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) .No.2141 of 2017

and

C.M.P. (MD) No.10588 of 2017

1.The State of Tamilnadu,
represented by its District Collector,
Sivagangai.

2.The Superintending Engineer,
Highways Circle Office,
Alagar Kovil Road,
Madurai.

3.The Divisional Engineer,
Highways Department,
Sivagangai.

... Petitioners

Vs.

K.P.Selvam

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 13.10.2017 in I.A.No.1 of 2017 in A.C.No.1 of 2017 on the file of the Learned Sole Arbitrator appointed as per order passed in Review. Application.(MD)No.31 of 2016, dated 01.04.2017.

For petitioner : Mr.M.Karuppasamy
Government Advocate

For Respondent : Mr.V.Perumal

O R D E R

The Government of Tamilnadu is the revision petitioner. The respondent is a Class-I Contractor, with whom an agreement was entered into on 20.04.2007. The said agreement was terminated on 09.02.2009. The respondent questioned the order of termination and also claimed damages by filing W.P.(MD)Nos.11330 and 11331 of 2012. The writ petitions were dismissed. Questioning the same, the respondent filed W.A.(MD)No.78 of 2015 and the same was dismissed on 23.02.2015.

2. Aggrieved by the same, Review Application(MD)No.31 of 2016 was filed. While dismissing the review petition, the Hon'ble Division Bench nominated the retired District Judge as the sole



arbitrator and specifically observed that any monetary limit prescribed in the contract would not be a bar for the sole arbitrator to proceed with the matter. This direction was given in the review application (MD)No.31 of 2016 filed by the respondent.

3. The Government filed S.L.P.Civil Diary No.36957 of 2017, questioning the said order. The Hon'ble Supreme Court of India on 05.01.2018, specifically dismissed the S.L.P., after observing that they did not find any legal or valid ground for interference.

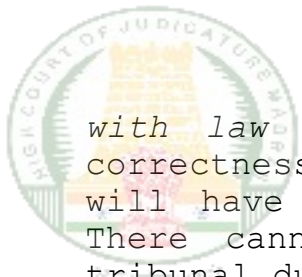
4. Thereafter, the arbitration proceedings commenced. The respondent made a claim for a sum of Rs.2,18,69,861/- (Rupees Two Crores Eighteen Lakhs Sixty Nine Thousands Eight Hundred and Sixty one only) as damages. The revision petitioners filed I.A.No.1 of 2017 in the said arbitral proceedings under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the competency of the arbitrator to arbitrate the dispute between the parties.

5. The revision petitioners wanted the issue of jurisdiction to be decided as a preliminary issue. The learned arbitrator by order dated 13.10.2017 dismissed the said I.A. Questioning the same, this Civil Revision Petition has been filed.

6. As rightly pointed out by the learned counsel for the respondent, this Civil Revision Petition is not maintainable and is liable to be dismissed for at least two reasons. The Hon'ble Division Bench had specifically observed that the arbitrator will decide the dispute between the parties notwithstanding the monetary bar set out in the agreement entered into between the parties. Questioning the same, the revision petitioner moved the Hon'ble Supreme Court, which sustained the order passed by the Hon'ble Division Bench. Thereafter, it was not open to the revision petitioner to file an I.A.No.1 of 2017 before the arbitrator, questioning his competence citing the monetary bar set out in the agreement.

7. This Court can only characterise such an exercise on the part of the revision petitioner as a gross abuse of legal process. It virtually borders on contempt. The learned arbitrator rightly dismissed the said I.A.

8. The present Civil Revision Petitioner has been filed without taking note of the statutory scheme set out in Section 16 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal may rule on its own jurisdiction. It is certainly open to the parties to file an application, questioning the competency of the Arbitral Tribunal. The Arbitral Tribunal is obliged to decide the plea to rule on its own jurisdiction. As per Section 16(5) of the Act, "where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award. A party aggrieved by the arbitral award may make an application for setting aside such an arbitral award, in accordance



with law under Section 34 of the Act." In other words, the correctness of the order passed in terms of Section 16 of the Act, will have to form part of the challenge to the arbitral award. There cannot be a challenge to the competency of the arbitral tribunal during the pendency of the arbitration proceedings.

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9. Therefore this Court holds that this Civil Revision Petition is not maintainable for this reason also. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

SD

ASSISTANT REGISTRAR (CRL SIDE)

TRUE COPY

SUB ASSISTANT REGISTRAR (CS III)

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To:

1.The Arbitrator, Arbitral Tribunal.
Madurai.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

1CC TO THE SPL GOVERNMENT PLEADER SR 78512
1CC TO MR. V. PERUMAL, ADVOCATE SR 78389

NM SKN SAR 3
10/09/2018
3P 5C

ORDER MADE IN
C.R.P. (PD) (MD) .No.2141 of 2017
and
C.M.P. (MD) No.10588 of 2017
13.08.2018