

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.146 of 2014

ORDER:

This is an Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. I have heard the learned counsel for the applicant and the learned counsel for the respondents 1 and 2.

3. Sub-clause (13) of Clause 57 of the Agreement, dated 13.04.2009, between the parties reads as follows:-

All disputes questions or differences arising out of or in any way touching or concerning this agreement (except those the decision thereof is otherwise herein in force specifically provided for) shall be referred to the sole arbitration of any person appointed by the Divisional Railway Manager, Secunderabad Division, Secunderabad subject to aforesaid, the provision of the Arbitration and Conciliation Act, 1996 and the rules made thereunder from time to time shall apply to the arbitral proceedings.

4. Setting out her plea to show that there is cause of action to go for arbitration in relation to the claim made by her, the applicant has demonstrated that there are disputes between the parties. The existence of such disputes is manifest on the basis of the rival contentions and the documents which are produced along with the application.

5. The third respondent was appointed by the agreement authority among the respondents as the sole arbitrator on 27.11.2011 as is evidenced through notice, dated 30.01.2012 issued by the third respondent. The applicant submitted her claim statement. However, no further action proceeded and this Application

has been necessitated because of the enormous delay and demonstrated refusal of the third respondent to proceed with the arbitration.

6. Respondents 1 and 2 filed counter affidavit stating that the sole arbitrator was appointed and therefore, there is no scope for an Application under Section 11 of the Act. Other submissions of respondents 1 and 2 are essentially in the realm of disputes as between the applicant and the Railway establishment represented by the respondents 1 and 2.

7. The learned counsel for the applicant has rightly referred to the decision of the Hon'ble Supreme Court of India in **Union of India vs. U.P.State Bridge Corporation Limited**¹, rendered making a reference to different precedents and concluding that when there is a failure on the part of the arbitral tribunal to act, it gives jurisdiction to exercise its authority under Section 11 of the Act and it would be well within authority to make an order appointing an arbitrator in exercise of power under Section 11(6) of the Act. This is, all the more so, because what is enjoined by sub-section (6) of Section 11 of the Act is "to take the necessary measure". On the facts and circumstances of this case, it is abundantly necessary that such measure is taken by appointing arbitrator and referring the arbitration to such arbitrator.

8. Before parting, it needs to be recorded that this appears to be a case of "mite against the mighty". I am constrained to say this in view of the fact that the total claim made by the applicant; a woman, who was given a contract to run a cycle shed was around Rs.10 or 11

¹ (2015) 2 SCC 52

lakhs initially and the third respondent, who is also an officer of the Railway establishment, had turned a Nelson's eye to the duty to act as an arbitrator, in all fairness, to end the disputes. The very object and purpose of enacting the Arbitration and Conciliation Act, 1996, after repealing the Arbitration Act, 1940, has been baselessly ignored by the third respondent, who at the time of his appointment, was essentially drawing emoluments out of public funds.

In the result, this Application is allowed appointing Sri R.Damodar, Retired District Judge, as the arbitrator to arbitrate on the disputes between the applicant and the respondents 1 and 2 and the said arbitrator shall enter on reference and proceed with, as enjoined by the Act.



THOTTATHIL B. RADHAKRISHNAN, CJ

20.07.2018
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