

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1302 of 2010

M/s.Jennath Roadways,
32A, Officers Colony,
2nd Street, Nehta Nagar,
Chennai 600 029.

... Appellant

Vs

1.Mr.Justice K.Venkatasamy,
Former Judge, Supreme Court of India,
Sole Arbitrator,
75, I Avenue, Indira Nagar,
Chennai 600 020.

2.Bharat Petroleum Corporation Limited,
1, Ranganathan Gardens,
Off: 11th Main Road,
Post Bag No.1212 and 1213
Anna Nagar,
Chennai 600 040

By its Senior Manager Transport (South)

..... Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the Arbitral Award dated 06.12.2005 passed by the first respondent in Arbitration Case No. of 2005 and prays that the same may be set aside.

For Appellant : Mr.M.K.Kabir

For Respondents : R1 - Arbitrator - deceased
R2 - Mr.K.Ethiraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the Arbitral Award dated 06.12.2005 passed by the 1st respondent in Arbitration Case No.. of 2005.

2. The appellant herein initiated an Arbitration proceeding by issuing a notice for referring the dispute for Arbitration as per Agreement dated 25.10.2001, which contemplates resolution of disputes between the appellant and the second respondent by way of arbitration.

3. The appellant herein had sent a notice dated 09.09.2003 and 07.10.2003 respectively to the second respondent. While serving these said notices, the appellant also requested the second respondent to appoint an Arbitrator. Since the second respondent failed to nominate an Arbitrator, the appellant filed O.P.No.708 of 2003 before Hon'ble Chief Justice of this Court. The Hon'ble Chief Justice by an order dated 12.08.2005 in the exercise of jurisdiction under the Arbitration and Conciliation Act, 1996, appointed Hon'ble Mr. Justice K. Venkateswami (Rtd.), Supreme Court as the Sole Arbitrator, (who has since deceased during the pendency of the present appeal). The operative portion of the order reads as follows :

"That the Hon'ble Mr. Justice K. Venkateswami, Judge (Retd.), Supreme Court, residing at 36, First Avenue, Indira Nagar, Chennai, be and is hereby appointed as Sole Arbitrator, who shall issue notice, inquire into the matter and decide the disputed issue by way of arbitration in accordance with the provisions of the Act.

2. That the learned Arbitrator appointed herein shall fix his remuneration and the same shall be shared by both parties in equal proportion.

3. That the petitioner herein, shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the learned Arbitrator appointed herein, towards initial expenses."

4. Even before, the appellant could file a claim petition before the learned Arbitrator, the second respondent filed an objection by exercising a rights under Section 16(2) of the Arbitration and Conciliation Act, 1996, questioning the jurisdiction of the learned Arbitrator. The appellant has also filed a counter and submitted that though the second respondent has objected to the appointment of an Arbitrator, it was submitted that the objection was overruled by the Hon'ble Chief Justice, by an order dated 12.08.2005. The learned Arbitrator has come to the following conclusion that the case cannot be decided by him in his order dated 06.12.2005. The operative portion of the order reads as follows:

"Pursuant to the above the learned counsel for the respondent produced documents in the 3rd hearing on 30.11.2005 to establish that it is for the party aggrieved to refer the dispute straight to the named Arbitrator. These documents were not taken on file as the learned counsel for the claimant Mr.Pugalaenthi objected to mark those documents as Exhibits. The learned counsel for the claimant has not produced any documents to support his stand that it is not the practice for aggrieved contractor to refer the dispute straight to the named Arbitrator. The preliminary issue under consideration can be decided without the above said documents.

For all these reasons, I sustain and uphold the preliminary objections and decide that this Arbitral Tribunal has no jurisdiction to decide the dispute between the parties and the matter if at all, to be referred to the Arbitrator named in the Agreement. Ordered accordingly."

5. This Court, heard learned Senior Counsel for the appellant and learned counsel appearing for the second respondent and also perused the materials placed before it.

6. In the order passed under Section 11(6) of the Arbitration and Conciliation Act, 1996 it is clear that the learned Arbitrator was required to decide the disputed issue in accordance with the provision of the Act. There was no scope for raising the Jurisdictional issue once again.

7. According to the learned counsel appearing for the second respondent, the preliminary objections raised by the respondent were also considered by the learned Arbitrator which was not objected by the appellant and therefore the present appeal was not maintainable. It is evident that under order dated 12.08.2005 in O.P.No.708 of 2003, the learned Arbitrator was appointed to enquire and decide the dispute in accordance with the provisions of the Act. If the second respondent was really aggrieved by the said order dated 12.08.2005, it had to either approach the learned Judge in O.P.No.708 of 2003 for clarification or in alternative file a Special Leave Petition before the Hon'ble Supreme Court to assail said order. Since neither has been done, it was not for the second respondent to file any application under Section 16 of the Act.

8. In view of the above observations, I am of the view that the order passed by the learned Arbitrator deserves to be set aside. Accordingly, the Civil Miscellaneous Appeal stands allowed. Arbitral Award dated 06.12.2005 passed by the first respondent in Arbitration Case No. of 2005 is set aside. Since the learned Arbitrator has also since deceased, liberty is given to the appellant to workout their remedy for appointment of another Arbitrator to decide the dispute in accordance with law. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.1.Mr.Justice K.Venkatasamy,
Former Judge, Supreme Court of India,
Sole Arbitrator,
75, I Avenue, Indira Nagar,
Chennai 600 020.

2. The Senior Manager Transport (South)
Bharat Petroleum Corporation Limited,
1, Ranganathan Gardens,
Off: 11th Main Road,
Post Bag No.1212 and 1213
Anna Nagar,
Chennai 600 040.

3.The Section Officer,
Vernacular Section, Madras High Court.

+1cc to Mr.M.K.Kabir, Advocate Sr.92944
+2cc to Mr.K.Ethiraj, Advocate Sr.92800 and 92801

C.M.A.No.1302 of 2010

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srg 21/01/2020