

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.P. Nos.800 of 2010, 446 of 2011, 59 of 2015 & 61 of 2015

M/s.Harsha Construction
rep.by its Managing Director,
P.Ramesh,
No.70, Hunters Road, Vasu Priya,
Vepery, Chennai-600 112.

... Petitioner in O.P.Nos.800/2010 & 446/2011

M/s.Harsha Construction
No.70, Hunters Road,
Vasupujya, Vepery,
Chennai 600 112
rep.by its
Managing Partner, D.Ramesh

... Petitioner in O.P.Nos.59/2015 & 61/2015

Vs.

1.Union of India rep.by its
The Chief Engineer, MTP(Railways)
Southern Railway, Poonamallee High Road,
Egmore, Chennai-8.

2.Smt.Sujatha Jayaraj
Presiding Arbitrator & FA &
CAO/General/MAS

3.Shri.A.K.Shina
Arbitrator & Chief Engineer/Works/

Southern Railway
Chennai 600 003.

4. Shri.N.K.Toppo
Arbitrator & Chief Works
Manager/Loco Works/
Southern Railway, Chennai 600 023.

... Respondents in O.P.No.800/2010

1. Union of India rep.by its
The Chief Engineer, MTP(Railways)
Southern Railway, Poonamallee High Road,
Egmore, Chennai-8.
2. Smt.Sujatha Jayaraj
Presiding Arbitrator & FA &
CAO/General/MAS
3. Rajendra Prasad
Arbitrator and Chief Engineer/ICF,
Chennai.
4. T.M.Sridhar,
Arbitrator and CSTE/construction/North,
Southern Railway, Egmore, Chennai 600 008.

... Respondents in O.P.No.446/2011

1. Union of India rep.by its
The Chief Engineer, MTP(Railways)
Southern Railway, Poonamallee High Road,
Egmore, Chennai-8.
2. Deputy Chief Engineer/MTP/MTMY,
Construction, Southern Railway,
Egmore, Chennai-600 004.
3. Shri.P.Mohideen Kutty,
Deputy chief Engineer/Construction,

Southern Railway,
Ernakulam, Kerala.

4. Shri.K.A.Ananthasubramanian,
Deputy Financial Adviser & Chief Accounts Officer,
Construction, New Joint office,
S.Railway, Egmore, Chennai-8.

5. Shri.M.K.Subramanian,
Southern Railway,
Deputy Chief Electrical Engineer,
LOCO Works/PER, Chennai.

... Respondents in O.P.No.59&61/2015

Prayer in O.P.No.800/2010: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the Tribunal dated 22.03.2010 as far as the claims of the petitioner is not considered and rejected, made in relation to the disputes arising out of the Agreement No.MTP/Civil/425-04 dated 15.06.2004 between the petitioner and the 1st respondent.

Prayer in O.P.No.446 of 2011: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the Tribunal dated 19.02.200 and additional award dated 05.05.2011 and to direct a fresh tribunal to decide all the issues based on the evidence already submitted by both the party to this tribunal.

Prayer in O.P.No.59&61 of 2015: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the Tribunal dated 17.06.2014, 07.07.2014 and 13.10.2014 as far as the

claims of the petitioner is not considered and rejected, made in relation to the disputes arising out of the Agreement Nos.MTP/Civil/424-04 & MTP/Civil/425-04 dated 23.04.2004 & 15.06.2004 between the petitioner and the 2nd respondent.

For Petitioner in all O.P.s : Mr.P.Subba Reddy

For Respondent in all O.P.s : Dr.S.R.Sundaran for R1

COMMON ORDER

Challenging the awards of the Arbitrator, these Original Petitions have been filed.

2. The preliminary objection raised by the petitioner in these Original Petitions is that the Arbitrator relied upon the report of the Committee. The Presiding Arbitrator in the arbitration is one of a member of the same committee, who filed the report. The member, who filed the report was also appointed as a Presiding Arbitrator in the same matter and therefore, Awards passed were not in according to law and hence, the same was challenged in these Original petitions.

3. This Court without going into the merits of the matter, at the first instance, is of the view that the Presiding Arbitrator is also one of a

party in the committee and gave a report against the petitioner and subsequently the same party became a Presiding Arbitrator in the same matter and decided the issue against the petitioner and therefore, certainly, it is not according to law. It is just like a person deciding his own case.

4. In view of the same, entire awards are liable to be set aside and the matter is remitted back to the General Manager (Railways) to appoint a fresh Arbitrator in this case within a period of one week from the date of receipt of a copy of this order to decide the issue which was covered in the Arbitration. The fresh Arbitrator, appointed, shall complete the proceedings within a period of six months and decide the issue further without influencing the observation made in the earlier Awards.

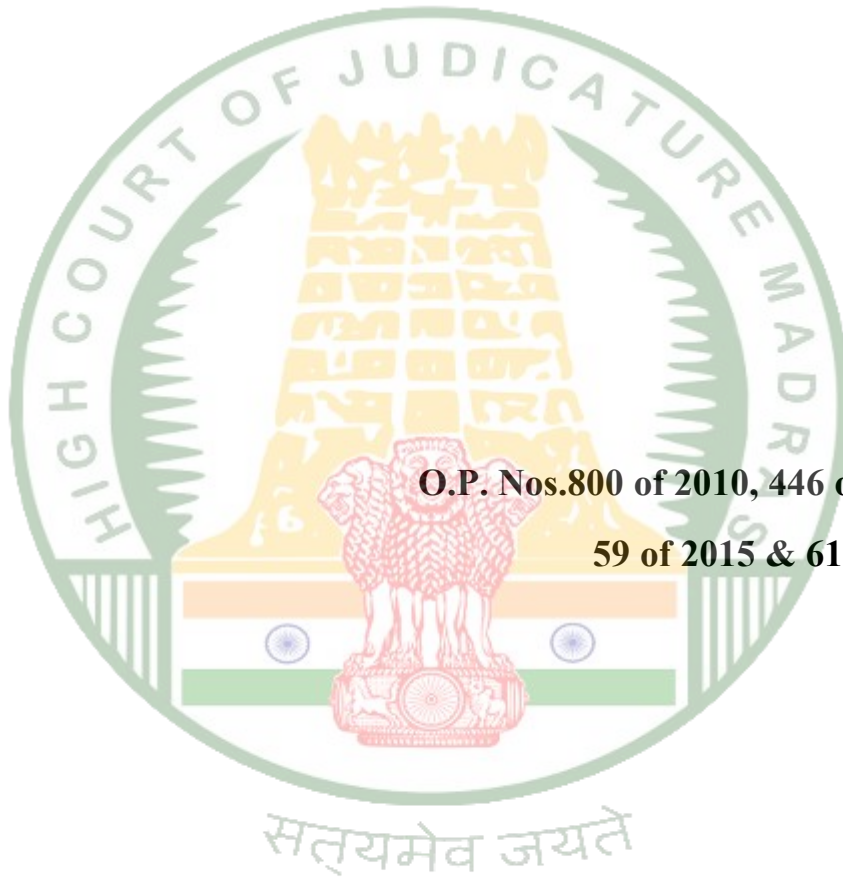
4. All the Original Petitions stand disposed of, with the above observations. No costs.

18.07.2019

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Note: Issue order copy on 22.07.2019.

N.SATHISH KUMAR.,J.
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**O.P. Nos.800 of 2010, 446 of 2011,
59 of 2015 & 61 of 2015**

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