

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1822 OF 2019
AND CMP NO.5999 OF 2019

M/s.Power & Instrumentation (Guj) Ltd.
309, Atlantis Enclave, Ibhash Chowk,
Gurukul Road,
Ahmedabad - 380 052. ... Appellant/Claimant

Versus

Chennai Port Trust
2nd Floor, Old Administrative Office Building
Rajaji Salai,
Chennai - 600 001. .. Respondent/Respondent

PRAYER :

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the order dated 13.02.2019 passed by the Arbitral Tribunal in I.A.No.1 of 2019 in Arb.No.1 of 2018 passed by the learned Sole Arbitrator and appoint an Advocate Commissioner accompanied by a qualified Electrical Engineer as prayed for in IA.No.1 of 2019 in Arb.No.1 of 2018.

For Appellant : Mr.S.Mahesh Kumar
For Respondent : Mr.Haja Mohideen Gisthi

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant seeking to set aside the order dated 13.02.2019 passed by the Arbitral Tribunal in I.A.No.1 of 2019 in Arb.No.1 of 2018 and to appoint an Advocate Commissioner accompanied by a qualified Electrical Engineer as prayed for in I.A.No.1 of 2019 in Arb.No.1 of 2018.

2. The appellant is the claimant. They filed a claim petition before the Arbitrator claiming outstanding payments in

respect of a contract entered between the respondent herein and also for refund of security deposit, bank guarantees and further payment towards loss on overheads / establishment charges and profits etc. During the pendency of the arbitration proceedings, the appellant filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 for appointment of an Advocate Commissioner accompanied by an Electrical Engineer to inspect the Bus Duct supplied and installed by the appellant at the respondent's premises and to file a detailed report. The appointment of Advocate Commissioner was objected by the respondent on the ground that it was unduly protracted by the appellant due to which the respondent could not complete the project of providing power supply to Navy ships which caused hardship to them. The Arbitrator has rejected the claim that the interim application itself is not maintainable, as it could be done only by resorting to Section 27 of the Act. Aggrieved over the same, the appellant is before this Court.

3. From a perusal of the materials, it is seen that inspection was conducted at an earlier instance. In this regard, an observation was made in para 5 of the interim application, which reads as under:

"As the issue in relation to Resin Bus Duct was pending for really long time, the parties with an intention to resolve the issue mutually agreed to and conducted testing of Resin Cast Bus Duct at the site on 03/11/2017 & 04/11/2017 in the presence of persons from M/s.C&S electrical limited and also the representatives of Respondent trust. The test result revealed that the Voltage drop is well within the limit of product catalogue."

4. Learned counsel for the appellant would submit that even though a test was conducted by a third party in the presence of both the parties and the test results reveal that the voltage drop is well within the limit of product catalogue, it was not accepted by the respondent. Therefore, he would insist that only an independent Electrical Engineer can conduct the test and the report filed him can give a quietus to this issue.

5. As directed by this Court on 18.03.2019, learned counsel for the appellant filed a Memo dated 20.03.2019, suggesting the names of Electrical Engineers, as follows:

"A. Mr.Madhavan Revindran
Experience : More than 35 years
Retired Executive Engineer (CPWD)

Presently Project Co-ordinator for IIT Palakkad
Evaluation Committee Member for IISER
Thiruvananthapuram
Mobile No: 9400866600

B. Mr.S.G.Panickker

Experience : More than 25 years
Designation : General Manager (Engg)
Airports Authority of India
Chennai Airport.
Mobile No: 9445568296

C. Mr.M.S.Dahiya

Experience : More than 25 years
Designation : Jt General Manager (Opns)
Airports Authority of India
Headquarters, New Delhi.
Mobile No: 9810031279

D. Mr.Jital Jhaveri

Experience : More than 20 years
Designation : Government Electrical Consultant/
Faculty at Center of Environmental Planning & Technology
Expert in Government tendering & Evaluation
Mobile: 9909903814

E. Mr.S.K.Virman

Experience : More than 30 years
Designation : Rtd Chief Engineer, BSNL
Mobile No: 9868182203

6. Learned counsel for the respondent has also produced a panel of 3 Engineers, who are all retired employees of various Port Trusts, as under:

1. Shri A.Ganesan, G.M (Engineering)
Haldia Dock Complex
Kolkata.
2. Shri Chandan Panigrahi
Dy. Chief Electrical Engineer
Paradip Port Trust
3. Shri M.Sivaraj
Retired SE (Electrical)
Chennai Port Trust

7. From the list of Engineers produced by the appellant, it is seen that the Engineers are either from BSNL or Airports Authority of India and it does not specifically state as to whether they are all Electrical Engineers. Therefore, this Court directed the appellant to consider the panel of Engineers given by the respondent Port Trust. Since they are all retired employees of various Port Trusts, the appellant is not inclined to accept any of those names. Therefore, considering the facts and circumstances of the case, this Court is inclined to appoint an Advocate Commissioner, who can avail the services of an Electrical Engineer from Central Power Research Institute (CPRI) Bangaluru, which is an institution under the control of Ministry of Power, Government of India or any other expert in the field of shore power supply to Vessels.

8. Accordingly, this Court appoints Mr.I. Abrar Mohammed Abdullah, Advocate, having office at 33, Law Chambers, High Court Buildings, Chennai-600 104, Mobile: 9444390950 as Advocate Commissioner to conduct inspection at the respondent's premises, on the instruments erected by the appellant, in the presence of both parties. He can avail the services of an Electrical Engineer from Central Power Research Institute (CPRI) Bangaluru, or any other expert in the field of shore power supply to Vessels. The Advocate Commissioner is directed to file his report along with the report of the Expert, before the Arbitrator. This exercise shall be completed within a period of two weeks from the date of appointment of the Electrical Engineer by the Advocate Commissioner. Remuneration for the Advocate Commissioner is fixed as Rs.1,00,000/- (Rupees One Lakh Only) and the appellant shall bear the expenses for the inspection and remuneration to the Advocate Commissioner, etc., for conducting the test.

9. The Civil Miscellaneous Appeal is disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

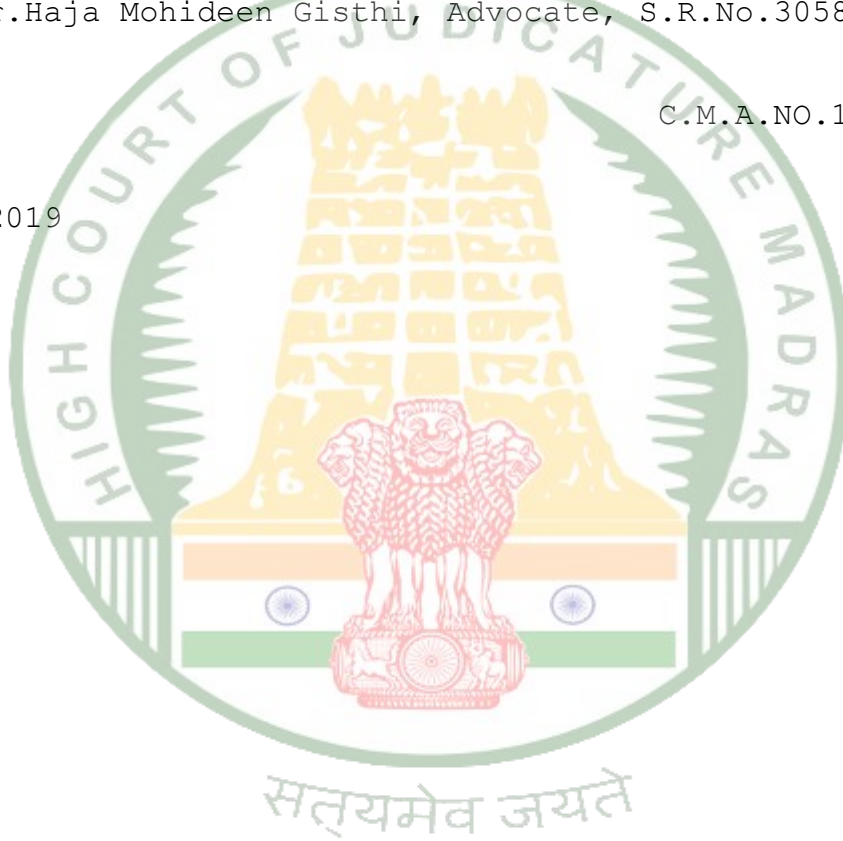
1. The Chennai Port Trust
2nd Floor, Old Administrative Office Building
Rajaji Salai,
Chennai - 600 001.
2. Mr.I.Abrar Mohammed Abdullah, Advocate,
No.33, Law Chambers, High Court,
Chennai-600 104,
Mobile: 9444390950

+1cc to Mr.Rohini Rajkumar, Advocate, S.R.No.30610

+1cc to Mr.Haja Mohideen Gisthi, Advocate, S.R.No.30582

C.M.A.NO.1822 OF 2019

VGII(CO)
CS/15/04/2019



WEB COPY