

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.8.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.199 of 2019
and
C.M.P.No.18026 of 2019

Indian Oil Corporation Ltd.,
Tondiarpet Terminal,
Ennore High Road,
Chennai 600 081. Appellant/ Respondent

Versus

T.Ravichandran
Partner,
R.Karthikeyan Transport,
having office at
8, Drivers Colony,
Kathivakkam High Road,
Korukkupet, Chennai 600 021. Respondent/Applicant

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of
O.S. rules read with Clause 15 of Letters Patent against the
order of this court dated 28.9.2018 in A.No.3779 of 2018.

Prayer in A.No.3779 of 2018:

Application praying that this Hon'ble Court be pleased to To
grant interim stay of all further proceedings made in the order of the respondent dated
16/04/2018 under Ref.No.IOC/TNP/OP/TT MALPRACTICE/6027 pending disposal of
arbitration.

For Appellant : Mr.Mohammed Fayaz Ali

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellant-Indian Oil Corporation Limited has filed this
Original Side Appeal aggrieved by the order dated 28th September
2018 whereby the learned Single Judge has disposed of the
Application under Section 9 of the Arbitration and Conciliation
Act, 1996, on a dispute arising between the Appellant-
Corporation and the Respondent-Contractor, T.Ravichandran,
Partner, R.Karthikeyan Transport.

2. The learned Single Judge, by the impugned order, by which the present Appellant-Corporation is aggrieved, has directed that in view of the Amendment to Section 12(5) of the Arbitration and Conciliation Act, 2015 an independent arbitrator viz., a former District Judge from the panel of Arbitrators to adjudicate the dispute between the parties.

3. Learned counsel for the Appellant Mr. Mohammed Fayaz Ali has drawn our attention to a communication dated 18.8.2018 of the Contractor to the General Manager I/C (Operations) of the Appellant-Corporation giving his consent for appointment of in-house Arbitrator for adjudicating the dispute between the parties.

4. We have heard the learned counsel for the Appellant. Sub-Section (5) of Section 12 as substituted by the Amendment Act, 2015 clearly provides with a non-obstante clause that notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an Arbitrator. Even though the Proviso to that sub-section provides that the parties may, by a specific agreement in writing subsequent to arising of dispute, can waive the applicability of such sub-section, we are satisfied that the communication of the Transport Contractor dated 18.8.2018 cannot be said to be a free consent for appointment of an Arbitrator, who is an employee of the Appellant-Corporation. An independent Arbitrator like a former District Judge will always be better suited for adjudicating the dispute independently and will be in consonance with the letter and spirit of sub-section (5) of Section 12 of the Act.

5. Therefore, we are not inclined to interfere with the order passed by the learned Single Judge. The Appeal is devoid of merits and is liable to be dismissed. Accordingly, it is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

ssk.

+1cc to Mr. Mohammed ali, Advocate SR.No. 73282

O.S.A.No.199 of 2019

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A.SK(01/10/2019)