

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.684 of 2019

Sri Ayyanarappan & Co.,
Railway Contractor
rep. by C.Rathinam,
No.79, Naripallam Sikkampatty,
Omalur (TK), Salem-636 309.

.. Petitioner

Vs.

1. The General Manager,
Southern Railways,
Head Quarters,
Park Town, Chennai.

2. The Principal Chief Engineer,
Southern Railways,
Head Quarters,
Park Town, Chennai.

3. Divisional Railways Manager,
Southern Railways,
Madurai.

4. Sri Sugind Surendran,
Presiding Arbitrator &
Sr, DEE/G/MDU.

5. Sri S.M.V.Saravanan (Arbitrator)
Southern Railways, EDPM/MDU.

6. Sri.S.Manoharan (Arbitrator),
DV.CE. and House Keeping,
Manager MAS

.. Respondents

* * *

Prayer : Petition filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, praying to terminate the mandate of respondents 4 to 6 and appoint an independent and impartial Arbitrator/Arbitrators to adjudicate, settle and resolve the disputes between the petitioner and the respondents 1 to 3 arising out of the contract MDU/423/2011, dated 15.11.2011.

* * *

For Petitioner : Mr.T.Thangadurai

For Respondents : Mr.P.T.Ramkumar
Standing Counsel

ORDER

The petitioner has instituted this Original Petition seeking for the termination of the mandate of respondents 4 to 6 and appointment of an independent and impartial Arbitrator/Arbitrators to adjudicate, settle and resolve the disputes between the petitioner and the respondents 1 to 3 arising out of the contract MDU/423/2011, dated 15.11.2011.

2. The brief facts of the case, which are necessary to adjudicate upon this petition, run infra :

2.1. The petitioner was awarded with the contract work by the respondents 1 to 3 and an agreement dated 15.11.2011 was entered into in this regard. The petitioner, after completing the work in

December 2013 itself, raised the final bill to the tune of Rs.12,90,151/-, however, there were outstanding amounts to be paid by the respondents 1 to 3.

2.2. Thus, the petitioner invoked the arbitration clause and the Arbitral Tribunal was constituted on 24.11.2015, however, the first sitting was held only on 21.03.2016, after repeated rescheduling. In the second sitting held on 18.04.2016, the Presenting Officer of the respondents 1 and 2 filed counter-statement, which was recorded in the minutes of even date besides stating that "regarding claim No.1, 2 and 3 there is no dispute between the claimant and the presenting officer". Further, in the same Minutes, the Arbitral Tribunal issued the following direction taking into account the fact that the case is very old, i.e., more than two years, at that time :

"Since the case is very old i.e. more than two years, the presenting officer is advised to complete the process of signing final rider agreement and passing of final bills within a period of one month."

2.3. The Presiding Arbitrator in the letter dated 17.08.2016 issued the following directions :

"Further to the above references and based on the minutes of Arbitration proceeding held on 18.04.16, it has be (sic) agreed by the presenting officer that the process of signing final rider agreement and passing of final bills will be completed within a month's time. But so far there is no progress in this regard."

Moreover a letter has been received from the counsel to the contractors requesting to pass the final bills as per the directions given by the Tribunal. Hence it is advised to expedite the signing of final rider agreement and passing of bills so as to fix the next date of hearing to complete the arbitration proceedings at the earliest."

2.4. Accordingly, the third sitting was scheduled on 22.11.2016. Subsequently, a letter dated 31.03.2017 was addressed to the petitioner by the office of the second respondent seeking his consent for switching over the existing ongoing arbitration case to the Arbitration and Conciliation (Amendment) Act, 2015, which was also replied to giving consent by the petitioner immediately. But there was no response from the official respondents thereafter and there was no progress before the Tribunal.

2.5. In the above circumstances, the petitioner through its Advocate sent a notice dated 28.11.2018 to the first respondent calling upon them to pay the final payment with interest, SD and PVC within 15 days from the date of receipt of a copy of the said notice, based on which, a direction was issued by the first respondent on 26.11.2018 to the Tribunal to take necessary action to finalise the case and publish an award early to avoid further litigation. However, since one of the Arbitrators superannuated on 30.06.2018, a letter was addressed by the first respondent for effecting substitution.

2.6. The learned counsel for the petitioner again sent a notice dated 27.05.2019 seeking for adjudication of the disputes within 15 days. Since there is no progress even thereafter, the petitioner is before this Court invoking Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (in short, "the Act") seeking for the aforesaid relief.

3. Heard the learned counsels on either side. Learned Standing Counsel for the Railways produced a copy of the proceedings of the first respondent dated 14.08.2019 substituting the Arbitrator in the place of the erstwhile Arbitrator, who retired from service on superannuation and submitted that the same has been communicated to the petitioner.

4. It is to be stated that the first sitting of the Arbitral Tribunal was held on 21.03.2016. In the second sitting held on 18.04.2016, the Presenting Officer of the respondents 1 and 2 filed counter-statement and the Arbitral Tribunal held that there is no dispute between the claimant and the presenting officer with respect to the claim No.1, 2 and 3 and thus, the Tribunal issued the certain directions noting that the dispute was more than two years old at that time. The Presiding Arbitrator in the letter dated 17.08.2016 advised to expedite the

signing of final rider agreement and passing of bills so as to fix the next date of hearing to complete the arbitration proceedings at the earliest. But till the retirement of one of the Arbitrators on 30.06.2018, there is no progress in the proceedings. In fact, after such retirement, a direction was issued by the first respondent on 26.11.2018 to the Tribunal to take necessary action to finalise the case and publish an award early to avoid further litigation, without even knowing the fact that one of the Arbitrators retired on superannuation. Even thereafter, only on 14.08.2019, the appointment of the substituted Arbitrator was made by the official respondents.

5. At this juncture, it is apposite to quote the judgment of the Hon'ble Apex Court in **ICOMM Tele Ltd. v. Punjab State Water Supply and Sewerage Board, (2019) 4 SCC 401**, wherein, while speaking of the object of the arbitration act, it was held as follows :

"25. Several judgments of this Court have also reiterated that the primary object of arbitration is to reach a final disposal of disputes in a speedy, effective, inexpensive and expeditious manner. Thus, in *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.*, (2017) 2 SCC 228 :

"39. In *Union of India v. U.P. State Bridge Corpn. Ltd.* (2015) 2 SCC 52, this Court accepted the view [Indu Malhotra, O.P. Malhotra on the Law and Practice of Arbitration and Conciliation (3rd Edn., Thomson Reuters, 2014).] that the A&C Act has four foundational pillars and

then observed in para 16 of the Report that:

'16. First and paramount principle of the first pillar is 'fair, speedy and inexpensive trial by an Arbitral Tribunal'. Unnecessary delay or expense would frustrate the very purpose of arbitration. Interestingly, the second principle which is recognised in the Act is the party autonomy in the choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have agreed to, that has to be generally resorted to."

(emphasis in original)

26. Similarly, in *Union of India v. Varindera Constructions Ltd.* (2018) 7 SCC 794] , this Court held:

"12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as the Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject-matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject-matter of arbitration unless injustice is caused to either of the parties."

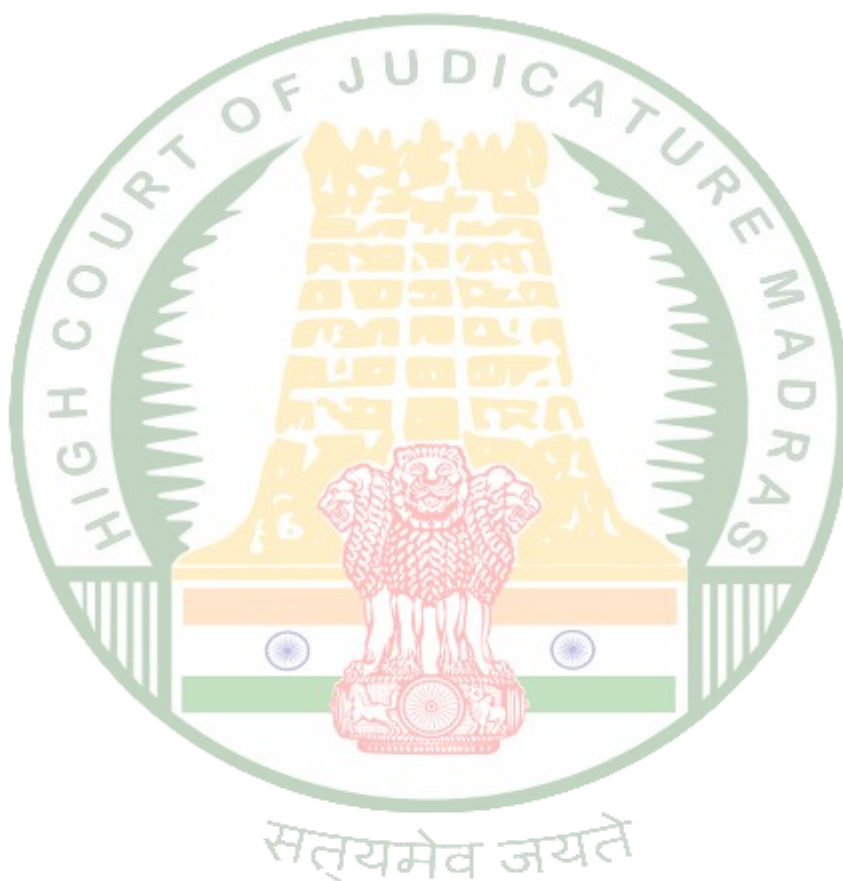
6. A perusal of the above judgments would go to show that the primary object of arbitration is to reach a final disposal of disputes in a speedy, effective, inexpensive and expeditious manner. Unnecessary delay or expense would frustrate the very purpose of arbitration. However, the facts narrated above would portray the sorry state of affairs prevailing in the snail's pace arbitration is being conducted by the Railways in the instant case.

7. However, without expressing any opinion, taking into consideration the submissions of the learned Standing Counsel for the Railways that the Arbitrator is substituted and the Tribunal is reconstituted, for which, learned counsel for the petitioner has no objection, this Court approves the appointment of Mr.Salim Javed, Dy.FA & CAO/G/MAS as an Arbitrator in the place of Mr.S.M.V.Saravanan, erstwhile Arbitrator and also the reconstituted Arbitral Tribunal. Accordingly, the Arbitral Tribunal is directed to continue the proceedings from where it was left and upon hearing the parties pass an award as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of the order.

8. The Original Petition is ordered accordingly. The parties shall bear their own costs.

15.10.2019

Index : Yes / No
Internet : Yes
gg



WEB COPY

PUSHPA SATHYANARAYANA, J.

99



O.P.No.684 of 2019

WEB COPY

15.10.2019