

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.963 of 2019

M/s.High End Quality Construction (P) Ltd
PWD & CPWD Contractors rep by its
Managing Director T.Sudha
No.1, Bypass Road
Karaikal 609 602.

... Petitioner

VS.

1.The Chief Engineer
Public Works Department
Government of Puducherry
Puducherry.

2.The Superintending Engineer Circle-II
Public Works Department
Government of Puducherry
Puducherry.

3.The Executive Engineer
Yanam Division
Public Works Department
Yanam.

... Respondents

Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent Sole Arbitrator to adjudicate upon the claims of the petitioner as per the Arbitration Application dated 17.08.2019 submitted by the petitioner to the 1st respondent herein viz., the

Chief Engineer, Public Works Department, Government of Puducherry as per the Agreement No.22/PW/YNM/2017-18 dated 15.06.2017 and as per Clause 25 of the General conditions of the Contract for Public Works 1996 and as amended Act 2015, award cost of this petition and pass such further order or orders as deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.N.Thiagarajan

For Respondents : Ms.V.Usha,
Additional Govt. Pleader (Puducherry)

ORDER

Mr.N.Thiagarajan, learned counsel on record for petitioner and Ms.V.Usha, learned Additional Government Pleader (Puducherry) on behalf of all the three respondents are before this Court.

2. Instant 'Original Petition' ('OP' for brevity) is under Section 11 of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A and C Act' for the sake of brevity) with a prayer for appointment of an Arbitrator i.e., for constitution of Arbitral Tribunal qua an 'Arbitration Agreement dated 15.06.2017, bearing Reference No.22/PW/YNM/2017-18' (hereinafter 'said Agreement' for brevity).

3. This Court is informed without any disputation or contestation that clause 25 of the said Agreement is the Arbitration Agreement between the parties being Arbitration Agreement within the meaning of Section 7 of A and C Act. In other words, Arbitration Agreement between the parties within the meaning of Section 7 of A and C Act, is in the form of a clause in said Agreement. This clause being clause 25 reads as follows:

'CLAUSE 25: Settlement of disputes and Arbitration:

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision appeal to the Chief Engineer, who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied this decision, the contractor shall within a period of 30 days from receipt of decision, give notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable adjudication by the arbitrator.

(ii) Except where the decision has become final, binding and conclusive in terms Sub-Papra (i) above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer. P.W.D incharge the work or if there be no Chief Engineer, the administrative head of the said P.W.D. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall appointed in the manner aforesaid. Such person shall be entitled to proceed with reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a .. disputes with amounts claimed in respect of each such dispute along with the .. for appointment of arbitrator and giving reference to the rejection by the Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by Chief Engineer P.W.D. or the administrative head of the PWD, as aforesaid .. act as arbitrator and if for any reason that is not possible, the matter shall be referred to arbitration at all.

It is also a terms of this contract that if the contractor does not make any dem.. appointment of arbitrator in respect of any claims in writing

as aforesaid within ... days of receiving the intimation from the Engineer-in-Charge that the final ready for payment, the claim of the contractor shall be deemed to have been ... and absolutely barred and the Government shall be discharged and released liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 (26 of 1996) and as amended in January or any statutory modifications or re-enactment thereof and the rules made under and for the time being in force shall apply to the arbitration proceeding in this clause.

It is also a terms of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/- the arbitrator shall give reasons for the award.

It is also a terms of this contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties or in such other manners as may be determined by the arbitrator.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties or in such other manners as may be determined by the arbitrator. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.'

4. Both learned counsel very fairly submitted in unison that they

agree for appointment of an Arbitrator and both the learned counsel also agree on the following sole Arbitrator:

Thiru S.Raghunathan, M.Tech
Chief Engineer (Retd.) - P.W.D.
Plot No.20, Sivaji Street, Shanthi Nagar
Lawspeth, Puducherry - 605008.
E-mail : ragu.pwdpy@gmail.com
Mobile : 094863-06033.

5. As there is no disputation or contestation between parties regarding existence of arbitration agreement and as there is consent/consensus between the parties regarding appointment of a sole Arbitrator, it is not necessary to dilate any further on factual matrix.

6. Aforesaid individual is appointed as sole Arbitrator, he is requested to enter upon reference with regard to arbitral disputes that have arisen between the parties qua said Agreement, proceed with the arbitration in accordance with A and C Act, more particularly in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017 and pass an award within the time lines stipulated in A and C Act.

Instant OP is disposed of on above terms. No costs.

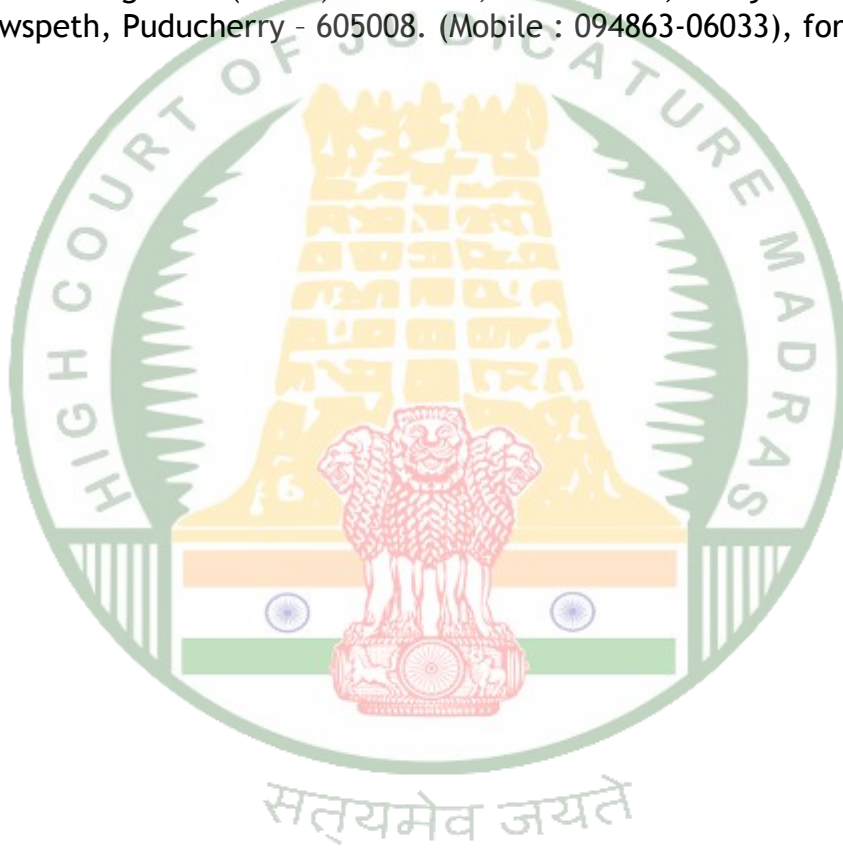
16.12.2019

Speaking order: Yes/No

Index: Yes/No

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Note: Registry is directed to send a copy of this order to Thiru S.Raghunathan, M.Tech, Chief Engineer (Retd.) - P.W.D., Plot No.20, Sivaji Street, Shanthi Nagar, Lawspeth, Puducherry - 605008. (Mobile : 094863-06033), forthwith.



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M.SUNDAR.J.,

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