

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NO.885 OF 2018

Mr.K.S. Baburaj,

.. Petitioner

Vs

1. The Union of India,
represented by the General Manager,
Southern Railway, Park Town,
Chennai-3.
2. The Chief Administrative Officer (Construction),
Southern Railway, Periyar EVR High Road,
Egmore, Chennai-8.
3. The Chief Engineer (Construction/East),
Southern Railway, Office of the CAO,
Periyar EVR High Road, Egmore, Chennai-8.
4. The Deputy Chief Engineer/CN/I/MAS,
Construction, Southern Railway,
near my Lady's Garden, Chennai-3.

..Respondents

Prayer: Petition filed under Section 11 of the Arbitration & Conciliation Act, 1996 to appoint an arbitrator and refer all the claims arising out of the Agreement No:16/Dy.CE/CN/I/MAS/2015 dated 29.2.2016 to arbitration.

For Petitioner : Mr.S.Amalaraj

For Respondents : Mr.P.T.Ramkumar
Standing counsel for Railways

ORDER

The petitioner and the respondent Railways entered into a contract under Agreement No.16/Dy.CE/CN/I/MAS/2015 dated 29.2.2016 for execution of the following works.

“MAS-GDR Sec-proposed 3rd and 4th line between Attipattu Pudunagar and Attipattu Stations-proposed linking of Permanent way, Assembling of points and Crossings and its allied works.”

2. Dispute arose between both parties arising out of the contract, pursuant to which, the petitioner vide its notice dated 21.5.2018, foreclosed the contract and sought for appointment of an independent arbitrator as per Section 12(5) r/w.Provisos 1 and 2 of the VII Schedule of the arbitration and Conciliation Act, 1996 (amended).

3. Learned counsel for the petitioner would submit that he issued a notice invoking arbitration clause on 21.05.2018 wherein it was stated that in the event of the first respondent failing to appoint an independent arbitrator within the statutory period of 30 days from the date of receipt of this notice, then the petitioner will approach the High Court for appointment of independent arbitrators, to which, the respondents vide their reply dated 5.7.2018 instructed the petitioner to waive the applicability of Section 12(5) of

the Arbitration and Conciliation Act, 1996. He would further submit that inspite of his notice dated 21.5.2018 requesting to appoint independent arbitrators, the Railways failed to appoint independent arbitrators. Thus he prayed for appointment of an independent arbitrator under Section 11 of the Arbitration and Conciliation Act.

4. As per the General Conditions of Contract, the Railways shall forward a panel of arbitrators from which the respondent shall choose two of the arbitrators. Among them, the railways would choose one and constitute an arbitral panel. But even though the petitioner has sought for appointment of arbitrator, the Railway failed to communicate the panel as per the terms of the contract within the stipulated time. Therefore, it is a fit case to exercise the power under section 11 of the Arbitration and Conciliation Act to appoint an arbitrator.

5. Accordingly, I thus appoint **Justice K.Venkataraman, Former Judge of this Court, residing at L-Block, No.125, East Anna Nagar, Chennai - 600 102**, as the sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, after issuing notice to the parties

and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

6. The Original application is allowed, leaving the parties to bear their own costs.

30.01.2019

msr/maya/tk

Index:Yes/No

Internet:Yes/No

speaking order/non-speaking order

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M.GOVINDARAJ, J.

msr/tk



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