

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P. No.1124 of 2018

M/s. ARSS Infrastructure Projects
Ltd.
Mancheswar Industrial Estate,
Bhubaneswar, Odhisha

.. Petitioner

-vs-

Union of India, Department of Railway,
represented through General Manager,
Southern Railway, Park Town,
Chennai 600 003

.. Respondent

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 for passing appropriate order in constituting an Arbitration Tribunal comprising of any of the Engineering person from the panel of Indian Road Congress or Institute of Engineers or any Hon'ble (Retd.) Judge of this Court

For Petitioner : Mr.K. Sathish Kumar

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

ORDER

This petition is filed seeking for passing appropriate order in constituting an Arbitration Tribunal comprising of any of the

Engineering person from the panel of Indian Road Congress or Institute of Engineers or any Hon'ble (Retd.) Judge of this Court to resolve the disputes between the parties.

2. Heard both sides.

3. The applicant is a public limited company registered under Registrar of Companies, Orissa.

3.1 The applicant entered into an agreement with the respondent bearing No.33/CN/09 on 16.3.2009 for performing the work viz., Gauge conversion between Pollachi and Palghat Jn.- proposed reconstruction of major bridge Nos.89, 147 and 150 (including sub-structure and superstructure) and forming Earth work in approaches, protective works etc. in between Meenachipuram and Palghat Town Stations Reach-II.

3.2 Since the work could not be completed within the time stipulated under General Conditions of Contract, the respondent terminated the contract under clause 62 of General Conditions of Contract dated 17.4.2012.

3.3. The applicant vide its letter dated 27.4.2012 and 7.8.2013 requested the respondent to take a decision on the matter of appointment of arbitrator within 30 days as per clause 64 of the

Contract.

3.4 On 11.3.2014, an Arbitration Tribunal was constituted by the General Manager constituting 1. Shri Rakesh M.Gupta, CMM/M, Southern Railway, Ayanavaram, Chennai and Presiding Arbitrator (2) Shri Mohammed Latief Khan , CE/Construction/S & RB, O/o. Chief Administrative Officer, Chennai -8 and 3) Smt.Usha Venugopal, Financial Adviser and CAO Southern Railway, Chennai 600 003.

3.5 During the course of arbitration proceedings, an amendment was brought into Arbitration and Conciliation Act through Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23.10.2015, pursuant thereto, by a communication dated 27.12.2016, the applicant requested the respondent to give his consent for conducting arbitration proceedings under newly amended act. But the respondent vide its letter dated 15.3.2017 rejected the request of the applicant and requested the applicant to submit a consent as per the format enclosed to that letter within 30days, in response to which, the applicant issued a letter dated 27.3.2017 requesting for shifting of arbitration case to the provision of New Arbitration Act and to constitute a fresh arbitration tribunal comprising up of persons who are in no way connected with Railways or Railway undertaking works.

3.6. Again on 10.8.2017, the applicant caused a legal notice dated 10.8.2017 reminding the respondent to take decision on

constituting fresh arbitral tribunal. Since there was no progress, the applicant has sent a letter dated 16.1.2018, calling upon the respondent to give instructions to recommence arbitration proceedings through existing arbitration tribunal. Even though the letter was received by the respondent, they have not taken any decision till date. Due to the delay caused by the respondent in recommencing arbitration proceedings, the applicant is before this Court seeking for constituting arbitral tribunal.

4. Admittedly, the Railways have received the representation of the applicant dated 16.1.2018, but has not taken any decision within the specified time limit stipulated in the General Conditions of Contract. In the circumstances, this Court is inclined to appoint an independent arbitrator. I have perused the communications exchanged between the parties. The respondent has caused inordinate delay in recommencing the arbitration proceedings as per the newly amended Act. Considering the facts and circumstances of the case, this Court is inclined to appoint a sole arbitrator to enter upon the reference.

5. Accordingly this court appoints Justice R. Balasubramanian, former Judge of this Court residing at No.5, Tiger Varadachari 1st Main Road, Kalashetra Colony, Besant Nagar, Chennai-90 (PH:044-2446669) 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. Arbitration proceedings shall be conducted as per the provisions of the newly amended Act.

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

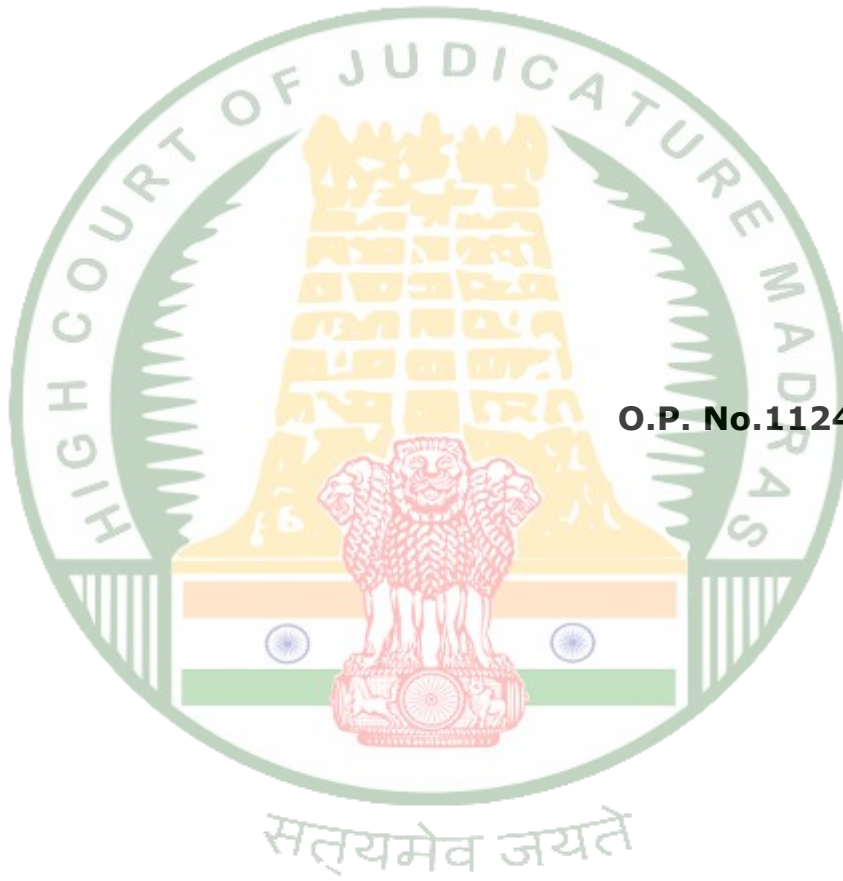
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Index:Yes/No
Internet:Yes/No
speaking order/non speaking order

M.GOVINDARAJ, J.

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