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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.A. (MD) No.355 of 2019

in WP(MD) 2734 of 2019

C.M.P. (MD) No.2969 of 2019

I.Vetrivel

: Appellant/Petitioner

Vs.

1.The Superintending Engineer,
National Highways Circle,
Madurai.

2.C.Kandasamy

: Respondents/Respondents

PRAYER: Appeal is filed under Clause 15 of Letters Patent against the order dated 12.02.2019 made in W.P.(MD) No.2734 of 2019.

Prayer in WP(MD). 2734 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in Lr.No.12/2016/JDO dated 16.08.2018 quash the same and consequently direct the 1st respondent to appoint a new Arbitrator on behalf of the Authority and in turn to appoint a third Arbitrator as per the agreement and to resolve the dispute between the petitioner and the 1st respondent within the stipulated time as may be directed by this Honble Court.

For Appellant

: Mr.Veera Kathiravan

Senior counsel for

M/s.Veera Associates

JUDGMENT

P.N.PRAKASH, J

This appeal arises under an arbitration that has been initiated by the National Highways Department. The Department nominated one Mr.C.Kandasamy as an Arbitrator and the appellant also has a right to nominate a person of his choice to the arbitration panel. While that being so, the appellant attributed bias against Mr.C.Kandasamy and gave a representation challenging



his nomination by the Highways Department. Thereafter, the appellant filed W.P.(MD) No.2734 of 2019 for a direction to recall the nomination of Mr.C.Kandasamy, which has been dismissed by the learned single Judge of this Court on 12.02.2019, aggrieved by which, the appellant is before this Court.

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2. Heard Mr.Veera Kathiravan, learned Senior Counsel for the appellant.

3. The learned Senior Counsel submitted that Mr.C.Kandasamy had an occasion to deal with this contract and therefore, there will be bias against the appellant. He also drew the attention of this court to a communication dated 16.08.2018 sent by the Superintending Engineer enclosing a report of Mr.C.Kandasamy, wherein, Mr.Kandasamy has stated as follows:

"2.According to the Claimant's letter quoted, Ministry had conveyed the Technical, Financial Sanction and Administrative Approval in their letter dated 07.02.2014, I don't remember my involvement/extent of involvement in this Project sanction as DG(RD) under the then Delegation of Powers; and I retired by end January, 2014."

Therefore, the learned Senior Counsel submitted that the appellant will not get justice before the arbitral Tribunal.

4. We are unable to persuade ourselves to agree with this submission, because the jurisdiction of the writ Court to interfere in matters of this nature is indeed very narrow. As rightly pointed out by the learned single Judge in the impugned order, there is a procedure adumbrated under Section 13(2) of the Arbitration and Conciliation Act to impeach the appointment of an arbitrator.

5. In our view the Arbitration and Conciliation Act is a self-contained Code and the writ Court should loath to interfere in such matters and refrain from impeding the progress of arbitral proceedings. We do not find any infirmity in the order passed by the learned single Judge warranting interference.

6. In the result, the writ appeal is dismissed as being devoid of merits. However, liberty is given to the appellant to work out his remedy in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To
The Superintending Engineer,
National Highways Circle,
Madurai.

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+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-55847[F] dated
22/03/2019)

RR

Order made in
W.A. (MD) No.355 of 2019
21.03.2019

KM/ (03.04.2019) 3P 3C