

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Arb.Appln.No.53 of 2018

O R D E R:

Heard both sides.

2. This Arbitration Application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to decide the disputes between the applicant and respondent arising out of and in relation to License Agreement dt.25.05.2009 executed between the applicant and the President of Union of India represented by the Divisional Engineer/Lines, South Central Railway, Hyderabad Division, Secunderabad.

3. Clause(14) of the said License Agreement states as under:

“In case of any doubt, difference or dispute shall arise between the licensees on the one hand and the Government on the other hand, as to the true intent of these presents or of any article, clause or thing herein contained, even in every such case, the doubt, difference or dispute shall be referred to the General Manager of the administration and his decision thereon shall be final, binding and conclusive.”

4. Alleging that there has been unilateral increase in the license fee by the respondent, the applicant addressed a letter dt.03.08.2017 to the Divisional Engineer/Lines, South

Central Railway, Hyderabad Division invoking clause(14) and requesting the dispute to be referred to Arbitration for fixation of fair license fee and/or to nominate an Arbitrator as per the Arbitration and Conciliation (Amendment) Act, 2015 for adjudication of the said dispute about the revision of license fee.

5. Thereafter, there was no response from the respondent.

6. Applicant then invoked Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court for Trial and Disposal of Commercial Disputes at Hyderabad in C.O.P. No.182 of 2017 to restrain the respondent from interfering with the peaceful possession of the petitioner in the subject property.

7. Counter affidavit was filed by the respondent there in admitting in para 18 that as per the License Agreement between the parties executed on 25.05.2009, there is an arbitration clause which can be invoked by either of the parties.

8. On 05.02.2019, the said application was ordered and interim relief was granted by the Commercial Court.

9. Thereafter, the applicant has invoked the jurisdiction of this Court under Section 11 in this application seeking appointment of Arbitrator alleging that there is a License Agreement dt.25.05.2009 between the parties containing an arbitration clause; that there is a dispute between the parties; and that it requires to be resolved under clause(14) of the said agreement because the respondent had failed to appoint an Arbitrator in response to the legal notice dt.03.08.2017 issued by the applicant.

10. Counsel for the respondent contended that though in the counter affidavit it was contended that there was no arbitration clause, in view of the admission contained in para 18 of the counter filed in COP.No.182 of 2017 that there is an arbitration clause between the parties, the said contention is not being pressed. He however contended that the procedure agreed upon by the parties has to be followed and without following the said procedure, the applicant has filed this application for appointment of Arbitrator.

11. According to him, the applicant should have addressed the General Manager of the South Central Railway to appoint an Arbitrator and since the notice dt.03.08.2017 of the applicant was not addressed to the General Manager but was addressed to the Divisional Manager/Lines, South Central

Railway, Hyderabad Division, the application ought to be dismissed.

12. It is important to note that the letter dt.03.08.2017 though addressed to the Divisional Engineer/Lines, South Central Railway, Hyderabad Division, Secunderabad, its copy was sent to the General Manager, South Central Railway, Secunderabad for necessary action.

13. Therefore, it is not as if the General Manager of the South Central Railway was not aware of the applicant seeking resolution of the disputes between the parties through arbitration.

14. A reading of clause(14) of the Agreement indicates that doubt, difference or disputes between the parties shall be referred to the General Manager of the Administration(South Central Railway) and his decision thereon shall be final, binding and conclusive.

15. In my considered opinion, this clause has to be read to mean that the General Manager is the adjudicator as agreed upon between the parties to decide the difference or disputes between them arising out of the License Agreement. Clause(14) does not state that the parties should address the General Manager directly to resolve such differences or

disputes between them. It only speaks of reference to the General Manager of the South Central Railway and such reference ought to be made by the Divisional Engineer/Lines, Hyderabad Division, South Central Railway, Secunderabad, who is the other party to the License Agreement dt.25.05.2009. Since it was to him the applicant addressed notice dt.03.08.2017 seeking arbitration, the plea of the respondent that the applicant ought to have issued notice demanding arbitration to the General Manager of the South Central Railways directly cannot be countenanced and it is rejected.

16. But any such reference to arbitration by the General Manager, who is an employee of the respondent, would not be valid in view of Section 12(5) r/w Schedule VII of the Act.

17. Accordingly, this Arbitration Application is allowed and the Hon'ble Sri Justice C.V.Nagarjuna Reddy(Retired) is appointed as an Arbitrator to adjudicate the disputes arising out of the License Agreement dt.25.05.2009 between the parties. No order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

24th April, 2019.

Note: Copy to be marked to
Hon'ble Sri Justice C.V.Nagarjuna Reddy (Retired),
Plot No.22-A, MLA Colony,
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B/o(*gra*)

