

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.31 of 2020

S.Mailavelu

... Petitioner

vs.

1. The Chief Engineer
Public Works Department
Puducherry

2. The Superintending Engineer
Circle - II, Public Works Department
No.14, Eveche, Puducherry - 605 001

3. The Executive Engineer
Irrigation Division
Public Works Department
Puducherry

... Respondents

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to an independent Sole Arbitrator to adjudicate upon the claims of the petitioner as the Arbitration Application submitted by the petitioner to the Chief Engineer, Public Works Department, Puducherry viz., the 1st Respondent herein dated 03.10.2019 as per the Agreement No.157/PW/ID/A2/2016-17 dated 18.08.2016 and as per clause 25 of the General Conditions of the Contract for Public Works 1996 and to award costs of this petition.

For Petitioner : Mr.N.Thiagarajan

For Respondent : Mr.J.Kumaran
Additional Government Pleader

ORDER

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

2. Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed *inter alia* under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity and clarity, with a prayer for appointment of an Arbitrator to adjudicate upon the arbitrable disputes that have arisen between the petitioner and the respondent qua an 'agreement dated 18.08.2016 bearing reference Agr.No.147/DW/ID/A2/2016-17' (hereinafter 'said agreement' for the sake of brevity, clarity and convenience).

3. Before proceeding further, this Court reminds itself about the scope of a petition under Section 11 of A and C Act. The contours and confines of a petition under Section 11 of A and C Act have been clearly laid down by Hon'ble Supreme Court in ***Duro Felguera S.A. vs. Gangavaram Port Limited*** reported in **(2017) 9 SCC 729** and ***Mayavati Trading Pvt.***

Ltd., Vs. Pradyut Deb Burman reported in (2019) 8 SCC 714). In the light of *Duro Felguera* and *Mayavati Trading* principles, this Court will have to satisfy itself about the *prima facie* existence of an arbitration agreement between the parties i.e., arbitration agreement within the meaning of Section 7 of A and C Act.

4. In the instant case, the arbitration agreement between the parties is in the form of a covenant in the said agreement. That Covenant is Clause 25. There is no dispute or contestation between the parties about existence of Clause 25 in said agreement or in other words, about the existence of arbitration agreement between the petitioner and the respondent. Owing to the arbitral disputes that have arisen between the parties, the petitioner has sent a arbitration application dated 23.10.2019 and has suggested 5 names thereunder and further suggested that one of them may act as the sole arbitrator.

5. Learned State counsel for respondents, on instructions, submits that one of the 5, namely Thiru S.Raghunathan, Chief Engineer (Retd.) - P.W.D, Plot No.20, Sivaji Street, Shanthi Nagar, Lawspeth, Puducherry - 605 008, E-mail: ragu.pwdpy@gmail.com, Mobile: 094863 06033, may please be appointed as sole Arbitrator to constitute the Arbitral Tribunal. As there is

consensus between learned counsel for petitioner and learned counsel for respondent regarding the existence of the arbitration agreement as well as the arbitrator, the task of disposal of instant application has become fairly simple.

6. Thiru S.Raghunathan, Chief Engineer (Retd.) - P.W.D is appointed as sole arbitrator, he is requested to enter upon reference, adjudicate the arbitral disputes that have arisen between the parties qua said agreement and pass an award in accordance with A and C Act.

Instant OP disposed of on above terms. No costs.

04.02.2020

Speaking order: Yes/No

Index: Yes/No

gpa

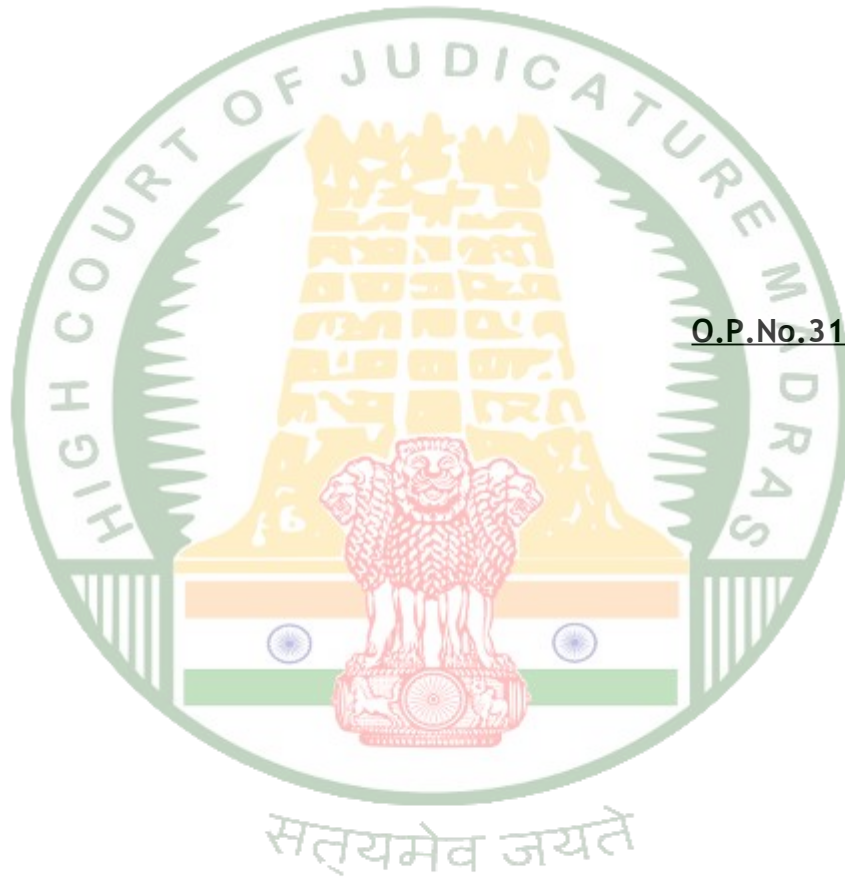
Note: Registry is directed to communicate this order to Thiru S.Raghunathan, Chief Engineer (Retd.) - P.W.D, Plot No.20, Sivaji Street, Shanthi Nagar, Lawspeth, Puducherry - 605 008, Mobile: 094863 06033.

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