

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.74 of 2020

Mr. M. Muthu
Regd PWD Contractor,
No.270, Villianur Road,
Kombakkam,
Puducherry.

... Petitioner

Vs

1. The Chief Engineer,
Public Works Department,
Government of Puducherry,
Puducherry.

2. The Superintending Engineer
Circle -II, Public Works Department,
Government of Puducherry,
Puducherry.

3. The Executive Engineer,
Special Buildings Division II,
Public Works Department,
Government of Puducherry,
Puducherry.

... Respondents

Prayer : Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an independent sole Arbitrator to adjudicate upon the claims of the petitioner as per the Arbitration Application submitted by the petitioner to the 1st respondent herein viz., the Chief Engineer, Public Works Department, Government of Puducherry dated 02.08.2019 as per Clause 10 of the Agreement No.27/PW/SBD-II/18-19 dated 27.08.2018 as well as General Conditions of the Public works 1996 and as amended Act 2015.

For Petitioner : Mr. N. Thiagarajan

For Respondents : Mr. Stalin

ORDER

The above Petition under Section 11(6) of the Arbitration and Conciliation Act has been moved by the Petitioner for appointment of an Arbitrator to go into the disputes between the petitioner and the first respondent in respect of certain contracts entered into between the two.

2. The petitioner would submit that after the completion of work entrusted to them, the petitioner raised bills, however, the first respondent

had not made payment as claimed by the petitioner. Therefore, disputes have arisen between the parties and in the light of arbitration clause in the Defacto agreement dated 27.08.2018, the petitioner had issued notices dated 22.05.2019 and 02.08.2019 calling upon the respondents to settle the dispute and also to appoint an Arbitrator. The petitioner had also sent a reminder on 25.09.2019 despite which, the respondents did not come forward to appoint an Arbitrator, stating that there is no arbitration clause and that all amount had been paid to the petitioner.

3. Under these circumstances the petitioner has come forward with the above petition for appointing an Arbitrator, in keeping with Clause 10 of the Memorandum of Agreement /Nomination entered into between the two.

4. The respondents have opposed the petition stating that there is no arbitration agreement entered into between the petitioner and the respondents and further, amounts have already been paid to the petitioner and therefore, nothing survives for consideration.

5. Apart from the above allegations they have further contended that a sum of Rs.8,80,000/- (Rupees Eight Lakh Eighty Thousand Only) has been paid and except for a minuscule sum of Rs. 4805/- nothing more is due and payable to the petitioner. That apart, the agreement does not contemplate payment of interest on the delayed payment.

6. Mr. N. Thiagarajan, learned counsel appearing on behalf of the petitioner reiterated the contention in the Petition and drew the attention of the Court to Section 10 of the Agreement/Nomination. He would further submit that the petitioner had issued a notice to the respondents pointing out the existence of an arbitration clause, to which there was no response and therefore, there is a tacit agreement to arbitrate the disputes.

7. Mr. Stalin, learned counsel appearing on behalf of the respondents would submit that there is no arbitration agreement between the parties and the Clause relied upon by the petitioner does not include non payment of the

bills and therefore, the very petition is not maintainable. He would, without prejudice to the above contention, submit that the petitioner has deliberately suppressed the payment of money by the respondents to him. On both these grounds he would submit that the petitioner is not inclined to any relief and the Petition in question should be dismissed.

8. The entire issue revolves around Clause 10 of the Agreement which reads as follows:

"10. Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to quality of workmanship, or materials used on the work or as to any other questions. claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract designs, drawing, specifications, estimates, instructions,

orders or these conditions or otherwise concerning the work, or the execution of, failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the sole arbitration of the Chief Engineer/Additional Chief Engineer, Central Public Works Department, and if the Chief Engineer Additional Chief Engineer is unable or unwilling to act, to the sole, arbitration of some other persons appointed by the Chief Engineer/Additional Chief Engineer willing to act as such arbitrator. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant, that he had to deal with the matters to which this Agreement relates and that in the course of his duties as such Government servant he had expressed views or all

or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to this contract. "

The above extract would clearly show that the parties had not contemplated the non payment of dues to be an Arbitral issue. Admittedly, the only bone of contention between the petitioner and the respondent is the non payment of bill. Considering the fact that this does not form the subject matter of Clause 10, the Petition deserves to be dismissed and is accordingly dismissed. However, there shall be no order to costs.

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Index : Yes/No

Speaking order/non-speaking order

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P.T.ASHA, J.

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