

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12 / 12 / 2018

DELIVERED ON: 20 / 08 / 2020

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NOS.275 AND 276 OF 2018

M/s.Vantage Advertising Pvt. Ltd.,
Represented by its Authorised Signatory
and Senior Operations Manager
A.Amalanathan
Having registered office at No.C-56, I Avenue,
Anna Nagar (East), Chennai – 600 102.

.. Petitioner in both OPs'

Vs.

1.Coimbatore City Municipal Corporation
Represented by its Commissioner
Big Bazaar Street, Town Hall,
Coimbatore – 641 001.

.. Sole Respondent
in O.P.No.275/2018 &
1st Respondent
in O.P.No.276/2018

2.The District Collector
Coimbatore.
(R2 impleaded vide order dated
18.09.2018 in A.No.4976/2018
in O.P.No.276/2018)

.. 2nd Respondent in
O.P.No.276 of 2018

PRAYER: Original Petitions filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, with a prayer to appoint Sole Arbitrator in each petitions, to arbitrate upon the disputes between the petitioner and the respondent.

For Petitioner : Mr.T.Sai Krishnan
(in both OPs')

For Respondent-1 : Mr.K.Magaesh
(in both OPs') Senior Counsel

For Respondent-2 : Mr.M.Sricharan Rangarajan
(in O.P.No.276/2018) Special Government Pleader

COMMON ORDER

Both the Original Petitions are filed for appointment of Sole Arbitrator to resolve the disputes between the petitioner and the respondents.

2. In O.P.No.275 of 2018, the petitioner was entered into a lease agreement with the respondent Corporation on 23.03.2010 for the purpose of maintenance of Foot Path and Road side parks including providing new street light poles at Race Course Road through DBOT (Public- Private Partnership) basis. The District Collector, Coimbatore is the Licensing

Authority and he accorded permission vide Proceedings Na.Ka.No.15787/2008/Kai1 dated 09.08.2010. However, by communication dated 31.03.2013, the District Collector, directed the respondent Corporation to remove the display boards, by stating that the license period expired on 31.03.2013. Aggrieved by the order of the District Collector, the petitioner has approached this Court by way of Writ Petition in W.P.No.12978 of 2013. This Court, by order dated 28.11.2016, closed the writ petition by observing that it is for the petitioner to get the dispute resolved through recourse to arbitration. The petitioner sent a letter dated 09.01.2018 to the respondent Corporation seeking appointment an Arbitrator to resolve the disputes. Even after receipt of the same, the respondent Corporation did not take any steps till date for appointment of Arbitrator and therefore, the petitioner is before this Court by way of filing O.P.No.275 of 2018.

3. In O.P.No.276 of 2018, the petitioner was awarded with a contract by the first respondent Corporation for construction of Concrete Cement Median and for erection of Advertisement display double sided illuminated boxes on NH67 Nagai – Gudalur – Mysore Road for a stretch at about 4.871 kms. The District Collector, Coimbatore, is the Licensing

Authority and he accorded permission vide Proceedings Na.Ka.No.15787/2008/Kai1 dated 09.08.2010. However, while the agreement was in subsistence, by communication dated 25.04.2012, the District Collector cancelled the license issued for formation of Centre Medians and display of glow sign boards stating that it is not a permissible activity. Even though the contract is initially for a period of three years, it is extendable by another three years. As such, the petitioner is entitled to continue the contract for six years. The petitioner made huge investments. Aggrieved by the order of the District Collector, the petitioner filed a writ petition in W.P.No.13185 of 2012. This Court, by order dated 08.07.2015 dismissed the writ petition and suggested the respondent Corporation to settle the issue amicably by granting license for a further remaining period in another location, which is unobjectionable. However, without considering the proposal sent by the petitioner dated 07.08.2015, the District Collector, vide proceedings dated 20.08.2015 accorded permission to install the advertisement boards on the left and right sides of NH 67. Again, the District Collector, passed an order dated 29.02.2016, issuing permission to another location, to which, the petitioner has already expressed his unwillingness. On 09.01.2018, the petitioner sought for appointment of Arbitrator to resolve the

disputes between them. However, the respondent Corporation has not appointed Arbitrator. Therefore, claiming cause of action on the order passed by this Court on 08.07.2015 in W.P.No.13185 of 2012 and the order dated 29.02.2016 of the District Collector, the petitioner has preferred the Original Petition in O.P.No.276 of 2018.

4. The respondents filed detailed counter affidavits controverting the allegations made by the petitioner.

5. The learned Special Government Pleader appearing for the second respondent would vehemently contend that the arbitration application is barred by limitation and in support of his contention, he relied on the following judgments:

(i) Judgment of the High Court of Punjab and
Haryana in ***NARESH KUMAR VS. STATE OF
HARYANA AND OTHERS [AIR 2013 P&H 70]***

(ii) Judgment of the High Court of Delhi in
RAJESH KUMAR GARG VS. MCD AND OTHERS
[2008 (102) DRJ 137]

(iii) Judgment of this Court in ***THE MADRAS***
METROPOLITAN WATER SUPPLY AND
SEWERAGE BOARD AND OTHERS VS.
RAMAKRISHNA REDDY AND OTHERS [1995 (2)
CTC 373]

(iv) Judgment of the Hon'ble Supreme Court in
SHREE RAM MILLS LTD. VS. UTILITY
PREMISES (P) LTD., [2007 (4) SCC 599]

(v) Judgment of the Hon'ble Supreme Court in
INDER SINGH REKHI VS. DELHI
DEVELOPMENT AUTHORITY [AIR 1988 SC 1007]

(vi)Judgment of the Hon'ble Supreme Court in
***PANCHU GOPAL BOSE VS. BOARD OF
TRUSTEES FOR PORT OF CALCUTTA [AIR 1994
SC 1615]***

(vii)Judgment of the Hon'ble Supreme Court in
***KETAN V. PAREKH VS. SPECIAL DIRECTOR,
DIRECTORATE OF ENFORCEMENT AND
OTHERS [AIR 2012 SC 683]***

(viii)Judgment of this Court in ***MOIDIN
BACHA ROWTHER AND OTHERS VS.
I.S.CHIDAMBARAM PILLAI [AIR 1945 MAD 86]***

(ix)Judgment of the High Court of Kerala in
***G.RAJARETHNA NAIKKAN VS.
P.N.PARAMESWARA KURUP [1997 (2) KLJ 64]***

6. I have considered the submissions made on either side and perused the materials available on record.

7. Admittedly, there is an arbitration agreement between the parties. As admitted by the respondent Corporation, the petitioner should have approached the District Collector, Coimbatore for constituting an Arbitration Committee. If he could not resolve the dispute, by conciliation or negotiation and thereafter only, he can seek for appointment of Arbitrator. In the instant case, the petitioner has not sought for resolution of the dispute. But contrary to the same, the petitioner has filed a writ petition in W.P.No.12978 of 2013 wherein the District Collector and the respondent Coimbatore City Municipal Corporation were parties. By order dated 28.11.2016, the Hon'ble First Bench of this Court, passed the following order in W.P.No.12978 of 2013:

"2.Learned counsel for the third respondent / Corporation points out that the very same petitioner had filed another Writ Petition No.13185 of 2012 in respect of another such agreement and though an option was given for

shifting the advertisements from the median to any other location, that was not found acceptable by the petitioner. The learned counsel states that at the present location, the Corporation is not inclined to extend the period by another three years as claimed for by the petitioner.

3.The aforesaid dispute having arisen, it is for the petitioner to get the same resolved through recourse to arbitration, especially as even the extended period of three years would have elapsed on 31.03.2016.”

8. It is true to state that the Limitation Act will apply to arbitration also. As per Article 137 of the Limitation Act, when there is no specific period is fixed, residuary clause will come into play as per which three years is the limitation period to initiate action. In the instant case, there are lot of transactions between the petitioner and the respondent and also the District Collector, Coimbatore, who is the Licensing Authority. In the presence of all these parties, on 28.11.2016, the Hon'ble First Bench of this Court had observed that the petitioner shall get the dispute resolved through recourse through arbitration, especially as even the extended period of three years could have lapsed on 31.03.2016. In that event, the cause of action

would arise from the date of rejection of the proposal made by the petitioner and the offer made by the District Collector on 20.08.2015.

9. The present Original Petitions for appointment of Arbitrator have been filed on 07.03.2018. As such, the petitions are within three years of limitation. At this juncture, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***M/S.DURO FELGUERA S.A VS. M/S.GANGAVARAM PORT LIMITED [2017 (9) SCC 729]*** wherein it is observed as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected. “

10. In the considered opinion of this Court, the Court cannot look into all other aspects, including limitation and once there is an arbitration clause, the matter should be referred to Arbitrator.

11. This Court, thus, appoints **Mr.S.A.Sriramulu, Retired Judge, No.2-A, 5th Cross Street, Lal Bahadur Colony, Bharathi Nagar, Peelamedu, Coimbatore - 641 004, Phone: 0422 - 2565706, Mobile No.9842263173**, as the Sole Arbitrator, *in both the Original Petitions*, 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.

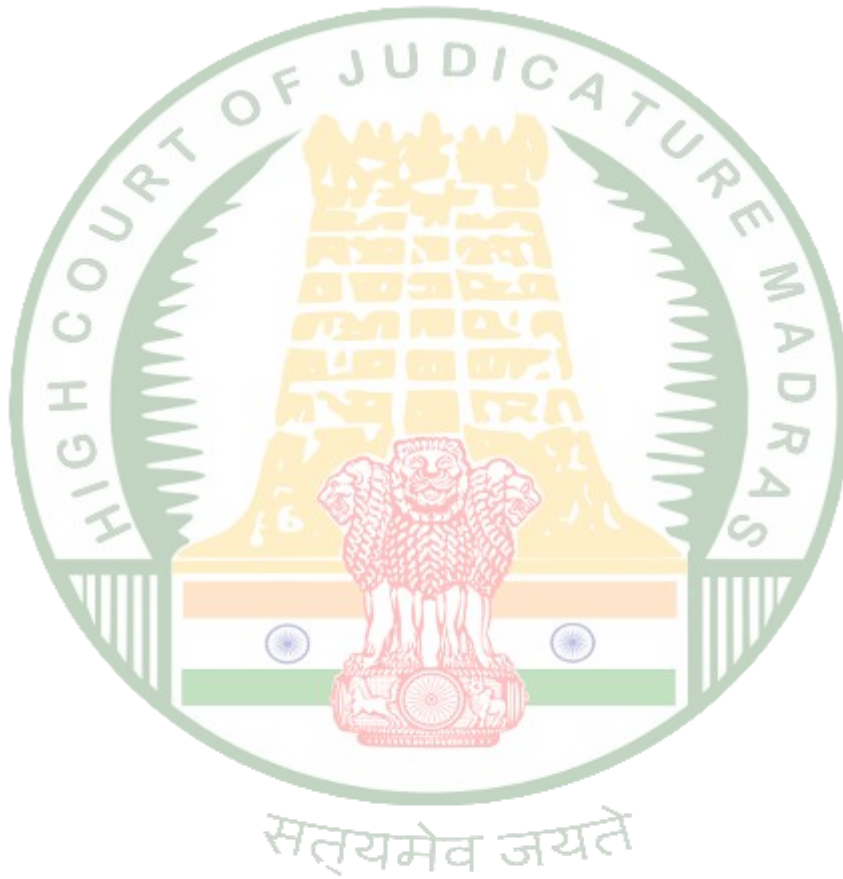
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12. However, it is open to the respondents to raise all the contentions with regard to limitation and maintainability before the Arbitrator.

13. Both the Original Petitions are ordered accordingly. No costs.

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M.GOVINDARAJ, J.

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PRE-DELIVERY COMMON ORDER MADE IN
O.P.NOS.275 AND 276 OF 2018

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