

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 03RD DAY OF DECEMBER 2019

THE HON'BLE MR. JUSTICE M.SUNDAR

O.P.No.266 of 2016

In the matter of Arbitration
and Conciliation Act, 1996
and

In the matter of Arbitration
Agreement dated 01/06/2006 and
award dated 01.11.2015.

NUCLEAR FUEL COMPLEX
Government of India,
Department of Atomic Energy,
Zirconium Complex,
Pazhayakayal Post,
Tuticorin-628 152.

..PETITIONER/RESPONDENT

-VS-

1.M/S.URC CONSTRUCTIONS
Private Ltd., H-102, Periyar Nagar,
Erode-638 001.

..RESPONDENT/CLAIMANT

2. SHRI D.K.JAIN
Sole Hon'ble Arbitrator, 602,
Sawans Pride, CHS, Plot No.10 and 11,
Sector 18, Kharghar,
Navi Mumbai-410 210.

..RESPONDENT/HON'BLE ARBITRATOR

Original Petition praying that this Hon'ble Court be
pleased to set aside the award passed by the Sole Hon'ble
Arbitrator Shri D.K.Jain dated 01.11.2015 in the above
matter and allow the counter claim made by the Petitioner
as claimed with interest and costs.

This original petition coming on this day before this

<https://hcservices.ecourts.gov.in/hcservices/> hearing the court made the following order:

Read this in conjunction with and in continuation of

earlier proceedings of this Court dated 12.03.2019, which reads as follows:

' On a perusal of the case file, I find that the Registry has put up a note before the then Hon'ble Chief Justice owing to recusal by one of the Hon'ble Brother Judges (Hon'ble Mr.Justice M.M.Sundresh). In this note put up by the Registry, the then Hon'ble Chief Justice vide order dated 19.02.2018 has assigned this O.P. to another Hon'ble Judge (Hon'ble Dr.Justice Anita Sumanth), by name.

2. Thereafter an order dated 01.03.2018 has been passed in O.S.A.No.337 of 2017 (arising out of A.No.1855 of 2016 being interlocutory application in instant OP) by a Hon'ble Division Bench presided over by then Hon'ble Chief Justice. Most relevant portion of this order is paragraph 4 and the same reads as follows :

"4.Since the application is ripe for final hearing, we dispose of the appeal, without going into the question of maintainability, by directing that the application under Section 34 of the 1996 Act be listed before the Hon'ble Mr.Justice M.Sundar. The learned Judge is requested to take up and decide the application expeditiously. No costs. Consequently, connected C.M.P.No.21855 of 2017 is closed."

(Underlining made by this Court for ease of reference)

3. Though aforesaid order of Hon'ble Division Bench of this Court was passed on 01.03.2018, instant O.P., i.e., O.P.No.266 of 2016 was first listed before me only on 5.2.2019 and the aforesaid

order of Hon'ble Division Bench was thereafter brought to my notice. It is made clear that in the interregnum, neither the Registry nor the counsel concerned have brought the aforesaid order dated 01.03.2018 to my notice.

4. From a reading of aforesaid orders of Hon'ble Division Bench, it appears that the aforesaid allocation of instant OP to one Hon'ble Judge by name was not brought to the notice of Hon'ble Division Bench.

5. It is now brought to my notice that a contempt petition being Cont.P.No.1774 of 2017 (arising out of alleged violation of the order in aforesaid A.No.1855 of 2016 in instant O.P) came up before the Hon'ble Judge who made the order, i.e., Hon'ble Dr. Justice Anita Sumanth and on 27.03.2018, the following order was made :

"List the matter along with O.P.No.266 of 2016.

2. On 19.02.2018, the Hon'ble the Chief Justice has directed listing of matter before the undersigned as a specially ordered matter. However order dated 01.03.2018 passed in O.S.A.No.337 of 2017 directs listing of the O.P before Mr.Justice M.Sundar.

3. Thus, the matter may be placed before the Chief Justice for appropriate orders."

(Underlining made for ease of reference)

6 From the case file placed before me, it is not clear as to whether Registry has placed the matter before Hon'ble Chief Justice as per aforesaid direction dated 27.03.2018.

7 Be that as it may, though the Portfolio of hearing the instant O.P, which is under Section

34 of the Arbitration and Conciliation Act, 1996 has now been allocated to me by Hon'ble Chief Justice (as per roster made by Hon'ble Chief Justice which is now operating), owing to the aforesaid order of the then Hon'ble Chief Justice allocating this O.P to one Hon'ble Judge by name (Hon'ble Dr. Justice Anita Sumanth) and the order dated 27.03.2018 made by another Hon'ble Judge wherein instant O.P also has been directed to be listed along with contempt petition, Registry is directed to place this matter before Hon'ble Chief Justice for suitable orders.

8 In the interregnum, parties before me undertake to approach Hon'ble Supreme Court for suitable orders regarding proceeding with instant main O.P, as both sides submit that Special Leave Petitions arising out of an interim order in the instant O.P and another order in the contempt petition are now pending in Hon'ble Supreme Court."

2. Pursuant to the aforesaid proceedings dated 12.03.2019, Registry has placed this file before Hon'ble Chief Justice and Hon'ble Chief Justice has directed this OP to be listed before this Court (referring to Judge presiding over this Court by name). Thereafter, this matter was listed before this Court on 29.04.2019 and 25.07.2019 when the following proceedings were made:

'Proceedings dated 29.04.2019:

Mr.S.M.Deenadayalan, learned counsel on record for sole petitioner and Mr.K.R.Nishanth representing Mr.V.P.Sengottuvel, learned counsel on record for contesting first respondent are

before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings of this Court dated 12.03.2019. Most relevant paragraph is paragraph 8 and the same reads as follows:

'8. In the interregnum, parties before me undertake to approach Hon'ble Supreme Court for suitable orders regarding proceeding with instant main O.P, as both sides submit that Special Leave Petitions arising out of an interim order in the instant O.P and another order in the contempt petition are now pending in Hon'ble Supreme Court.'

3. Adverting to the aforesaid paragraph 8, Mr.K.R.Nishanth representing Mr.V.P.Sengottuvel, learned counsel on record for first respondent submits that suitable application has been moved in the Hon'ble Supreme Court and learned counsel seeks time to pursue the same.

At request of first respondent, list this matter after summer vacation.'

'Proceedings dated 25.07.2019:

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 29.4.2019.

2. This Court is informed today that Special Leave Petitions (SLP (C) Nos.021266 to 021267 of 2018) in the Supreme Court are likely to be listed on 26.8.2019.

3.It is open to both the learned counsel to mention before this Court for listing of this case after and obviously subject to orders of

Hon'ble Supreme Court.

Adjourned side die.'

3. Post 25.07.2019 proceedings, Hon'ble Supreme Court has passed an order dated 18.11.2019 in S.L.P (C) Nos.21266 - 21267 of 2018, wherein Hon'ble Supreme Court has requested instant OP i.e., Section 34 petition, to be taken up and disposed of within eight weeks. This order of Hon'ble Supreme Court and a letter dated 27.11.2019 given to the Registry by the counsel for first respondent were brought to the notice of this Court by the Registry yesterday and the matter has been listed today under the caption 'Specially Ordered Cases'.

4. Notwithstanding the above trajectory and notwithstanding the order of Hon'ble Supreme Court, learned counsel for petitioner as well as learned counsel for first respondent seek an adjournment. Mr.J.Harikrishna, learned counsel representing Mr.S.M.Deenadayalan, learned counsel on record for petitioner submits that counsel is out of town and requests for a short accommodation of two days. Mr.K.R.Nishanth, learned counsel on record for first respondent seeks an adjournment stating that senior counsel Mr. A.L.Somayaji has been briefed, but there is personal inconvenience for learned senior counsel today.

5. To be noted, the sole Arbitrator, who constituted the Arbitral Tribunal, which made the Arbitral Award dated 01.11.2015, which has been called in question in the instant Section 34 petition, has been arrayed as second

respondent. The question as to whether it is necessary to array the sole Arbitrator as a co-respondent in instant case is left open. However, Registry to verify the status regarding service of notice qua second respondent and do the needful qua cause list in the next listing.

In the aforesaid backdrop, Registry is directed to list this matter under the same caption on 06.12.2019.

Sd/.M.S.J.

03.12.2019

//Certified to be a true copy//

Dated this the day of 2019.

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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