

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.03.2020

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition No.921 of 2019

RPN Engineers Chennai Pvt. Ltd.,
M-60, 9th Street,
Anna Nagar East,
Chennai 600102.

Petitioner

versus

1. Union of India
rep.by The General Manager,
Southern Railway,
Head Quarters Office,
Park Town, Chennai 600003.

2. The Chief Engineer/West
Construction,
Southern Railway,
Egmore, Chennai 600008.

3. Shri. Arun Bhagra
Retd AGM/SCR,
"Sai Mansarovar"
#357, 13th A Main,
A Sector, Yelahanka New Town,
Bengaluru - 560064.
(Presiding Arbitrator)

4. Shri. B.P. Khare,
Retd GM/DLW,
47, Shree Golden City,
Phase -1, Jaatkhedhi,
Hoshangabad Road,
Near Vrindavan Garden,
Bhopal - 462026 (MP)
(Co - Arbitrator)

5. Shri B.N. Rao,
Retd FA & CAO / SR
20B - 2/5, Srinagar Colony,
Mada Street, Saidapet,
Chennai 600015 (TN)
(Co - Arbitrator)

Respondents

PRAYER: Original Petition has been filed under Section 14 & 15 r/w Section 11 of Arbitration and Conciliation Act, 1996, as amended by the Arbitration Conciliation (Amended) Act, 2019, to terminate the mandate of the present tribunal comprising 3 to 5 respondents and appoint an independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement No.MTP/Civil/476/13(CN) dated 20.02.2013 and to direct the Respondents to pay the cost of the petition.

For Petitioner : M/s.P. Subba Reddy

For Respondents : Mr.P.T.Ramkumar
Standing Counsel for
Southern Railways

ORDER

This Original Petition has been filed to to terminate the mandate of the present tribunal comprising 3 to 5 respondents and appoint an independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement No.MTP/Civil/476/13(CN) dated 20.02.2013.

2. It is the case of the Petitioner that there was a dispute arose between the parties and the dispute was referred to the Arbitration and Arbitral Tribunal has been constituted. It is the contention of the learned counsel for the Petitioner that the members of the Tribunal are governed by by Railway Board's Circular and the said circular clearly indicate that they are under the watch of the General Manager of the Railways. Despite the Tribunal constituted on 8.2.2019 the Tribunal has not proceeded further, there was some delay. It is his further contention that the entire arbitration governed by the Amended Act 2015 and the disclosure was also not made. They have interested in following the Railway Board Circulars and Guidelines. Hence prayed for terminate the mandate of the Tribunal.

3. Though several grounds raised and entire contract have been reproduced, from the submissions, the main grievance sought to be canvassed is to terminate the Arbitrators as referred above.

4. At this stage, the learned counsel appearing for Railways also produced the Order of the Tribunal stated that the proceedings have been terminated, since the Petitioner has not filed claim statement despite giving opportunity. Hence in view of the termination of proceedings the only recourse to the Petitioner is to file petition under Section 34 of the Arbitration and Conciliation Act. The submission of the learned Counsel appearing for Railways is recorded.

5. Since the entire Arbitration proceedings was terminated on 16.01.2020, as rightly pointed out by the learned counsel appearing for Railways, the Petitioner has to take the only recourse under Section 34 of the Arbitration and Conciliation Act. It is the contention of the learned counsel for the Petitioner that since the petition is already pending before this Court, the termination of the proceedings is not legal. It is to be noted

whether the termination of the Arbitral Proceedings is correct or not cannot be gone into this Petition. The only recourse is to file Petition under Section 34 of the Arbitration and Conciliation Act and not in this Petition. The Petitioner is at liberty to challenge the termination order in the context of his allegation made in this Petition.

6. In view of the above, the Original Petition liable to be dismissed and accordingly it is dismissed.

04.03.2020

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

ggs

सत्यमेव जयते

WEB COPY

N.SATHISH KUMAR, J.,

ggs



Original Petition No.921 of 2019

WEB COPY

04.03.2020