

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

**O.P.No.1070 of 2019**

M/s.Siddhi Vinayak Enterprises  
represented by its Proprietor R.Devika  
No.5/9, Indra Nagar, 2<sup>nd</sup> Street  
Ram Nagar, Nanaganallur  
Chennai - 600 061 ... Petitioner

vs.

The Senior Divisional Commercial Manager  
Southern Railway  
Divisional Railway Manager's Office  
Commercial Branch, Park Town  
Chennai - 600 003 ... Respondent

Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the dispute arising out of the agreement for manning the vehicle parking stand at Pallavaram railway station.

For Petitioner : Mr.Kandhan Duraisami

For Respondent : Mr.Vijay Anand  
Additional Standing Counsel for Railways

**ORDER**

Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) filed 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, is with a prayer for appointment of an Arbitrator to resolve the arbitrable disputes that have arisen between the petitioner and the respondent with regard to 'Tender for parking vehicles dated 08.08.2014' (hereinafter 'said agreement' for the sake of convenience and clarity).

2. Mr.Kandhan Duraisami, learned counsel for petitioner and Mr.Vijay Anand, learned Additional Standing Counsel for Southern Railways for the sole respondent, are before this Court.

3. As instant OP is one under Section 11 of A and C Act, this Court reminds itself of the contours and confines of a petition under Section 11 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). Suffice to say that going by the *Duro Felguera* and *Mayavati Trading* principles laid down by Hon'ble Supreme Court, in a Section 11 petition, the Court would examine the existence of an arbitration agreement between the parties and on *prima facie* satisfaction of the existence of an arbitration agreement between the parties, Court will proceed to appoint an arbitrator.

4. In the instant case, arbitration agreement between the parties is in the form of Clause 26 in said agreement. It may not be necessary to advert to the said clause as there is no dispute or contestation about the existence of Clause 26 in said agreement. However, what is relevant is, trajectory which this matter has taken.

5. Arbitration agreement between the parties was invoked and the same culminated in an arbitral award dated 01.12.2016. This award was assailed by the petitioner vide O.P.No.919 of 2016 (obviously under Section 34 of A and C Act). This O.P.No.919 of 2016 being a petition under Section 34 of A and C assailing the arbitral award dated 01.12.2016, came to be disposed of by another Hon'ble Single Judge of this Court on 08.03.2018. Most relevant part of the order of the other Hon'ble Single Judge is Paragraph 7, which reads as follows:

*'7. In such view of the matter, the award stands set aside.*

*The first respondent is directed to constitute a new panel of three members who do not have any relationship either with the contract or the dispute which is the subject matter of the arbitration and they would be selected only with the consent of the petitioner, who, after the list of panel being furnished, is entitled to select three out of it. Inasmuch as the award is set aside only on technical ground, the bank guarantee furnished is directed to be kept alive till the disposal of the arbitration proceedings. The*

*entire exercise as indicated above will have to be done within a period of six weeks from the date of receipt of a copy of this order.'*

***(Underlining and double underlining made  
by this Court to supply emphasis and  
highlight)***

6. Both the learned counsel submit without disputation or contestation that aforementioned order made by another Hon'ble Single Judge has been given legal quietus. In other words, the aforementioned judicial order made by another Hon'ble Single Judge has not been carried in appeal either under Section 37 of A and C Act by way of intra-court appeal or assailed in any other manner. Therefore, aforementioned judicial order now governs the parties.

7. Learned Additional Standing Counsel for Southern Railways points out that pursuant to the Hon'ble Single Judge's order, Railways sent a communication dated 12.12.2018 to the petitioner giving the names of 5 individuals for constitution of Arbitral Tribunal. It may not be necessary to advert to the names. Suffice to say that the petitioner sent a reply dated 18.10.2019 not agreeing to the names suggested by the respondent Southern Railways. Instead, the petitioner suggested the name of a former Hon'ble Judge of this Court to act as Hon'ble sole Arbitrator. Therefore, in sum and

substance, there is no consensus between parties (petitioner herein not having given consent) with regard to appointment of arbitrator. Paragraph 7 of the earlier order passed by another Hon'ble Single Judge, which has been extracted and reproduced supra, which has attained finality makes it clear that appointment of arbitrator shall not be made without consent of the petitioner. In the light of the earlier judicial order that has been given legal quietus and the trajectory that unfurled thereafter (alluded to supra), petitioner has laid the instant OP.

8. One other aspect which is of relevance is the arbitration agreement between the parties and aforesaid judicial order provide for arbitration by a three member Arbitral Tribunal.

9. Considering the quantum of the claim and nature of the matter, both the learned counsel today submit on instructions that it would be desirable to have the Arbitral Tribunal constituted by a sole arbitrator. In other words, it is desirable to downsize the Arbitral Tribunal in terms of number i.e., reduce number of arbitrators from three to one, is the common say of both the learned counsel.

10. In the aforesaid backdrop, Mr.R.Paranjothi, a former District

Judge, at No.6, Ram Colony West, Mambalam, Chennai - 600 033 (Mob: 9444128002) is appointed as sole arbitrator. Learned Judge is requested to enter upon reference and adjudicate the arbitral disputes that have arisen between the parties qua said agreement dated 08.08.2014 and pass an award in accordance with A and C Act, more particularly in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

11. This order is owing to the earlier judicial order, which is governing both the parties and therefore, will not serve as a precedent for other matters governing Railway contracts.

Instant OP disposed of on above terms. No costs.

04.02.2020

Speaking order: Yes/No

Index: Yes/No

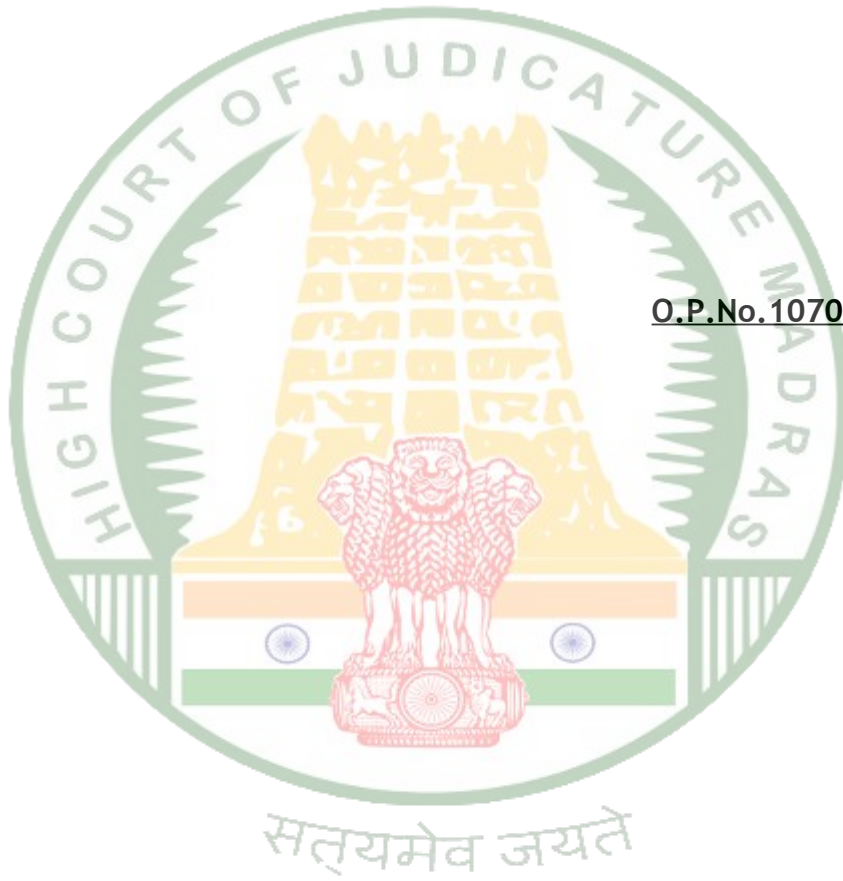
gpa

**Note: Registry is directed to communicate this order to Mr.R.Paranjothi, a former District Judge, at No.6, Ram Colony West, Mambalam, Chennai - 600 033 (Mob: 9444128002) forthwith.**

O.P.No.1070 of 2019

M.SUNDAR.J.,

gpa



O.P.No.1070 of 2019

WEB COPY

04.02.2020