



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD) No.1822 of 2011

and

M.P(MD)No.1 of 2011

The Metal Powder Company Limited,
Rep. by its Secretary,
Having Administrative Office and
Factory at Maravankulam,
Thirumangalam-626 709,
Madurai District.

... Revision Petitioner

-Vs-

1.The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2.Sri.A.K.S.Shaiwal,
Sole Arbitrator and
Chief General Engineer/HJP,
Office of the G.M.(Engg),
East Central Railway,
Hajipur, Bihar.

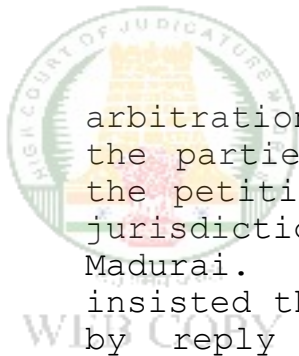
... Revision Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the proceedings in No.4-AKSS/ARB/Metal Powder/17, dated 15.07.2011 on the file of Sri.A.K.S.Shaiwal, Sole Arbitrator and Chief General Engineer/HJP, Office of the G.M.(Engg), East Central Railway, Hajipur, Bihar.

For Petitioner	:	Mr.R.Meenakshi Sundaram for R.Subramanian
For R1	:	Mr.N.Mohideen Basha
For R2	:	No appearance

O R D E R

This Civil Revision Petition is filed challenging the letter of the second respondent namely, the Arbitrator, dated 15.07.2011 in and by which, he had fixed a venue of arbitration at New Delhi. The



arbitration proceedings arose out of a contract entered into between the parties on 12.05.1988. In the tender submitted on 01.02.1988, the petitioner has included a jurisdiction clause which limits the jurisdiction to the Courts or the Tribunals situated in the city of Madurai. The respondent in its response dated 23.02.1988 has insisted that the jurisdiction clause should be withdrawn. However, by reply telex message dated 24.02.1988, the petitioner has reiterated its inability to withdraw the jurisdiction clause. Despite the same, respondents have gone ahead and awarded the contract to the petitioner on 30.03.1988. Original arbitration proceedings were initiated and the Deputy Chief Engineer, Northern Railway, Jalandhar City was nominated as the Arbitrator. He had issued a notice of hearing on 06.10.2008. The petitioner by its response dated 15.09.2008 sought for arbitration to be held at Madurai. The said request was rejected by the Arbitrator. The said rejection was challenged by the petitioner in C.R.P.No.2034 of 2008. This Court after considering the case of both parties, had passed the following order:-

"12. Therefore, the order passed by the second respondent dated 29.09.2008 is hereby set aside with a direction to the second respondent to consider the letter of the petitioner dated 15.09.2008, in the light of the provisions contained under section 20 of the Arbitration and Conciliation Act, 1996 by taking into consideration, the relative convenience of both parties, witnesses, experts and inspection of the documents and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. The revision is disposed of accordingly. No costs. Consequently, the connected M.P. is also closed."

2. Thereafter, the arbitrator sent the impugned letter dated 15/18.07.2011 fixing the venue of arbitration at New Delhi. This letter is the subject matter of the present Civil Revision Petition.

3. I have heard Mr.R.Meenakshisundaram, learned counsel appearing for the petitioner and Mr.N.Mohideen Basha, learned Special counsel for Railways/for first respondent.

4. Mr.R.Meenakshisundaram, learned counsel appearing for the petitioner would contend that when the petitioner had made it clear that it will not withdraw the jurisdiction clause and despite the same the first respondent had chosen to award the contract to the petitioner, the jurisdiction clause will prevail and therefore, the arbitration has to go on only at Madurai and not at any place fixed by the respondents. In response of the said contention, the learned counsel for the first respondent would rely upon the clause relating to arbitration in the contract between the parties dated 12.05.1998, which reads as follows:-



"Arbitration clause:- In the event of any dispute or difference of opinion between the Railway administration and contractors as to the respective right and obligation of the parties hereunder or of as to the true intent and meaning of these presents and of any articles or conditions thereof such dispute or difference of opinion (except the matter regarding which the decision has been specifically provided for in the terms of the contract) shall be referred to the sole arbitration of an officer of the Railway who shall be nominated for the purpose by the General Manager, Northern Railway for the time being and his decision shall be final, conclusive and binding on the parties. For the purpose of this contract, the General Manager, will remain the Head of the Northern Railway".

to contend that it is open to the Arbitrator to fix the venue of arbitration depending on the convenience of the parties under Section 20(2) of the Arbitration and Conciliation Act 1996. He would also stress that the convenience of the parties would mean the convenience of both parties and not the convenience of the petitioner alone.

5. After some arguments, Mr.N.Mohideen Basha, learned counsel appearing for the first respondent would submit that they are ready to conduct arbitration at Madurai itself and requests the Court to fix the time limit for completion of the arbitration since the arbitration proceedings arise out of the contract dated 12.05.1988. It is also stated that the Arbitrator appointed had sought to revoke his mandate.

6. Considering the said submission, this Civil Revision Petition is disposed of with the following directions:-

i)The first respondent shall appoint a new Arbitrator within a period of four weeks from the date of receipt of this order to conduct the arbitration proceedings.

ii)The Venue of Arbitration shall be at Madurai and the arbitrator so appointed shall commence and conclude the arbitration within a period of twelve weeks from the date of his appointment.

iii) The petitioner is also required to co-operate in disposal of the arbitration proceedings considering the fact that the arbitration proceedings arise out of contract dated 12.05.1988. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2.Sri.A.K.S.Shaiwal,
Sole Arbitrator and
Chief General Engineer/HJP,
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East Central Railway,
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+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-1795[F] dated 13/01/2020)

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VB(29.01.2020) 4P 4C