

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**MONDAY, THE TWENTY EIGHTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY**

**PRESENT**

**THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY**

**ARBITRATION APPLICATION NO: 101 OF 2017**

**Between:**

D.Prabhakara Rao, S/o Samba Siva Rao, Aged about 40 years, Proprietor D. Prabhakara Rao and Company, Civil Mechanical Contractors, R/o. Kattubadi Palem, (Post), Viz Kondapalli, G. Kondur Mandal, Vijayawada Rural, Krishna District.

**...Applicant**

**AND**

Divisional Railway Manager (Works), South Central Railway Vijayawada, Krishna District.

**...Respondent**

Application under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 and Scheme of Appointment Arbitrator praying that for the reasons stated in the affidavit filed therewith, the High Court may be pleased to appoint a Sole Arbitrator under Section 11(5) and (6) of Arbitration and Conciliation Act, 1996, read with Rules and Scheme under the Act for getting the disputes resolved between the parties and for passing an award by such Sole Arbitrator and passed other orders as this Hon'ble Court deems fit.

This application coming on for hearing, upon perusing the application and affidavit filed in support thereof, and upon hearing the arguments of Sri Sai Gangadhar Chamarty, Advocate for the Applicant and of Sri C.V.Rajeev Reddy, Advocate for the Respondent.

**The Court made the following: ORDER**

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Arbitration Application No.101 of 2017

ORDER:

This application is filed under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996, seeking to appoint a sole arbitrator to resolve the disputes between the applicant and the respondent-railways.

2. The brief facts of the case are that the respondent-railways called for tenders for various works and the applicant being civil and mechanical contractor has submitted its offer on 26.08.2011 for a total value of Rs.50,86,242/- for the said works and the said offer was accepted vide letter dated 18.11.2011. However, the respondent called for another tender for the works which were already allotted to the applicant vide letter dated 18.11.2011. Aggrieved by the same, the applicant filed W.P.No.22 of 2013 and the same was disposed of on 18.02.2013, granting liberty to the applicant to seek reference of the disputes for arbitration and thereupon, the applicant made a request on 30.01.2015 before the respondent for appointment of arbitrator, but the same was rejected on 07.07.2015. Hence, the present application is filed.

3. The respondent filed counter stating that the arbitration application is not maintainable as the applicant has not impleaded the Union of India represented by the General Manager, South Central Railways, Secunderabad, as party respondent. That as the claims/disputes put forth by the applicant have exceeded to the value of more than 20% of the agreement value, the disputes cannot be referred to arbitration and the provisions of Clauses 63 and 64 of General Conditions of Contract are not applicable for referring the disputes to be settled through arbitration and as such, the competent authority has rejected the applicant's request for

appointment of arbitrator vide letter dated 07.07.2015. Though the writ petition was disposed of on 18.02.2013, the applicant made a request for appointment of arbitrator on 30.01.2015 i.e., almost two years after disposal of the writ petition, and as such, this application is liable to be dismissed on the ground of delay and that though the applicant was issued with the acceptance letter dated 18.11.2011, for the value of Rs.50,86,242/- with a completion period of eight months by 17.07.2012, it has not come forward to execute the agreement and also not approached the respondent to commence the work and as such, the respondent had forfeited the earnest money deposit amount of Rs.85,700/-. The termination of contract and letter dated 07.07.2015, rejecting the request of the applicant for appointment of arbitrator, are legal and valid, and the application is liable to be dismissed. .

4. Heard Sri Sai Gangadhar Chamarty, learned counsel for the applicant and Sri C.V.Rajeeva Reddy, learned Standing Counsel for the respondent.

5. At the hearing, learned Standing Counsel for the respondent submits that the respondent has no objection for appointment of arbitrator to resolve the disputes between the applicant and the respondent; and learned counsel for the applicant also acceded to the same.

6. In view of the aforesaid submissions, the Arbitration Application is disposed of, directing the respondent to take steps for nominating the arbitrator in terms of Clause-64 of General Conditions of Contract, within two months from the date of receipt of a copy of this order.

7. As a sequel thereto, miscellaneous applications, if any, pending in the Arbitration Application shall stand closed.

//TRUE COPY//

SD/- K.GANGADHAR RAO  
JOINT REGISTRAR  
SECTION OFFICER

To,

1. One CC to Sri Sai Gangadhar Chamarty, Advocate [OPUC]
2. One CC to Sri C. V. Rajeeva Reddy, Advocate [OPUC]
3. Two CD Copies

HIGH COURT

ARRJ

DATED:28/12/2020



ORDER

ARB/APPL.No.101 of 2017

DISPOSING OF THE ARBITRATION APPLICATION

SSV  
4 copies  
Dt 18/01/2021