



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 29TH DAY OF JUNE, 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P. No.249 of 2021

&

A. NO. 1078 of 2021

In the Matter of Arbitration
Agreement RS Development
and Constructions India Pvt.
Ltd. and IPRCL dated
07/11/2019

M/s. RS DEVELOPMENT AND CONSTRUCTIONS

INDIA PVT. LTD.,

Represented by its Authorized Signatory,

Mr. S. Sankar

No. 131/1, A.P.T.Road,

Erode - 638 003.

Tamil Nadu.

..Petitioner

Vs.

1. M/s. INDIAN PORT RAIL &

ROPEWAY CORPORATION LTD.,

(A Government of India Enterprise)

Represented By Its Managing Director

4th Floor, Nirman Bhavan,

Mp Road, Mazgaon,

Mumbai - 400 010.

2. M/s. INDIAN PORT RAIL &

ROPEWAY CORPORATION LTD.,

Represented By Its General Manager (Projects),

Fourth Floor, Wavoo Building,

No.48/39, Rajaji Salai,

Chennai - 600 001.

3. M/s. INDIAN PORT RAIL &



ROPEWAY CORPORATION LTD.,
Represented By Its Deputy General Manager/I,
Projects,
No: 48/39, 4th Floor,
Wavoo Building, Rajaji Salai,
Krishnan Koil Street,
Chennai - 600 001.

4. SHRI MR. V.K. VERMA, IRSE, EX.CE
1125, Prestige Ivy League,
Beside Epark Tcs,
Hi Tech City Road, Kondapur,
Hyderabad - 500 084
Telangana.
(PRESIDING ARBITRATOR)

5. SHRI MR. K.V. SIVAPRASAD,
PRINCIPAL CHIEF ENGINEER/RETD./SC RLY,
Villa No. 40, Maitri Enclave, Near Tulsi Gardens,
Yarpral, Hyderabad-500 087
(CO-ARBITRATOR)

6. SHRI MR. MAHESH KUMAR GUPTA, EX.IRSE,
EXECUTIVE DIRECTOR, (RETD.),
ENGINEERING PROJECTS (INDIA) LIMITED,
B-4, Sector-44, Noida-201 301,
Uttar Pradesh.
(CO-ARBITRATOR)

..Respondents

O.P. No. 249 of 2021

Original Petition praying that this Hon'ble Court be pleased to:

a) Terminated the mandate of the Respondents 4 to 6, the
Arbitral Tribunal and appoint an independent Arbitrator to arbitrate all the
disputes and claims of the Petitioner to be submitted arising out of the
Agreement between RS Development and Construction India Pvt. Ltd. Vs.



b) Direct the Respondents to pay the cost of the petition.

A. No. 1078 of 2021

M/s. RS DEVELOPMENT AND CONSTRUCTIONS
INDIA PVT. LTD.,

Represented by its Authorized Signatory,

Mr. S. Sankar

No. 131/1, A.P.T.Road,

Erode - 638 003.

Tamil Nadu.

..Applicant

Vs.

1. M/s. INDIAN PORT RAIL &
CORPORATION LTD.,

(A Government of India Enterprise)

Represented By Its Managing Director

4th Floor, Nirman Bhavan,

Mp Road, Mazgaon,

Mumbai - 400 010.

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Represented By Its General Manager (Projects),

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Hyderabad - 500 084



Telangana.

(PRESIDING ARBITRATOR)

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PRINCIPAL CHIEF ENGINEER/RETD./SC RLY,
Villa No. 40, Maitri Enclave, Near Tulsi Gardens,
Yarpral, Hyderabad-500 087
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EXECUTIVE DIRECTOR, (RETD.),
ENGINEERING PROJECTS (INDIA) LIMITED,
B-4, Sector-44, Noida-201 301,
Uttara Pradesh.
(CO-ARBITRATOR)

..Respondents

Application praying that this Hon'ble Court be pleased to stay all further proceedings of the arbitral tribunal pending disposal of this Original Petition with respect to Agreement entered into between the 3rd Respondent/Deputy General manager and RS Development and Constructions India Pvt. Ltd. Dated 07/11/2019.

This Original Petition along with the application coming on this day before this court for hearing in the presence of Ms. K. Aparna Devi, advocate for the petitioner in O.P. No. 249 of 2021 and for the applicant in A. No. 1078 of 2021 and Mr. P.T. Ramkumar, standing counsel for Railways appearing for respondents 1 to 3 in O.P. No. 249 of 2021 and in A. No. 1078 of 2021 and upon reading the petition and the counter affidavit of R. Selvaraj filed in O.P. No. 249 of 2021 and the order dated 15/03/2021



made in A. No. 1078 of 2021 and this court having observed that now the allegation appears to be with regard to the fixation of fees as per the guidelines of the circular of IBRCL, in such case, the arbitrators shall fix the fees as per schedule of the Arbitration and Conciliation Act, 1996, further apprehension of the petitioner is that the Presiding Officer and other arbitrators are under the control of IBRCL is also unfounded, infact, the respondent is under the control of Ministry of Shipping, which is not disputed, hence, this petition is liable to dismissed and it is ordered as follows:-

That the O.P. No.249 of 2021 be and is hereby dismissed with liberty to the petitioner to raise all their objections before the arbitral tribunal.

2. That the A. No. 1078 of 2021 do stand closed.

WITNESS THE HON'BLE JUSTICE MR. SANJIB BANERJEE, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 29TH DAY OF JUNE, 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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VF-09.08.2021

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O.P. No.249 of 2021
&
A. No. 1078 of 2021

ORDER :-

DATED: 29.06.2021

THE HON'BLE MR. JUSTICE
N. SATHISH KUMAR

FOR APPROVAL: 10.08.2021

APPROVED ON: 12.08.2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.249 of 2021 & A.No.1078 of 2021

M/s.RS Development and Constructions India Pvt Ltd.,
Represented by its Authorized Signatory Mr.S.Sankar,
No.131/1, A.P.T.Road, Erode – 638 003, Tamil Nadu. . . . Petitioner

Versus

1. Mr.M/s.Indian Port Rail & Ropeway Corporation Ltd.,
[A Government of India Enterprise],
Represented by its Managing Director
4th Floor, Nirman Bhawan, MP Road, Mazgaon,
Mumbai – 400 010.
2. M/s.Indian Port Rail & Ropeway Corporation Ltd.,
Represented by its General Manager [Projects],
Fourth Floor, Wavoo Building,
No.48/39, Rajaji Salai, Chennai – 600 001.
3. M/s.Indian Port Rail & Ropeway Corporation Ltd.,
Represented by its Deputy General Manager/I Projects,
No.48/39, Fourth Floor, Wavoo Building,
Rajaji Salai, Krishnan Koil Street, Chennai – 600 001.
4. Mr.V.K.Verma Irse, Ex.CE,
1125, Prestige Ivy League, Beside Epark Tcs,
Hi Tech City Road, Kondapur,
Hyderabad – 500 084, Telengana
[Presiding Arbitrator]

6. Mr.K.V.Sivaprasad,
Principal Chief Engineer/Retd./SC Rly,



Villa No.40, Maitri Enclave, Near Tulsi Gardens,
Yapral, Hyderabad – 500 087

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[Co-Arbitrator]

7. Mr.Mahesh Kumar Gupta, Ex.IRSE,
Executive Director [Retd.],
Engineering Projects [India] Limited,
B-4, Sector – 44, Noida – 201 301,
Uttar Pradesh.
[Co-Arbitrator]

. . . Respondents

PRAYER : Petition filed under Section 14 [1] [a] [2] of Arbitration and Conciliation Act, 1996 to as amended by the Arbitration and Conciliation [Amendment] Act, 2019 to terminate the mandate of the respondents 4 to 6, the arbitral tribunal and appoint an independent arbitrator to arbitrate all the disputes and claims of the petitioner to be submitted arising out of the agreement between RS Development and Construction India Pvt. Ltd. Vs. IPRCL dated 07.11.2019 and to direct the respondents to pay the cost.

For petitioner : Ms.K.Aparna Devi

For respondents : Mr.P.T.Ramkumar,
Standing Counsel – R1 to R3

ORDER

This petition has been filed to terminate the mandate of the arbitral tribunal and to appoint an independent arbitrator to arbitrate all the disputes and claims arising out of the agreement entered between the parties dated 07.11.2019.



2. When this Court is about to dismiss this petition, the learned counsel appearing for the petitioner would submit that she may be given liberty to raise all the objections before the arbitral tribunal.

3. On perusal of the entire application and the counter reveals that the main contention raised for terminating the arbitral tribunal is not maintainable. Infact one of the arbitrator was selected by the petitioner from the list furnished by the respondent. Similarly, one of the member was selected by the respondent from the list produced by the petitioner. Both the arbitrators have selected the Presiding arbitrator. Now the allegation appears to be with regard to the fixation of fees as per the guidelines of the circular of IBRCL. In such case, the arbitrators shall fix the fees as per schedule of the Arbitration and Conciliation Act, 1996. Further apprehension of the petitioner is that the Presiding Officer and other arbitrators are under the control of IBRCL is also unfounded. Infact, the respondent is under the control of Ministry of Shipping, which is not disputed. Hence, this petition is liable to dismissed.

4. Accordingly, this Original Petition is dismissed with liberty to the petitioner to raise all their objections before the arbitral tribunal.



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Sd./-N.S.K.J.,
29.06.2021

// Certified to be true copy//
Dated at Madras this day of 2021.

Court Officer(O.S.)

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