



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.SATHISHKUMAR

O.P.No.319 of 2021

and

A.No.1646 of 2021

In the matter of Arbitration and
Conciliation Act, 1996 as amended
and

In the matter of Arbitration Agreement
No: 06/DYCE/CN/I/MDU/HQ/2011
dated 26.12.2011.

M.Rajkumar,
Railway & Highways Engineering Contractor,
Plot No.S-7, M.R. Complex,
Paper Mills Road, Taj Nagar, SPB Colony [Po],
Erode – 638 010.

. . . Petitioner

Versus

1. The Union of India,
Rep. by the General Manager,
Southern Railway, Head Quarters Office,
Park Town, Chennai – 600 003.
2. The Chief Engineer [Central], Construction,
O/o. The Chief Administrative Officer, Construction,
Southern Railway, Periyar E.V.R. High Road,
Egmore, Chennai – 600 008.
3. The Deputy chief Engineer/I, Construction,
Southern Railway, Arasardi,
Madurai Division, Madurai – 625 016.
4. Mr.Dani Thomas,
Retd. CAO/CN/ERS,



No.10-C, Lords, Skyline Imperial Gardens,
Stadium Link Road,
Palarivattom, Kochi – 682 025.
[Presiding Arbitrator]

4. Mr.V.Muralimohan,
Retd. FA & CAO/ICF-/PER,
“Priyam”, G-1, New No.740 A,
7th Main Road, Ramnagar South,
Madipakkam, Chennai – 600 091.
[Co-Arbitrator]

6. Shri.T.Archunan
Retd. Sr. DEN/ - Co.Ord. / MAS,
New Director – Project,
Kochi Metro Railway Limited, Kochi,
No.12D, Lords, Skyline Imperial Gardens,
Stadium Link Road, Palarivattom,
Kochi – 682 025.
[Co-Arbitrator]

. . . Respondents

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

a) 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 No.06/DYCE/CN/I/MDU/HQ/2011, dated 26.12.2011.

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

A.No.1640 of 2021:

Application praying that this Hon'ble Court be pleased to stay all further proceedings of the arbitral tribunal pending disposal of the original petition with respect to Agreement No.06/DYCE/CN/I/MDU/HQ/2011, dated 26.12.2011 executed between the petitioner and the 3rd respondent.



This Original Petition alongwith 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.319 of 2021 and for the Applicant in A.No.1646 of 2021 and Mr.P.T.Ramkumar, Standing Counsel appearing for the respondents 1 to 5 in O.P.No.319 of 2021 and A.No.1646 of 2021 and upon reading the petition filed in O.P.No.319 of 2021 and the judges summons and the affidavit of M.Rajkumar filed in A.No.1646 of 2021, and this court having observed that merely because fees has not been fixed as per the schedule IV of the Arbitration and Conciliation Act, it cannot be inferred that the tribunal is acting partially, and the arbitral tribunal has categorically informed the applicant that the functioning of the tribunal will not be depending on the fees received as per the guidelines and circular and tribunal will be independent and impartial, despite such assurance given by the tribunal, challenging the very constitution on technical grounds is not sustainable in the eye of law,

It is ordered as follows:-

That the O.P.No.319 of 2021 be and is hereby dismissed.

2. That the connected A.No.1646 of 2021 do stand closed.

3. That the arbitral tribunal shall receive the fees as per the Schedule IV of the Arbitration and Conciliation Act.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
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 the day of 2021.

COURT OFFICER(O.S.)



WEB COPY

SK-24.08.2021

4

O.P.No.319 of 2021
and
A.No.1646 of 2021

ORDER :-
DATED : 29.06.2021

THE HON'BLE MR.JUSTICE
N.SATHISHKUMAR

FOR APPROVAL:25.08.2021

APPROVED ON: 25.08.2021



WEB COPY

5

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.319 of 2021 & A.No.1646 of 2021

M.Rajkumar,
Railway & Highways Engineering Contractor,
Plot No.S-7, M.R. Complex,
Paper Mills Road, Taj Nagar, SPB Colony [Po],
Erode – 638 010.
Petitioner

...

Versus

1. The Union of India,
Rep. by the General Manager,
Southern Railway, Head Quarters Office,
Park Town, Chennai – 600 003.
2. The Chief Engineer [Central], Construction,
O/o. The Chief Administrative Officer, Construction,
Southern Railway, Periyar E.V.R. High Road,
Egmore, Chennai – 600 008.
3. The Deputy chief Engineer/I, Construction,
Southern Railway, Arasardi,
Madurai Division, Madurai – 625 016.
4. Mr.Dani Thomas,
Retd. CAO/CN/ERS,
No.10-C, Lords, SkylineImperial Gardens,
Stadium Link Road,
Palarivattom, Kochi – 682 025.
[Presiding Arbitrator]



4. Mr.V.Muralimohan,
Retd. FA & CAO/ICF-/PER,
“Priyam”, G-1, New No.740 A,
7th Main Road, Ramnagar South,
Madipakkam, Chennai – 600 091.
[Co-Arbitrator]

6. Mr.T.Srchunan,
Retd. Sr. DEN/ - Co.Ord. / MAS,
New Director – Project,
Kochi Metro Railway Limited, Kochi,
No.12D, Lords, Skyline Imperial Gardens,
Stadium Link Road, Palarivattom,
Kochi – 682 025.
[Co-Arbitrator]

. . . Respondents

PRAYER : Petition filed under Section 14 read with section 11 of of Arbitration and Conciliation Act, 1996 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 No.06/DYCE/CN/I/MDU/HQ/2011, dated 26.12.2011 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 R5

ORDER



mainly on the ground that the arbitrators are paid fees as per the circular and guidelines issued by the Railway Board and not as per the fourth schedule of the Arbitration and Conciliation Act. Challenge is made with regard to the same before the learned arbitrator, which is negated by the arbitral tribunal. Therefore, it is the contention of the petitioner that the arbitral tribunal has become de jure and also defunct in respect of the performance itself. Hence, the arbitral tribunal has to be reconstituted.

2. A three member arbitral tribunal was constituted after obtaining consent from the petitioner. The same could be seen in the proceedings dated 03.11.2020 available in the typed set of papers. Before the arbitral tribunal, the petitioner had filed an objection for constitution of arbitral tribunal mainly on the ground that since fees has been agreed as per the circular of the Railway Board, tribunal would not perform the function impartially and also on the other ground that arbitral tribunal cannot follow the Railway Board guidelines and circular and they have to conduct the proceedings in terms of the Arbitration and Conciliation Act, Amended Act 2019.

3. The learned arbitrator has passed the Order rejecting the application on various grounds apart from the limitation and also indicated that the arbitral tribunal is independently dealing with the matters and would be impartial and their decision would be based on the facts and



documents produced by the parties.

WEB COPY

4. Heard both side. Perused the materials available on record.

5. The main ground raised in this application to terminate the mandate of the arbitral tribunal is fixation of fees as per the circular by the Railway Board. The constitution of the tribunal with the consent of the applicant is not in dispute. When the constitution is challenged, the party who intends to challenge the constitution shall within 15 days, after becoming aware of the Constitution of the tribunal, make objection to the tribunal by a written communication as per Section 13 of the Arbitration and Conciliation Act. If such a challenge is not successful before the tribunal, the tribunal shall continue the proceedings and make arbitral award as per Sub Clause 4 of Section 13 of the Arbitration and Conciliation Act. In case, the award has been passed by the tribunal, such an award can be challenged under section 34 of the Arbitration and Conciliation Act. Therefore, when the challenge procedure was not successful, the only remedy available to the applicant is to challenge the award, in the event of award being passed and not to terminate arbitral tribunal. Hence, this Court is of the view that merely because fees has not been fixed as per the schedule IV of the Arbitration and Conciliation Act, it cannot be inferred that the tribunal is acting partially.



6. It is to be noted that the arbitral tribunal has categorically informed the applicant that the functioning of the tribunal will not be depending on the fees received as per the guidelines and circular and tribunal will be independent and impartial. Despite such assurance given by the tribunal, challenging the very constitution on technical grounds is not sustainable in the eye of law, hence, this petition is liable to be dismissed. However, the arbitral tribunal shall receive the fees as per the Schedule IV of the Arbitration and Conciliation Act.

7. Accordingly, this Original Petition is dismissed. Consequently, connected application is closed.

Sd./-(N.S.K.J.)
29.06.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.