



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.1001 of 2019

In the matter of disputes between
1.Dr.S.Rajagopal and another
and
A.Chidambaram & another
and
In the matter of the Arbitration and
Conciliation Act, 1996

1. Dr.S.Rajagopal,
S/o. E.P.Sanjeevi,
M 36/2, 7th Cross Street,
Basant Nagar,
Chennai – 600 090.

2. R. Vasuki Rajagopal,
W/o. Dr.S.Rajagopal,
M 36/2, 7th Cross Street,
Besant Nagar,
Chennai – 600 090.

... Petitioners

-Vs-

1. A. Chidambaram,
S/o. Annamalai Chettiyar,
No.45, Basullah Road,
T.Nagar, Chennai – 600 017.

2. S. Venkatraman,
S/o. V. Srirangarajan,
No.1/136A, Kamaraj Street,
Kelambakkam,
Chengalpattu District.

... Respondents



Original Petition praying that this Hon'ble Court be pleased to pass an order of Termination of the Arbitration Case No.1 of 2014 pending before the Sole Arbitrator Mr. Justice K. Venkatraman (Retd.,).

This Original Petition along with O.P.No.30 of 2017 coming on this day before this Court for hearing in the presence of Mr.S.M.Muralidharan, advocate for the Petitioners herein and Mr.M.Jagajeevan, advocate for the respondents herein and upon reading the petition filed herein and this court having observed that now, trial has been concluded and the matter is pending for arguments and at this stage, the petitioner cannot take advantage of the judgment of the Hon'ble Supreme Court which was passed under different context wherein the parties have not given written consent to appoint the Arbitrator and though no application has been filed separately to extend the period granted to the Arbitrator to dispose of the matter in Arbitration Case No.1 of 2014, as the Original petition filed to terminate the mandate of the Arbitrator taking note of the Apex Court judgment cited supra, was negatived by this Court by distinguishing the said judgment referred to by the petitioner, this Court is inclined to exercise its jurisdiction to extend the time granted to the Arbitrator without formal application as the filing of such application is not mandatory under Sec.29-A (5) of the Arbitration and Conciliation Act, but directory in nature.



It is ordered as follows:-

WEB COPY That the O.P.No.1001 of 2019 be and is hereby dismissed.

2. That the mandate of the Sole Arbitrator to dispose of the matter in Arb.Case No.1 of 2014 be and is hereby extended for a further period of Six months.

3. That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
21ST DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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ED

21.10.2021

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O.P.No.1001of 2019

ORDER:

DATED : 21/09/2021

THE HON'BLE MR. JUSTICE
N. SATHISH KUMAR

FOR APPROVAL: 27.10.2021

APPROVED ON : 28.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **21.9.2021**

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THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.1001 of 2019
and O.P.No.30 of 2017

1. Dr.S.Rajagopal		
2. R.Vasuki Rajagopal	...	Petitioner
	Vs.	
1. A.Chidambaram		
2. S.Venkatraman	...	Respondents

Prayer:- Original Petition is filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 to pass an order of Termination of the Arbitration Case No.1 of 2014 pending before the sole Arbitrator Mr.Justice K.Venkatraman (Retd.).

For Petitioner	: Mr.S.M.Muralidharan
For Respondents	: Mr.M.Jagajeevan

ORDER

This petition has been filed to terminate the Arbitrator appointed by this Court in CrI.O.P.No.18438 of 2013 which was filed by the petitioners.

2. The present petition has been filed mainly on the strength of

<https://hcservices.ecourts.gov.in/hcservices/>

Apex Court judgment passed in **KERALA STATE ELECTRICITY**



BOARD AND ANOTHER VS. KURIEN E.KALATHIL AND

ANOTHER [CIVIL APPEAL Nos.3164-3165 of 2017] wherein dispute

between the appellant Board and the respondent Contractor has reached the Apex Court, wherein the Hon'ble Apex Court held that mere oral consent by the counsel without a joint memo or joint application does not satisfy the requirement under Sec.89 of C.P.C. Since referring the parties to arbitration has serious consequences of taking them away from the stream of civil courts and subject them to the rigour of arbitration proceedings, in the absence of arbitration agreement, the court can refer them to arbitration only with written consent of parties either by way of joint memo or joint application; more so, when Government or statutory body like the appellant-Board is involved and finally set aside the arbitral award. Absolutely, there is no dispute with the observations made by the Hon'ble Supreme Court. In the case in hand, pursuant to the reference, parties have participated in the trial and the trial is also concluded and the matter also reached arguments stage. At this stage, the period stipulated by this Court to complete the arbitration proceedings has also expired. The sole Arbitrator could not proceed with the matter unless the period is extended by this Court. Under these circumstances, the petitioner has approached this Court to terminate the sole Arbitrator appointed by this Court in Arbitration Case No.1 of



3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

4. In the case of aforesaid judgment of the Hon'ble Supreme Court, the counsel has given consent without any written memo of instruction for referring the dispute to Arbitrator. On this ground, the Hon'ble Supreme Court has held that in the absence of written consent of the parties either by way of joint memo or joint application, the matter could not be referred to the Arbitrator. Whereas in the case in hand, very reference itself is made on the basis of consent expressed by both parties, before the learned Judge of this Court in CrI.O.P.No.18438 of 2013. The relevant portion of the order reads as under:

“3.. Both sides counsel as well as parties agreed to that they would resolve the matter regarding the 0.78 cents of the Survey No.18/10A in front of arbitrator. The arbitral issue before the learned arbitrator will be only in relation to 0.78 cents and the parties are also ready for amicable settlement to resolve the issue between themselves. Hon'ble Mr. Justice K. Venkataraman, (Retd.,) residing at L. 125,



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17th Street, Anna Nagar East, Chennai - 600 102 is appointed as Arbitrator. Remuneration for the Arbitrator is fixed at the rate of Rs.40,000/- (Rupees Forty Thousand only) and the respective parties are directed to pay the remuneration jointly (each Re.20,000/-). The Hon'ble Arbitrator is directed to forward a report to this Court with regard to outcome of the arbitration proceedings within a period of two weeks."

5. In the instant case, now, trial has been concluded and the matter is pending for arguments. At this stage, the petitioner cannot take advantage of the judgment of the Hon'ble Supreme Court which was passed under different context wherein the parties have not given written consent to appoint the Arbitrator.

6. In the result, the O.P.No.1001 of 2019 is dismissed. No costs.

7. Though no application has been filed separately to extend the period granted to the Arbitrator to dispose of the matter in Arbitration Case No.1 of 2014, as the Original petition filed to terminate the mandate of the Arbitrator taking note of the Apex Court judgment cited supra, was



negated by this Court by distinguishing the said judgment referred to by the petitioner, this Court is inclined to exercise its jurisdiction to extend the time granted to the Arbitrator without formal application as the filing of such application is not mandatory under Sec.29-A (5) of the Arbitration and Conciliation Act, but directory in nature. Such view of the matter, further period of six months granted to the sole Arbitrator to dispose of the matter in Arbitration Case No.1 of 2014,

8. In view of the final order passed by this Court in O.P.No.30 of 2017, dated 26.2.2018, nothing survives for adjudication and hence O.P.No.30 of 2017 is closed.

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

21/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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