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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **29.03.2022**

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THE HONOURABLE MR.JUSTICE M.SUNDAR

Arb. O.P. (Com.Div.) Nos.81 and 82 of 2022

M/s.Radha Travels,
No.51, Sakthi Vinayagar New Salt Colony,
Tiruchendur Road,
Tuticorin - 628 003 rep. by its
Authorised Signatory P.S.Kathiresan

... Petitioner in
both the cases

Vs.

Government of India,
Department of Atomic Energy,
Zirconium Complex
(A unit of Nuclear Fuel Complex,
Hyderabad), Pazhayakayal Post,
Tuticorin - 628 152.

... Respondent in
both the cases

Petitions filed under Section 11 (6)(A) & (C) of The Arbitration and Conciliation Act, 1996 r/w Rule 2 of The Appointment of Arbitrators of Madras High Court Scheme, 1996 praying to appoint a sole Arbitrator to resolve the disputes between the petitioner and the respondent in terms of (i) Clause 16 of the Tender No.ZC/NFC/AO(3)/TS(3)/01/2015/115 dated 31.01.2015 and (ii) Clause 10 of the Tender No.ZC/NFC/CAO/T(03)01/2016 dated 16.11.2016 respectively.



For Petitioner : Mr.H.Siddarth
in both the cases

For Respondent : Mr.S.Janarthanam,
Sr. Panel Central Govt. Standing Counsel
in both the cases

COMMON ORDER

This common order will govern the captioned two Arb. OPs viz., Arb. O.P.(Com.Div.) No.81 of 2022 (hereinafter referred to as 'Senior OP' for the sake of convenience and clarity) and Arb. O.P.(Com.Div.) No.82 of 2022 (hereinafter referred to as 'Junior OP' for the sake of convenience and clarity).

2. Captioned Arb. OPs have been presented in this Court on 04.01.2022 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with prayers for appointment of a sole arbitrator.

3. Mr.H.Siddarth, learned counsel for petitioner in both the captioned Arb. OPs and Mr.S.Janarthanam, learned Senior Panel Central Government Standing Counsel for lone respondent in both the captioned Arb. OPs are before this Court.



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4. Aforementioned counsel on both sides i.e., counsel for petitioner and State counsel made a common request that both the captioned Arb. OPs may please be disposed of by a common order as the matter pertains to two tenders of similar nature pertaining to providing transport for commutation and the arbitrable disputes that have arisen are similar in nature.

5. Senior OP is predicated on Clause 16 of a tender dated 31.01.2015 bearing Ref. No.ZC/NFC/AO(3)/TS(3)/01/2015/115 for work that has been described as 'providing school buses along with (Drivers, Attendants/Ayahs) for pick up/drop of school children from ZC Township to M/s.SPIC School Tuticorin & other schools located in Tuticorin City' (this 31.01.2015 tender shall hereinafter be referred to as 'first primary contract' for the sake of convenience and clarity). This clause 16 in the first primary contract reads as follows:

16. Settlement of dispute/differences by Arbitration

(a) Except where otherwise provided in the contract, all disputes and differences concerning this contract or arising out of the terms and conditions of this contract whether during or after the expiry of the validity



of the contract shall be referred to the sole arbitration of the Chief Executive, NFC or to the person appointed by him.

(b) There should not be any objection that the Arbitrator so appointed is a government servant, that he had to deal with matters to which the contract relates or that in the course of his duties as a Government servant he had expressed views on all or any of the matters in dispute or difference. The Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the authority as aforesaid shall appoint another person to act as an arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which his predecessor left it.

c. Subject as aforesaid the provisions of the Arbitration Act or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to arbitration proceedings under this clause.

d. It is also a term of the contract that the party invoking the arbitration shall specify dispute or disputes to be referred to arbitration under this clause together with the amount claimed in respect of each such dispute.

6. As regards the Junior OP, the same is predicated on clause 10.1 of a tender dated 16.11.2016 for work that has been described as



'operation of 25 seater Mini Buses, Jeep (Bolero) & Pick Up Van' (this 16.11.2016 tender shall hereinafter be referred to as 'second primary contract' for the sake of convenience and clarity). Clauses 10 and 10.1 in the second primary contract read as follows:

*10. Settlement of dispute/differences by
Arbitration:*

10.1 Except where otherwise provided in the contract, all disputes and differences concerning this contract or arising out of the terms and conditions of this contract, whether during or after the expiry of the validity of the contract, shall be referred to the sole arbitration of the Chief Executive, NFC or to the persons appointed by him.

7. Aforementioned Clause 16 of the first primary contract and Clause 10 of the second primary contract serve as arbitration agreements between the petitioner and respondent. In other words, they are arbitration agreements within the meaning of Section 2 (1) (b) read with Section 7 of A and C Act. This Court is informed that arbitrable disputes have arisen between the parties *qua* first primary contract and second primary contract including but not limited to absorption of GST, security deposit and some other issues. It is not



necessary to dilate on this and give an exhaustive enumeration of the arbitrable disputes as this is a Section 11 legal drill.

8. This Court reminds itself that a Section 11 legal drill is within a limited landscape and the perimeter for this limited landscape is drawn by sub- section (6A) thereat. This principle has been recognised by the Honourable Supreme Court in the oft-quoted **Mayavati Trading case law i.e., Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 7961**. Relevant paragraph in **Mayavati Trading** case law is Paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'



9. Aforementioned paragraph 10 of **Mayavati Trading** case law takes us to **Duro Felguera** case law i.e., **Duro Felguera Vs. Gangavaram Port Ltd.**, reported in **(2017) 9 SCC 729**, relevant paragraphs in **Duro Felguera** are paragraphs 47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

*'59. The scope of the power under [Section 11](#) (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co. (supra)* and *Boghara Polyfab (supra)*. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected. '*

10. The aforementioned **Mayavati Trading** principle and



Duro Felguera principle are to the effect that a Section 11 legal drill is largely confined to examining the existence of arbitration agreement between the parties.

11. In the case on hand, learned State counsel has filed two separate memos (one each in Senior OP and Junior OP) inter alia bringing it to the notice of this Court that the respondent is in the process of appointing a sole arbitrator. This means that there is no dispute, disagreement or contestation between the parties about the existence of arbitration agreements i.e., aforementioned arbitration viz., Clause 16 of first primary contract and Clause 10 of second primary contract. Therefore, applying **Mayavati Trading** and **Duro Felguera** principles, as there is no dispute or contestation about the existence of arbitration agreements, this Court deems it appropriate to accede to the prayer for appointment of a sole arbitrator.

12. As regards the appointment of sole arbitrator, this Court was informed that it would be desirable to appoint one arbitrator for both the matters i.e., in Senior OP and Junior OP.

13. Therefore, Mr. Vishnu Mohan, Advocate, No.8, 8th Street,



Dr.Radhakrishnan Salai, Mylapore, Chennai - 4 (Mobile No.9381353434) is appointed as sole arbitrator. Learned sole arbitrator is requested to enter upon reference, adjudicate upon the arbitrable disputes that have arisen between the petitioner and respondent qua afromentioned first primary contract and second primary contract and render an award. The arbitration shall be conducted in the Arbitration and Conciliation Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

14. Captioned Arb OPs are disposed of in the aforesaid manner. There shall be no order as to costs.

29.03.2022

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M.SUNDAR,J.,

mmi



P.S.: Registry to communicate a copy of this order to

1. Mr.Vishnu Mohan,
Advocate,
No.8, 8th Street, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4
2. The Director,
Tamil Nadu Mediation and Conciliation Centre,
cum-Ex Officio Member
Madras High Court Arbitration Centre,
Madras High Court, Chennai-600 104.

**Arb. O.P. (Com.Div.) Nos.81
and 82 of 2022**

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