



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,  
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A. (CAD) NOS.85 AND 101 OF 2021

O.S.A. (CAD) No.85 of 2021:

Ion Exchange (India) Limited,  
Environment Division,  
R-14, T.T.C. MIDC, Rabale,  
Navi Mumbai - 400 701.

.. Appellant/  
Applicant

Vs

1. Chennai Petroleum Corporation Limited,  
536, Anna Salai, Teynampet,  
Chennai - 600 018.

2. Rajendra Singh Solanki,  
Sole Arbitrator,  
B-10/7269 Sector-B,  
Vasant Kunj,  
New Delhi - 110 070.

.. Respondents/  
Respondents

O.S.A. (CAD) No.101 of 2021:

Ion Exchange (India) Limited,  
Environment Division,  
R-14, T.T.C. MIDC, Rabale,  
Navi Mumbai - 400 701.

.. Appellant/  
Applicant

Vs



1. Chennai Petroleum Corporation Limited,  
536, Anna Salai, Teynampet,  
Chennai - 600 018.

2. Rajendra Singh Solanki,  
Sole Arbitrator,  
B-10/7269 Sector-B,  
Vasant Kunj,  
New Delhi - 110 070.

3. Standing Conference of Public Enterprises,  
1<sup>st</sup> Floor, Core-8, SCOPE Complex,  
7, Lodi Road, New Delhi-110 003.

.. Respondents/  
Respondents

Common Prayer:

Appeals filed under Section 13 of the Commercial Courts Act, 2015 and under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 30.04.2021 in Application Nos.8474 of 2018 and 270 of 2019 in O.P.No.880 of 2015.

Prayer in A.No.270 of 2019:

Application praying that this Hon'ble Court be pleased to permit the applicant to amend the petition in O.P.No.880 of 2015 in the manner set out in the schedule to the Judge's Summons.

#### SCHEDULE

The following paragraphs may be added after paragraph 28 of the petition in OP 880 of 2015

28A. The Second Respondent holds shares in the first respondent and in its holding company Indian Oil Corporation Limited ('IOCL'). The second respondent is currently an office bearer in IOCL's corporate social responsibility initiatives and advises IOCL in this regard. It is therefore submitted that the second respondent became ineligible to act as arbitrator under the seventh schedule of the Arbitration and Conciliation Act, 1996. The second respondent has therefore become de jure unable to perform his functions.

28B. Without prejudice to the foregoing, the arbitration clause mandates the second respondent shall render the award within six months of the commencement of the arbitral proceedings which period may be enlarged by consent of both the parties (vide sub-clause (vi) at petitioner's typed set volume I page 717). The



parties have from time to time consented to the enlargement of the time. The last extension was given upto 03.12.2015 (vide minutes of the proceedings held on 11.09.2015-petitioner's type set volume I page 865). The last enlargement of time has expired and the petitioner is not willing to enlarge the time any further. Consequently, the second respondent can no longer continue as arbitrator. It is submitted that the second respondent has de jure become unable to perform his functions on this ground as well.

Prayer in A.No.8474 of 2018:

Application praying that this Hon'ble court be pleased to direct the third respondent to produce the following details in respect of the second respondent.

- a. The number of arbitration matters in which second respondent was appointed as arbitrator.
- b. The dates on which second respondent was appointed as arbitrator in each of these arbitrations.
- c. The number of arbitration matters decided by second respondent.
- d. The number of arbitration matters pending before second respondent.
- e. The date on which second respondent was empanelled with third respondent.
- f. The second respondent arbitration experience as per third respondent's records.

Prayer in O.P.No.880 of 2015:

Petition filed under section 14, 15 of the Arbitration and Conciliation Act, 1996, be pleased to pass an order;-

a)declaring the mandate of the second respondent as the sole arbitrator is terminated in respect of the arbitration proceedings between the petitioner and the first respondent arising out of the tender enquiry document number 6104 SPC DOC 700 022 -LSTK - 2 Sea Water Reverse Osmosis Desalination Plant in February 2005.

b)consequently remove the second respondent as the sole arbitrator in respect of tender enquiry document number 6104 SPC DOC 700 022-LSTK-2 sea water Reverse Osmosis Desalination Plant In February 2005 which is a subject matter of arbitration in



arbitration proceedings.

c) directing the respondents to pay the costs of these proceedings;

WEB COPY

|                     |                                                                                    |
|---------------------|------------------------------------------------------------------------------------|
| For the Appellant   | : Mr.V.Ramakrishnan<br>Senior Counsel<br>for Mr.S.Sathya ganesh<br>in both Appeals |
| For the Respondents | : Mr.Raghav<br>for respondent No.1<br>in both appeals                              |

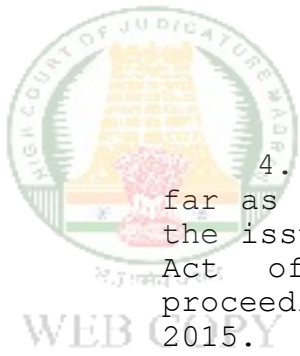
#### COMMON JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

After arguing the appeals for some length on few issues, which precisely were in reference to Section 12 of the Arbitration and Conciliation Act, 1996 (unamended provision of Section 12), learned senior counsel appearing for the appellant submitted that if liberty is given to him to pursue his case within the framework of Section 14 of the Act of 1996, he may not press these appeals. The appellant seeks to amend the original petition as referred in the schedule of the Application No.270 of 2019 found at page 27 of the typed set of papers filed along with O.S.A. (CAD) No.85 of 2021. The precise reason to seek liberty is the expiry of the period for making an arbitral reference.

2. Learned senior counsel for the appellant prays for withdrawal of the appeals, however, with liberty to take remedy under Section 14 of the Act of 1996 by amending the pending Original Petition or by filing a fresh Original Petition for the aforesaid.

3. The prayer of the learned senior counsel for the appellant has been opposed by learned counsel for the first respondent. He submits that impliedly the appellant has consented for the extension of time to the arbitration proceedings. He informed this court that an application is pending even in reference to Section 14 of the Act of 1996. Therefore, if liberty is given by this court to pursue the cause by the appellant under Section 14 of the Act of 1996, it may not be without any observation on the issue, as an application has already been filed and is pending and the same can be pressed into service by the appellant.



4. We have considered the rival submissions and find that so far as the challenge to the order dated 30.04.2021 is concerned, the issues were argued largely in reference to Section 12 of the Act of 1996 (unamended provision) for the reason that proceedings were already initiated prior to the Amendment Act of 2015.

5. In view of the above, while dismissing the appeals as withdrawn, liberty as sought by the appellant, is granted and, accordingly, the parties would be at liberty to pursue their case. If the first respondent intends to oppose the Original Petition filed under Section 14 of the Act of 1996 on all available grounds, they can do so. If the course stipulated under Section 14 of the Act of 1996 is taken by the appellant, it goes without saying that the issues therein would be decided by the learned Single Judge without being influenced by the impugned order dated 30.04.2021. There is no order as to costs. Consequently, C.M.P.Nos.17241 and 16484 of 2021 are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To:

The Sub Assistant Registrar  
Original Side  
High Court, Madras.

+2ccs to Mr.G.Sivashankaran, Advocate, S.R.No.2340 & 2341

O.S.A. (CAD) Nos.85 and 101 of 2021

AKII(CO)  
PM/28/01/2022