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Arb.O.P.(Comm.Div.) No.484 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P.(Comm.Div.) No.484 of 2022 &
A.No.4157 of 2022

MALCO Energy Limited,
SIPCOT Industrial Complex,
Madurai Bypass Road,
Thoothukudi-628 002.

... Petitioner

vs.

1.Senior Divisional Engineer,
Southern Railway, Salem Division,
Salem-636 005.

2.Shri K.J.S.Naidu,
Presiding Arbitrator,
Commissioner of Railway Safety/Bangalore (Rtd.),
201, B-Block, Koncept Nest, Hosakerehalli Road,
Byatarayanapura, Bengaluru-560 026.

3.Shri G.Chandrasegaran
Arbitrator, Retd. CCE/MAS
No.15-A/9A, 37th Punitha Anthoniar Street,
GKM Colony, Jawahar Nagar,
Chennai-600 082.

4.Shri S.Subramhanyan
Arbitrator, Retd AM/Railway Board,
No.1013, G Block, 14th Street,
Anna Nagar, Chennai-600 040.

... Respondents



Arb.O.P.(Comm.Div.) No.484 of 2022

PRAYER: Arbitration Original Petition filed under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 read with Sections 11(6) and 15(2) of the Arbitration and Conciliation Act, 1996, pleased to terminate the Mandate of the Tribunal viz., the 2nd to 4th Respondents herein and consequently appoint a new Tribunal to adjudicate the disputes between the Petitioner and the 1st Respondent arising out of the Memorandum of Understanding dated 10.12.1999.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.Prasad Vijayakumar for R1

ORDER

The petitioner seeks termination of the mandate of the arbitral tribunal. The petitioner is the claimant before the arbitral tribunal. The present petition is filed largely on two grounds. The first ground is that the petitioner did not participate in or consent to the appointment of the second, third and fourth respondents as arbitrators. The second ground is that the arbitral tribunal did not provide the disclosure, as mandated by sub section (1) of Section 12 of the Arbitration and Conciliation Act 1996 (the Arbitration Act).

2. After the petition was filed, learned counsel for the first respondent placed before the Court a communication dated 06.06.2019 from the



petitioner to the Chief General Manager, Southern Railways. The said communication states that the petitioner has selected two persons from and out of the panel provided by the first respondent to be appointed as arbitrators. Learned counsel for the first respondent points out that both the persons selected by the petitioner were appointed and form part of the arbitral tribunal. Upon this communication being placed before the Court, learned counsel for the petitioner concedes that the first objection does not survive.

3. With regard to the second objection, he submits that both Schedule V and Schedule VII of the Arbitration Act specify circumstances which give rise to justifiable doubts as to independence or impartiality of the arbitrators. Since the mandatory disclosure under Section 12(1) of the Arbitration Act was not made, he submits that the petitioner did not have the requisite information to challenge the arbitral tribunal, if necessary.

4. This contention is countered by learned counsel for the first respondent on the ground that the petitioner selected two members of the arbitral tribunal after being fully aware that they are retired employees of the railways. By relying upon Section 13(2) of the Arbitration Act, he submits



that the challenge should be made within 15 days after becoming aware of the constitution of the arbitral tribunal. By referring to the relevant dates pertaining to the proceedings of the arbitral tribunal, learned counsel submits that the objections of the petitioner have impeded the conduct of arbitral proceedings.

5. Section 12(1) of the Arbitration Act clearly mandates that persons approached for appointment as arbitrators are required to disclose in writing any circumstances which may give rise to justifiable doubts as to their independence or impartiality. Indeed, as per Section 12(2), the obligation to disclose continues throughout the arbitral proceedings. In effect, a disclosure is warranted at the outset and, thereafter, if any circumstance that may give rise to justifiable doubts as to independence or impartiality arises,

further disclosure(s) is warranted. The circumstances specified in the



Arb.O.P.(Comm.Div.) No.484 of 2022

Schedule V are illustrative and intended to be a guide in determining whether such circumstances exist. As regards Section 13(2), it provides for a challenge to the arbitrator within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of the circumstances referred to in sub-section (3) of Section 12. Unless the disclosure is made in terms of Section 12(1), it is not possible for parties to arbitral proceedings to mount a challenge in terms of Section 13(2), if warranted.

6. Consequently, respondents 2 to 4 shall provide a disclosure in terms of Section 12 of the Arbitration Act. Upon receipt of such disclosure, it is open to the petitioner to raise a challenge under Section 12. Such challenge shall not, however, be made on the ground that respondents 2 to 4 are ex-employees of the Railways because the petitioner was aware of that fact at the time of constitution of the arbitral tribunal. At this juncture, no case is made out under Section 14 of the Arbitration Act. Subject to the above observations, Arb.O.P.(Com.Div.) No.484 of 2022 is disposed of without any order to costs. Consequently, A.No.4157 of 2022 is closed.

Index : Yes/No

Index : Yes / No

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Arb.O.P.(Comm.Div.) No.484 of 2022

SENTHILKUMAR RAMAMOORTHY,J

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