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Arb.O.P.(Com.Div.)No.120 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.120 of 2023

M/s.Atlanta-Arss-JV,
Plot # 38, Sector A,
Zone-D, Mancheswar Industrial Estate,
rep.through its
Authorized Signatory
Umakanta Pattanaik

... Petitioner

Vs.

Union of India,
Department of Railway,
Represented through General Manager,
Southern Railway, Egmore,
Chennai

... Respondent

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 as amended Act, 2019, praying to appoint a Sole Arbitrator from the panel of this Hon'ble Retired High Court Judges and to pass another order.

For Petitioner : Mr.S.Koushik
for M/s.K.Sathish kumar

For Respondent : Mr.A.R.L.Sundaresan
ASG, Assisted by
Mr.K.S.Jeyaganeshan,SPC



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ORDER

This Original Petition has been filed by the petitioner to appoint a Sole Arbitrator from the panel of this Hon'ble Retired High Court Judges.

2. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 64(3)(a)(i) of the General Conditions of Contract.

3. Relevant clause of 64(3)(a) reads as under:-

64(3)(a) : Appointment of Arbitrator where applicability of Section 12(5) of Arbitration and Conciliation Act has been waived off:

64.(3)(a)(i): In cases where the total value of all claims in question added together does not exceed Rs.1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

64.(3)(a)(ii): In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior



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Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the GCC September 2019 85 Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator “.

4. It is noticed that the petitioner has issued several communications were passed from the year 2015. By a communication dated 09.11.2015, the



respondent has nominated four persons for being appointed as arbitrators to be nominated by the petitioner in terms of Clause 64(3)(a)(iv) of the General Conditions of Contract. The petitioner has however objected the same on 04.09.2015 with request the respondent to re-constitute to the Arbitral Tribunal consisting of independent members. On 21.09.2015, the respondent has responded to the petitioner stating that the request of the petitioner for constituting an Arbitral Tribunal is in progress and that the petitioner has advised to select the nominee for shortly.

5. It is noticed that on 09.11.2015, the respondent informed the petitioner to select two officers has nominated the following four employees/Officers of the Railways:-

1. Shri. S.K.Agarwal, CELE/MAS
2. Shri S.Abdul Rahman, CE/TP/HQ/MAS
3. Shri.Shrikant Singh, CSE/MAS
- 4.Shri.Kamlesh Shukla, CMM/S/PER

6. It was clearly contrary to Section 12 and Schedule VII of the Arbitration and Conciliation Act, 1996. The petitioner by letter dated



14.12.2015 requested for appointment of Arbitrator for resolving the disputes arising out of the work. By a letter dated 29.06.2016, the respondent has stated that the amended provisions of Arbitration and Conciliation Act, 1996 is not applicable for this contract because their request for referring disputes to Arbitration was made prior to 23.10.2015.

7. The petitioner has stated that the respondent may be nominate one of the two officers of the Railways i.e. i)Shri.Shrikant Singh, CSE/MAS and ii) Sh.S.A.Abdul Rahman, CE as petitioner's nominee. By a communication dated 12.07.2016, the respondent has also informed the petitioner that the General Manager, Southern Railway, Chennai has constituted the Arbitral Tribunal with the following Officers :-

- i) Shri.Shrikant Singh, CSTE/P&P/HQ/MAS as Presiding Arbitrator
- ii) Shri.S.A.Abdul Rahman, CE/TP/HQ/MAS as Arbitrator
- iii) Shri.Karunaker K.Menon, FA& CAO/MTP/R/MS as Arbitrator.

8. However, the Arbitral Tribunal constituted by the respondent has not proceeded further. Under these circumstances, the petitioner issued another notice dated 17.11.2022 and has asked the respondent to reconstitute of the



Arbitral Tribunal. However, the respondent did not respond further. Hence,

the present petition has been filed.

9. Heard the learned counsel for both sides.

10. It is noticed that the petitioner has claimed for Rs.17 crores for the respondent. Therefore, the dispute between the parties has to be resolved in terms of Clause 64(3)(b) of the Arbitration and Conciliation Act, 1996. However, an appointment of a serving employees of the respondent railways in terms of under Clause 64(3)((b)(i)(ii) as arbitrators cannot be allowed without consent of the petitioner in view of Section 12(5) read with VII Schedule to the Arbitration and Conciliation Act, 1996.

11. That apart, the Arbitral Tribunal constituted by the respondent communication dated 12.07.2016 has not progressed. Further, the claim is almost a decade old. The respondents have not acted diligently by constituting an appropriate Tribunal in accordance with the clause 64(3)(a)(ii) of the General Conditions of Contract.



12. Considering the above, it has to be construed that the respondent have forfeited their rights to appoint an Arbitrator in terms of the aforesaid Contract Agreement dated 14.09.2015 and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

13. Since the dispute between the parties are arbitrable, **Hon'ble Mr.Justice R.Kannan (Retd.), (Cell No.9780008145) Former Judge of Madras High Court residing at No.22, Gil Christ Avenue, Opp. Harrington Road, Chetpet, Chennai-31** is appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

14. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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15. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

16. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

17. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes/No

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

The General Manager,
Union of India,
Department of Railway,
Southern Railway, Egmore,
Chennai

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