



WEB COPY



O.S.A.(CAD) No.11 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR. JUSTICE P.DHANABAL

O.S.A.(CAD) No.11 of 2022

Malu Sleepers Ltd.,
(Formerly Malu Sleepers Private Limited),
Rep. by its Managing Director,
No.8, 1st Main, Gandhi Nagar, Bangalore 560009. ...appellant

Vs.

The Union of India,
Rep. by the Chief Engineer,
Southern Railway, Park Town, Chennai 3. ...respondent

Prayer: Original Side Appeal filed under Clause -15 of Letters Patent Act R/w Order-XXXVI Rule-1 of the O.S.Rules & Sec-37(1)(c) of Arbitration & Conciliation Act 1996 against the fair and decreetal order of this Court dated 25.10.2021 made in OP.No.421 of 2014.

For Appellant	: Mr.P.S.Amala Raj
For Respondent	: Mr.P.T.Ram Kumar



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J U D G M E N T

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J]

This appeal is filed against the fair and decreetal order of this Court dated 25.10.2021 made in OP.No.421 of 2014.

2. It is the case of the appellant that they were awarded contract by the first respondent for manufacture and supply of 5 lakhs BG PSC track sleepers. The appellant had supplied the entire track sleepers before July 1997 i.e. before the original due date of 01.04.1999. During the currency of contract, the Railways introduced new norms. Though the appellant addressed a letter indicating that the revised norms cannot be effected from 28.03.1995 and the bill for the period prior to 01.12.1996 should be paid as per the terms of the original contract and not in accordance with the revised norms, the respondent proceed to enforce the revised norms with effect from 28.03.1995. Thereafter, by subsequent negotiations, resulted in implementing new norms and rider agreement came to be executed between the parties. As the dispute arose between the parties, the matter has been



referred to a sole Arbitrator. The award passed by the Arbitrator was challenged before this Court by both sides in OP.No.14 of 2005 and OP.No.525 of 2005. This Court by order dated 13.08.2008 set aside the award passed by the Arbitrator on the ground that the learned Arbitrator has not interpreted the terms of the rider agreement and he has gone beyond the agreement.

3. Subsequently at the request of the parties, a fresh Arbitrator was appointed. The second Arbitrator blindly accepted the respondent's version and rejected all the appellant's claims vide award dated 21.05.2014. The appellant approached this Court and filed OP.No.421 of 2014 to set aside the said award. The learned Single Judge vide order dated 25.10.2021 while rightly setting aside the aforesaid award has directed the respondent to nominate a fresh Arbitrator. The above said direction to the respondent to appoint an Arbitrator is contrary to the well settled position of trite law and hence, the present appeal is filed.

4. The learned counsel for the appellant submitted that the the order of the learned Single Judge directing the respondent to unilaterally nominate a fresh sole Arbitrator will only lead to a compromise of the cardinal



principles of natural justice i.e. impartiality and neutrality. If the respondent appoints an Arbitrator, he will only be biased in favour of the respondent and against the appellant. Therefore, the learned Single Judge while setting aside the order ought not to have granted direction to the respondent for appointment of a fresh Arbitrator. Hence, said portion of the order is liable to be set aside.

5. The learned counsel appearing for the respondent submitted that the as per the direction of this Court, a second arbitrator has been appointed. However, the learned counsel for the respondent fairly stated before this Court that they are now ready to appoint a new arbitrator in accordance with law.

6. The above submission is not controverted by the leaned counsel for the appellant.

7. In view of the above submissions, we are inclined to set aside the direction issued by the learned Single Judge directing the respondent to nominate a fresh Arbitrator. Accordingly, the said portion of the impugned order in this appeal is set aside. However, liberty is given to the parties to



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invoke arbitration clause in the agreement and seek appropriate remedy for
appointment of a new Arbitrator.

8. With the above directions, the appeal is allowed. No costs.

[D.K.K., J] [P.D.B., J]
27.11.2023

Index : Yes / No
Speaking order: Yes/No
pvs

To
The Chief Engineer,
The Union of India,
Southern Railway, Park Town, Chennai 3.



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