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Arb.O.P(Com.Div.)No.197 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.197 of 2023

M.Sulochana

... Petitioner

Vs.

1.The Union of India,
Represented by
The General Manager,
Southern Railway,
Park Town, Chennai - 3.

2.The Divisional Railway Manager (Works),
Madurai Division, Southern Railway,
Railway Colony, Madurai - 625 016.

3.The Senior Divisional Engineer (South),
Madurai Division, Southern Railway,
Railway Colony, Madurai - 625 016.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint the arbitrators to arbitrate all the claims and disputes arising out of the Agreement No.MDU 85/2020 dated 18.03.2020 between the petitioner and the respondents and to direct the respondents to pay the cost of the petition.



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For Petitioner : Mr.Amalaraj
For Respondents : Mr.A.R.L.Sundaresan
Additional Solicitor General (ASG)
Assisted by Ms.S.P.Arthi
Senior Panel Counsel (SPC)

ORDER

The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointing Arbitrators in terms of an Agreement entered into between the parties on 18.03.2020.

2. The dispute between the petitioner and the respondents is arbitrable in terms of the aforesaid Agreement dated 18.03.2020. Relevant clause for resolving the dispute through arbitration reads as under:-

"64.(3) : Appointment of Arbitrator

64.(3)(b): Appointment of Arbitrator where applicability of Section 12(5) of Arbitration and Conciliation Act has not been waived off:

(i) In cases where the total value of all claims in question added together does not exceed Rs.50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates 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



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least 2 names out of the panel for appointment as arbitrator 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 arbitrator.

(ii) In cases where the total value of all claims in question added together exceed Rs.50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of Panel of three (3) retired Railway Officers, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date 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 has served in the Accounts Department."

3. The petitioner has invoked arbitration clause on 18.01.2023, to which, the respondents have responded by their communication dated 13.02.2023 asking the petitioner to consent and follow the procedure in terms of Clause 64 of the General Conditions of Contract (GCC).



4. The petitioner has thereafter approached this Court by filing this Arbitration Petition on 18.04.2023.

5. Since the respondents have not acted upon in accordance with the above clause by appointing the arbitrators, it is deemed that the respondents have forfeited their rights for appointing arbitrators. Considering the same, this Court is inclined to appoint **Mrs.Chitra Sampath, Senior Advocate, (Cell No.99620 85956) having Office at 12/3A and 3B, Kamatchipuram 1st Street, West Mambalam, Chennai - 600 033**, as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

6. 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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7. 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 respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

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

9. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents 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

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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