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Arb.O.P.(Com.Div.)No.253 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.253 of 2023

A.Venku Reddy,
Indian Railway Contractor,
H.No.8-3-833/K/1 to 8/408,
Krishe Meadows, Sri Nagar Colony,
Near Sathya Sai Nigamagamam,
Hyderabad - 500 073.

... Petitioner

Vs.

1.The Union of India,
Represented by
The General Manager,
Southern Railway, Head Quarters Office,
Park Town, Chennai - 600 003.

2.The Deputy Chief Engineer,
Construction,
Dy.CE/GC/III/TPJ,
Southern Railway,
Tiruchirappalli,
Tamil Nadu - 1.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2019, praying to appoint an independent and impartial arbitrator to adjudicate the dispute between the petitioner and the respondents



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in terms of the Contract Agreement No.32/DY.CE/GC/III/TPJ/TTP-PK/HQ dated 11.08.2017 as set out under details of claims in Para No.5 above and to direct the respondents to pay the cost of this petition.

For Petitioner : Ms.K.Aparna Devi
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 as amended by the Arbitration and Conciliation (Amendment) Act, 2019, for appointing an Arbitrator in terms of a Contract Agreement entered into between the parties on 11.08.2017.

2. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 64(3)(a)(ii) of the aforesaid Contract Agreement. It reads as under:-

"64.(3) : Appointment of Arbitrator

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 JA Grade or 2 Railway Gazetted Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also



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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 Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator."

3. It appears that the petitioner had sent a letter dated 21.11.2022 and called upon the respondents to pay a sum of Rs.76,80,454/- due according to the petitioner herein.

4. The respondents have responded to the aforesaid letter on 05.12.2022 by intimating the petitioner that the quantity arrived in the final variation statement was revealed to the petitioner/contractor and signature was obtained in each and every page in the final variation statement. Upon full satisfaction, the petitioner/contractor signed the final variation statement and the bill was



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prepared. The petitioner/contractor has accepted the measurements as final in final variation statement by duly giving "No Claim Certificate" on 20.11.2019 and the final bill was paid on 28.04.2020.

5. The learned Additional Solicitor General for the respondents submits that in the aforesaid reply dated 05.12.2022, it has been categorically stated that the liability of the respondents/railways was discharged and that the petitioner had not preferred any specific claim within a period of ninety days after the settlement of the final payment to the petitioner on 29.05.2020.

6. It is noticed that the aforesaid reply dated 05.12.2022 is an intra office communication between the departments within the railways and a copy has been marked to the petitioner for information. No further letters have been issued to the petitioner directly thereafter.

7. The petitioner has thereafter issued a notice/invocation letter under Section 21 of the Arbitration and Conciliation Act, 1996 on 26.01.2023. There has been no response to the same although the same was delivered on the respondents on 30.01.2023. Thus, there is an arbitrable dispute.



8. The respondents have forfeited their rights to appoint an Arbitrator in accordance with the terms and conditions of the Contract Agreement dated 11.08.2017. Considering the same, this Court is inclined to appoint **Hon'ble Mr.Justice K.N.Basha (Retd.), Former Judge of Madras High Court residing at Dr.Ambedkar Road (Old ICF Link Road), North Thirumalai Nagar, Villivakkam, Chennai - 600 049, (Mobile No.94444 54545)**, as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

9. 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.

10. 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



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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.

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

12. 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.

13. It is open for the respondents railways to raise preliminary objections regarding maintainability of the arbitration proceedings.

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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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