



Arb.O.P.(Com.Div.)No.363 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.363 of 2023

M/s.K.S and Company,
Represented by its Partner
K.Sundaresan,
4/150, Lake Area Main Road,
Uthangudi Post,
Madurai - 625 107.

... Petitioner

Vs.

1.The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry - 605 001.

2.The Chief Engineer,
Public Works Department,
Puducherry - 605 001.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation Act, 2019, praying to appoint a sole arbitrator in terms of Clause 25 of General Conditions of Contract appended to Agreement No.80/PW/ID/A2/2014-2015



Arb.O.P(Com.Div.)No.363 of 2023

executed between the petitioner and the respondents to adjudicate all the disputes between the petitioner and the respondents.

For Petitioner : Mr.K.Hari Shankar
For Respondents : Mr.Ramasamy Meyyappan
Government Advocate (Puducherry)

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 Act, 2019, to appoint a sole arbitrator in terms of Clause 25 of General Conditions of Contract appended to Agreement No.80/PW/ID/A2/2014-2015 executed between the petitioner and the respondents to adjudicate all the disputes between the petitioner and the respondents.

2. The amount involved in this case is Rs.10.8 Crores.

3. The dispute between the petitioner and the respondents governed by an Arbitration Clause under an Agreement dated 18.08.2014.



4. Relevant portion of the agreement containing the arbitration clause

reads as under:-

"Clause 25 Settlement of Disputes and Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with



WEB COPY



Arb.O.P(Com.Div.)No.363 of 2023

this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub-Para(i) above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, P.W.D., in charge of the work or if there be no Chief Engineer, the administrative head of the said P.W.D. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor."

5. Considering the above, Court is inclined to appoint Hon'ble Mr.Justice G.Rajasurya (Retd.), Former Judge of Madras High Court to act as an arbitrator.

6. The learned Arbitrator shall dispose the claim petition of the petitioner strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

16.10.2023

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Arb.O.P(Com.Div.)No.363 of 2023

C.SARAVANAN, J.

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Arb.O.P.(Com.Div.)No.363 of 2023

16.10.2023