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Arb. O.P(Com.Div). No.586 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.586 of 2022

Surya Coach Builders (P) Ltd.,
Represented by its Managing Director,
26/14, Abshot Layout,
Sankey Road, High Grounds,
Bangalore – 560 052.

... Petitioner

Vs.

- 1.Chief Administrative Officer – Construction,
Southern Railways,
183, E.V.R. Periyar High Road,
Egmore, Chennai – 600 008.
- 2.Chief Engineer – Construction,
Southern Railways,
183, E.V.R. Periyar High Road,
Egmore, Chennai – 600 008.
- 3.Deputy Chief Engineer / Construction / Stores,
Office of the Chief Administrative Officer,
Southern Railways / Construction,
183, E.V.R. Periyar High Road,
Egmore, Chennai – 600 008.
- 4.Assistant Executive Engineer – Construction/ST/MS,
Southern Railways,
183, E.V.R. Periyar High Road,
Egmore, Chennai – 600 008.



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5. Financial Advisor & Chief Accounts Officer,
South Central Railway,
Lekha Bhawan,
Secundrabad – Telangana State.

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondents.

For Petitioner	: Mr.Sai Srujan Tayi for M/s.Giridhar & Sai
For Respondents	: Mr.A.R.Sakthivel Senior Panel Counsel Central Government Standing Counsel

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondents.

2. Both the learned counsel appearing for the respective parties would submit that the present dispute arising out of the tender notice



No.W.503/CN/TF/OT/2012-13/TF 333 dated 02.11.2012. The Indian Railway

Standard condition of contract applies for the present dispute, therefore, the same can be referred to arbitration in terms of its Clause No. 2900, which reads as follows:

“2900 Arbitration:

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.



(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to 'arbitration at all.

(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules thereunder and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.



(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise."

3.By referring the above Clause, learned counsel appearing for the petitioner would submit that, a Gazetted Officer of Railways can be appointed as an Arbitrator and any such appointment in terms of the above Clause is contrary to law laid down by the Hon'ble Apex Court in ***Perkins Case*** (cited supra).

4.By invoking the Clause 2900 of the contract, learned counsel for the petitioner issued a notice under Section 21 of the Act on 13.07.2022. The respondent in their reply notice dated 10.08.2022, suggested three name from their panel and requested to nominate any one of them as Arbitrator. However, the petitioner is not in agreement for the same, since the Hon'ble Apex Court in the case of ***Perkins Eastman Architects DPC and Ors. vs. HSCC (India) Ltd.,***



reported in **(2020) 20 SCC 760**, has held that a person having an interest in the dispute or in the outcome or decision thereof must not only be ineligible to act as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. Hence, the petitioner approached this Court for appointment of Arbitrator.

5. Heard the learned counsel appearing for the petitioner as well as the respondent and perused materials available on record.

6. Upon hearing and perusal of Clause 2900 of the contract, it is clear that in the event of any dispute, the same shall be referred to the Sole Arbitrator of a Gazetted Railway Officer appointed to be the Arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units. Therefore, the petitioner by invoking Clause 2900 of the contract issued notice dated 13.07.2022, under Section 21 of the Act to the respondent. The respondent in his reply notice dated 10.08.2022 nominated three persons as Arbitrators from their panel and requested to select any one of them. All those three people nominated by the respondent are connected to the respondent/Railways, which is against the law laid down by the Hon'ble Apex



Court in the ***Perkins Case***, (cited supra), unless and otherwise the parties agreed in written consent for appointment of those persons as Arbitrator, no Arbitrator can be appointed unilaterally. Under such circumstances, this Court feels that it would be appropriate to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents. Accordingly, this Court passes the following orders:

i) **Mr.R.Umashankar, Advocate, residing at New No.58, Old No.35, Abraham Street, Mylapore, Chennai – 600004, (Contact No.9444010639),**is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras



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High Court Arbitration Centre (MHCAC) (Administrative
Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the petitioner/s herein, the respondents herein shall bear the entire remuneration and other expenses and thereafter, the respondents can recover the same directly from the petitioner/s herein.

7.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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KRISHNAN RAMASAMY. J.,
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