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Arb.O.P.(Com.Div.)No.577 of 2022

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.577 of 2022

A.Venku Reddy

... Petitioner

Vs.

- 1.The Union of India,
Rep.by the General Manager,
Southern Railway, Park Town,
Chennai 3.
- 2.The Chief Engineer (Construction),
Southern Railway, Construction Branch,
EVR Periyar Salai, Egmore,
Chennai-8.
- 3.The Deputy Chief Engineer (GC-III),
Gauge Conversion, Southern Railway,
Opposite Arun Hotel, SBI Road,
Tiruchchiirapllli-1.

... Respondents

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 as amended Act, 2019, praying to appoint an Arbitrators to arbitrate all the claims and disputes arising out of the Agreement No.



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14/Dy.CE/GC/III/TPJ/TVR-KKDI/HQ dated 07.09.2016 between the petitioner and the respondents and direct the respondents to pay the cost of the petition.

For Petitioner : M/s.Amalaraj

For Respondents : Mr.A.R.L.Sundaresan
ASG
Assisted by
Mr.A.R.Sakthivel, 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 07.09.2016.

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



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more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also 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. The petitioner has invoked the arbitration clause as early as 26.03.2022 by serving a notice on the respondents through registered post with acknowledgment. The notice was also received by the respondents on 12.07.2022. In the aforesaid communication, the respondents have stated that



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all the payments were settled during 2019 and therefore there was a full and final settlement of all dues and therefore nothing survives for further adjudication and that there was no arbitrable dispute between the parties. Hence, it is submitted that the present petition is liable to be dismissed.

4. Per contra the learned counsel for the respondents has relied on the following cases : -

- i) **Ambica Construction v. Union of India,**
(2006)13SCC 475
- ii) **R..Kalathia and Company vs. State of Gujarat,**
(2011)2 SCC 400

5. Having considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents, this Court is of the view that there is an arbitrable dispute whether there was a full and final settlement of all claims is to be decided by the arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

6. Considering the above, Hon'ble Mr.Justice M.Govindaraj,(Retd.)
Former Judge of Madras High Court (Cell No.9444 257157), residing at
No.4, 225 South, 2nd Cross Street, Sri Kableeswarar Nagar, Neelankarai,



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Chennai - 41, is appointed as an arbitrator to arbitrate the disputes between the parties under the Agreement No.14/Dy.CE/GC/III/TPJ/TVR-KKDI/HQ dated 07.09.2016.

7. The respondents are at liberty to all the objections relating to arbitrable dispute between the parties.

8. 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 touching on the limitation.

9. 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 remains *ex parte*,



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the petitioner shall pay the entire fee and other incidental charges to the learned

Arbitrator and later recover the same from the respondents.

10. Since this Court has appointed the Arbitrator, it is open for 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

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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