



Arb. O.P. (Com. Div.) No. 615 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P. (Com. Div.) No. 615 of 2022

M/s. Muthuswamy Construction,
Registered under the Indian Partnership Act, 1932,
Rep. by its Partner,
Mr. A.Anbu,
Having registered office at
Plot No. 59, First Floor,
4th Cross Street,
Sri Ranga Nagar,
Meri Oulgaret,
Puducherry – 605 010.

... Petitioner

Vs.

1. The Chief Engineer,
Public Works Department,
Puducherry.
 2. The Superintending Engineer,
Buildings & Roads Circle – I,
Public Works Department,
Puducherry.
 3. The Executive Engineer,
Buildings & Roads (Central) Division,
Public Works Department,
Puducherry.
- Respondents

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PRAYER: This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to

(a) appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the dispute resolution clause i.e. clause 25 of the Contract No. 14/PW/BRC/2014-15 dated 28.08.2014; and

(b) direct the respondents to pay costs.

For Petitioner : Mr. G.S.Suvethan

For Respondents : Mr. Ramaswamy Meyyappan,
Government Advocate (Puducherry)

ORDER

The present petition has been filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The present dispute arises out of Contract No. 14/PW/BRC/2014-15 dated 28.08.2014 whereby the respondents awarded contract in favour of the petitioner for the construction of Perunthalaivar Kamarajar Manimandapam Complex at Karuvadikuppam Revenue Village, Puducherry. According to the petitioner, the respondents are liable to pay a sum of Rs. 9,05,44,381/- by virtue



of the said contract. In spite of several requests, the same has not been paid by the respondents. Learned counsel for the petitioner submits that in terms of clause 25 of the contract dated 28.08.2014. The relevant portion of the said clause reads as follows:-

“CLAUSE 25

Settlement of Disputes & Arbitration:

....

The arbitration shall be conducted in accordance with the provision of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.”

Since the respondents have not paid the amount due to the petitioner, he has issued notice dated 15.07.2022 for appointment of Arbitrator in terms of clause



25 of the contract dated 28.08.2014. However, the respondents have not come forward to nominate the Arbitrator. On the other hand, they have claimed damages against the petitioner.

3. Learned Government Advocate appearing for the respondents submits that the present dispute is supposed to have been referred to the DRC and only when the dispute could not be resolved by the DRC, the same should have been referred to arbitration. Learned counsel for the petitioner submits that the DRC has not been constituted. He further submits that no external persons have been nominated. However, learned Government Advocate appearing for the respondents submits that there is no dispute with regard to constitution of the DRC and the petitioner is supposed to have referred the dispute to the DRC.

4. Learned counsel for the petitioner submits that the petitioner has suggested 3 persons from service out of which one person may be selected. However, in order to save time, learned Government Advocate appearing for the respondents suggests to appoint any independent person as Arbitrator may be appointed by this Court so that both the parties can make their respective claims before the Arbitrator. Therefore, this Court feels it appropriate to pass the



following order:

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i) Hon'ble Mr. Justice K. Kalyana Sundaram, Former Judge, Madras High Court, residing at Flat No. 406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai, Chennai, Contact No. 93810 11077 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Sole 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.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

5. 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 learned Sole Arbitrator. It is also made clear that since specific venue has not been mentioned in the said clause of the contract, the parties shall decide it before the learned Sole



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Note: Issue order copy on 06.01.2023.

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

To

1. The Chief Engineer,
Public Works Department,
Puducherry.
2. The Superintending Engineer,
Buildings & Roads Circle – I,
Public Works Department,
Puducherry.
3. The Executive Engineer,
Buildings & Roads (Central) Division,
Public Works Department,
Puducherry.

Copy to

Hon'ble Mr. Justice K. Kalyana Sundaram,
Former Judge, Madras High Court,
Flat No. 406, 5th South Cross Street,
Kapaleaswarar Nagar, Neelankarai,
Chennai.



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KRISHNAN RAMASAMY, J.

vjt

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