



Arb.O.P.(Com.Div.)No.641 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.641 of 2022

M/s.Jegadeeswari Constructions,
Rep.by its Managing Partner
R.Kulothungan

... Petitioner

Vs.

1.The Union of India,
Rep.by the General Manager,
Southern Railway, Park Town,
Chennai 3.

2.The Senior Divisional Engineer (West),
Salem Division, DRM Office,
Suramangalam (PO),
Southern Railway,
Salem 636 005.

... 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.SA/162 dated 12.11.2020 between the petitioner and the respondents and direct the respondents to pay the cost of the petition.



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For Petitioner : M/s.Amalaraj
For Respondents : Mr.A.R.L.Sundaresan
ASG
Assisted by
Dr.D.Siman(SC)

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 12.11.2020.

2. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 64(3)9a)(i) of the General Conditions of Contract.

3. Relevant clause of 64(3)(a)(i) reads as under:-

64.(3)(a)(i): In cases where the total value of all claims in question added together does not exceed Rs.10,00,000/- (Rupees Ten Lakhs only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.



4. Both the learned counsel for the petitioner and the respondents stated that the aforesaid amount of Rs.10,00,000/- extracted in clause 64(3)(a)(i) has to be read as **Rs.50,00,000/-**.

5. The learned counsel for the respondents would submit that the respondents should be given liberty to appoint an arbitrator from the panel of retired officers of the railway.

6. It is noticed that the petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act on 22.08.2022. The respondents have responded on 06.09.2022 by stating that the representation of the petitioner cannot be accepted and that railway is the Competent Authority which is empowered to appoint a serving Railway Officer or/a Retired Railway Officer empanelled in the panel of Arbitrators. Hence, the petitioner's request could not be considered.

7. As per Clause 64(a)(3)(i) of the General Conditions of Contract, the Arbitral Tribunal shall consist of the Sole Arbitrator to be nominated by the General Manager. The person to be nominated should not be below the rank of Junior Administrative Grade. This clause is contrary. Section 12(5) of the



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Arbitration and Conciliation Act, 1996 and Schedule VII of the Arbitration and Conciliation Act.

8. That apart, time lines under clause 64(a)(3)(ii) of the General Conditions of the Contract also has not been adhered by the respondents. The respondents have thus forfeited their rights to appoint an Arbitrator in accordance with the terms and conditions of the Contract Agreement dated 12.11.2020.

9. Consequently, Mr.Hari Shanker Mani, **(Cell No.98410 93321)**, New No.115, 1st Floor, Luz Church Road, Luz Corner, Mylapore, Chennai 600 004 is appointed as an independent arbitrator to arbitrate the disputes between the petitioner and the respondents under Agreement No.SA/162 dated 12.11.2020.

10. 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



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Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order touching on the limitation.

11. 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*, the petitioner shall pay the entire fee and other incidental charges to the learned Arbitrator and later recover the same from the respondents.

12. 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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To

- 1.The General Manager,
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Chennai 3.
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