

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 15TH DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

AR NO. 217 OF 2023

PETITIONER:

S.ANI
AGED 58 YEARS
S/O LATE SATHYADEVAN A.R LAND, NJEKKAD P.O,
VADASSERIKONAM, VARKALA- , TRIVANDRUM DISTRICT, PIN -
695143

BY ADVS.
K.S.BABU
SREELAKSHMI B.T.
N.SUDHA
BABU SHANKAR
ALVIN JEWEL S.S.
VIDHYA T.U.
MENINO FUTO

RESPONDENTS:

- 1 SOUTHERN RAILWAY,
HEAD QUARTERS OFFICE, PARK TOWN, CHENNAI- REPRESENTED
BY ITS GENERAL MANAGER, PIN - 600003
- 2 CHIEF ENGINEER, CONSTRUCTION
SOUTHERN RAILWAY HEAD QUARTERS OFFICE, CONSTRUCTION
BRANCH - EGMORE MADRAS- PIN - 600008
- 3 CHIEF ENGINEER, CONSTRUCTION,
SOUTHERN RAILWAY, ERNAKULAM ERNAKULAM SOUTH JUNCTION
COCHIN, PIN - 682016
- 4 DEPUTY CHIEF ENGINEER, CONSTRUCTION, II
SOUTHERN RAILWAY THIRUVANANTHAPURAM., PIN - 695014
- 5 UNION OF INDIA
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI
REPRESENTED BY IT'S SECRETARY., PIN - 110001

BY ADVS.
MANU S. DSGI
A.K.HARIDAS

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R. RAVI, J.

AR.No.217 of 2023

Dated this the 15th day of March, 2024

ORDER

The application is for reference to arbitration of the disputes that arisen from Annexures A1 and A2. Admittedly the tender notice was dated 10.08.1999 and the agreement was entered on 05.03.2001 between the 2nd respondent and the petitioner. The copy of agreement has been produced as Annexure A2. The period fixed in agreement for competition of the work is nine months from the date of the agreement. It is stated that the work was prolonged beyond the period due to incessant rains and ultimately it was completed in 2003. The respondents contend that the issue is hopelessly barred by limitation and there is no arbitral dispute which can be referred, at this stage. The contention of the petitioner is that the final bill was not prepared and it is only after the preparation of the final bill that the period of limitation will start to run. Since the question of limitation has to be

answered taking into account the factual situation, I am of the opinion that the said issue should also be considered by the Arbitrator to be appointed and need not be considered at the stage of Section 11 application by this Court. The Arbitrator may consider the question of limitation as a preliminary issue before proceeding further in the application.

In the above circumstances, the following orders are passed:

- (a) I nominate Sri.K.M.Balachandran, ENRA 299, 33/1968, Aiswaraya, Perandoor Road, Elamakkara, Kochi-682026 as the sole Arbitrator to adjudicate and resolve the disputes and differences between the parties to this case.
- (b) The Registry is directed to communicate a copy of this order to the learned Arbitrator, within a period of two weeks from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.
- (c) Once the Disclosure Statement is obtained from the learned Arbitrator, the

Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.

- (d) The fees of the Arbitrator shall be governed by the Fourth schedule to the Arbitration and Conciliation Act, 1996.

Sd/-
T.R.RAVI
JUDGE

APPENDIX OF AR 217/2023

PETITIONER ANNEXURES

Annexure A1	THE TRUE COPY OF THE LETTER OF ACCEPTANCE - LOA NO W.496/TVC/262/CN (5409) DATED 12.07.2000 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
Annexure A2	THE TRUE COPY OF AGREEMENT NO.71/CN/2001 DATED 05.03.2001 EXECUTED BETWEEN THE 2ND RESPONDENT AND THE PETITIONER.
Annexure A3	THE TRUE COPY OF LETTER DATED 12.06.2020 ISSUED BY THE 4TH RESPONDENT.
Annexure 4	THE TRUE COPY OF LETTER DATED 30.10.2020 ISSUED BY THE SSE/PW/DL/KYJ TO THE DY.CE/CN/TVC, THE 4TH RESPONDENT.
Annexure 5	THE TRUE COPY OF LETTER NO.W.148/217 & 203/TVC DATED 16.11.2020 ISSUED BY THE 4TH RESPONDENT.
Annexure A6	THE TRUE COPY OF THE NOTICE OF CLAIMS SUBMITTED BY THE PETITIONER DATED 07.08.2023.
Annexure A7	THE TRUE PHOTOSTAT COPY OF THE RECEIPT OF ACKNOWLEDGMENT DATED 11.08.2023 OF THE 1ST RESPONDENT.
Annexure A8	THE TRUE PHOTOSTAT COPY OF THE RECEIPT OF THE ACKNOWLEDGMENT DATED 10.08.2023 OF THE 2ND RESPONDENT.
Annexure A9	THE TRUE COPY OF LETTER NO.W.148/CN/ERS/02/2019/ARB DATED 16.10.2023 ISSUED BY 4TH RESPONDENT TO THE PETITIONER.

Annexure 10 THE TRUE PHOTOSTAT COPY OF THE RELEVANT
PAGES, 40 TO 43 OF THE STANDARD GENERAL
CONDITIONS OF CONTRACT. 2010.

Annexure A 11 THE TRUE COPY OF PAGES 1 AND 44 TO 46 OF
THE GENERAL CONDITIONS OF CONTRACT, 1998

RESPONDENT EXHIBITS

EXHIBIT R4(a) THERE IS NO PROVISION IN THE AGREEMENT
EXECUTED BY THE PETITIONER AND RAILWAYS
FOR INVOKING THE ARBITRATION CLAUSE AS
CAN BE SEEN FROM THE AGREEMENT