



WEB COPY



Arb.O.P.No.(com.div)No.135 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

Arb.O.P.(Com.Div.)No.135 of 2024

Power & Instrumentation (Guj) Ltd.,
309, Atlands Enclave, Subhash Chowk,
Gurukul Road, Ahmedabad 380 052.

... Petitioner

vs.

1.Chennai Port Trust,
2nd Floor, Old Administrative Office Building,
Rajajai Salai,
Chennai 600 001.

2.G.Thilakavathi
Senior Advocate,
Arbitrator,
No.1, Appavu Avenue,
Mandappam Road, Kilpauk,
Chennai 600 001.

... Respondents

Prayer: Original Petition is filed under Section 14(1)(a) & (15(2) of the Arbitration and Conciliation Act, 1996 praying to terminate the mandate of the Arbitrator and substitute Arbitrator shall be appointed and further extend



Arb.O.P.No.(com.div)No.135 of 2024

the mandate of the newly constituted Arbitral Tribunal by a period one year from the date of disposal of this petition.

For Petitioner : Mr.Rajesh Pavikh
for Mr.Mahesh Kumar.S

For R1 : Mr.S.haja Mohideen Gisthi
Senior Standing Counsel

ORDER

The petitioner company entered into a contract with the 1st respondent for providing 11KV power supply arrangements for navy at Madhusudan Jetty in Chennai Port Trust. According to the petitioner company, after completion of the work, the 1st respondent refused to give a completion certificate stating that the petitioner did not complete the work to its satisfaction.

2. Hence, a dispute arose between the petitioner and the 1st respondent. Under these circumstances, the petitioner filed O.P.No.87 of 2019 for appointment of an Arbitrator. The petitioner had also filed



Arb.O.P.No.(com.div)No.135 of 2024

O.A.No.503 of 2018 to injunct the 1st respondent from using the equipment supplied by the petitioner. O.A.No.503 of 2018 was later disposed on 16.09.2020, long after O.P.No.87 of 2019 was ordered on 27.04.2018.

3. Vide order dated 27.04.2018 in O.P.No.87 of 2018, this Court had appointed the 2nd respondent as the Sole Arbitrator to adjudicate the dispute between the petitioner and the 1st respondent. Pursuant to the above said order, the Arbitral Tribunal was constituted and the Arbitration Proceedings commenced before the 2nd respondent, Arbitrator.

4. After the learned Arbitrator entered upon the reference, pleadings was completed on **24.10.2018**. The petitioner filed an application for appointment of an Advocate Commissioner under Section 17 of the Arbitration and Conciliation Act, 1996 for inspection of work executed by the petitioner. The said application came to be dismissed on 13.02.2019 by the 2nd respondent, Arbitrator.



Arb.O.P.No.(com.div)No.135 of 2024

WEB COPY

5. Aggrieved by the same, the petitioner filed CMA.No.1822 of 2019 which also came to be disposed vide order dated 28.03.2019. By the aforesaid order, the Court appointed an Advocate Commissioner to give a report in respect of work executed by the petitioner. Meanwhile, on 24.10.2019, the Mandate of the Arbitral Tribunal expired in view of Section 29A of the Arbitration and Conciliation Act, 1996.

6. The petitioner thereafter preferred A.No.1873 of 2020 for extension of mandate under Section 9 of the Arbitration and Conciliation Act, 1996. The said application was listed for final hearing on 16.09.2020 along with A.No.503 of 2019. While A.No.503 of 2019 was ordered on 16.09.2020, no order was passed in A.No.1873 of 2020.

7. As mentioned above, O.A.No.503 of 2018 was ordered as under : -

“4. When this Court posed the question as to whether any Electrical Engineer from CPRI is required, the learned Advocate Commissioner has submitted that despite the request made by him, he could not get the Electrical Engineer as indicated in the order. Therefore, this Court had passed an



Arb.O.P.No.(com.div)No.135 of 2024

order for mere measurement, both sides can nominate the Electrical Engineer and the Advocate Commissioner can measure the equipments in the presence of Electrical Engineer nominated by both sides.

5.As the orders already passed by this court in C.M.A., the parties are advised to move before the concerned court and seek modification or review of the order, particularly, **with regard to the nomination of Electrical Engineer to assist the Advocate Commissioner, this Court is of the view that for measuring the equipments, the presence of Electrical Engineer would itself suffice. Therefore, the Advocate Commissioner may get appropriate modification from the Court to get the aid of Electrical Engineer from CPRI without any further delay.”.**

“..... This order shall continue till the Advocate Commissioner files the report before the C.M.A. Court.”

8. The proceedings got further delayed due to the intervening lock down imposed due to disruption caused on account of outbreak Covid-19 Pandemic. The petitioner had therefore issued a notice dated 19.07.2022 to the counsel of the 1st respondent and asked the 1st respondent to consent for appointment of an alternate arbitrator as the mandate of the arbitrator



Arb.O.P.No.(com.div)No.135 of 2024

appointed by this Court on 27.02.2018 had expired long before. The petitioner also marked a copy of the notice also to the 2nd respondent, Arbitrator.

9. Thereafter, the petitioner preferred Application No.3627 of 2022 seeking extension of mandate of Arbitral Tribunal and at the same time prayed for re-constitution of the Arbitral Tribunal.

10. This Court, vide order dated 08.11.2022 passed an order in Application No.3267 of 2022 and directed the petitioner to file suitable application under Section 14 of the Arbitration and Conciliation Act and with a further direction to make learned Arbitrator as party to the proceedings.

11. The petitioner challenged order dated 08.11.2022 passed in Application No.3627 of 2022 in O.S.A.(C.A.D)No.160 of 2022 before the Hon'ble Division Bench of this Court. The said appeal was later dismissed as withdrawn vide order dated 23.11.2023. It is in this background, the



Arb.O.P.No.(com.div)No.135 of 2024

petitioner has now approached this Court for the second time in this petition.

12. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

13. This petition has been filed to embarrass the 2nd respondent who was appointed as an arbitrator by this Court vide order dated 27.04.2018 in O.P.No.87 of 201 filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996.

14. The petitioner is solely responsible for the delay in the Arbitral Proceedings before the Arbitral Tribunal inasmuch as after the application for appointment of Advocate Commissioner was dismissed on 13.02.2019 by the Arbitral Tribunal, the petitioner escalated the issue before this Court in CMA.No.1822 of 2019 which came to be disposed on 28.03.2019. Thereafter, O.A.No.503 of 2018 filed by the petitioner which was dismissed vide order dated 16.09.2020.



Arb.O.P.No.(com.div)No.135 of 2024

WEB COPY

15. This Court is of the view that there is no scope for terminating the mandate of the learned Arbitrator in the Arbitral Proceedings. At the same time, the Court is also of the view that the learned Arbitrator need not be embarrassed further by the petitioner/ claimant.

16. Therefore, to balance the interest of the parties and the 2nd respondent, Arbitrator, Court is inclined to dispose this petition by directing the petitioner to pay a sum of Rs.2,50,000/- to the 2nd respondent, Arbitrator, as costs within a period of 30 days from today. The petitioner shall also pay further cost of Rs.50,000/- to the 1st respondent, within a period of 30 days from today.

17. Only subject to compliance of this order, the certified copy of this order shall be issued by the Registry to the petitioner.

18. Since the mandate of Arbitral Proceedings has already expired, the Court is inclined to extend the Mandate of the Arbitral Tribunal and



Arb.O.P.No.(com.div)No.135 of 2024

appoints Hon'ble Mr.Justice **DR.JUSTICE VINEET KOTHARI**(Retd. Judge) **Former Acting Chief Justice, Gujarat High Court**, as also this High Court, **residing at No.947, 11th D Road, Sardarpura, Jodhpur, Rajasthan 342 003 (Mobile No.94808 22552)** as an Arbitrator to resolve the dispute between the parties.

19. Hon'ble Mr.Justice **DR.JUSTICE VINEET KOTHARI**(Retd. Judge) **Former Acting Chief Justice, Gujarat High Court**, the learned Arbitrator appointed herein shall continue with the Arbitral proceedings. It is made clear that the Arbitral Proceedings shall continue only subject to the petitioner paying the aforesaid amount to the 2nd respondent, Arbitrator and the 1st respondent within the period stipulated above.

20. Since pleadings are completed, the learned Arbitrator appointed herein may proceed and complete the proceedings as expeditiously as possible, preferably, within a period of twelve months from the date of entering reference.



WEB COPY



Arb.O.P.No.(com.div)No.135 of 2024

C.SARAVANAN, J.

kkd

21. This Original Petition is disposed of. No costs.

28.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
kkd

To

The Chennai Port Trust,
2nd Floor, Old Administrative Office Building,
Rajajai Salai,
Chennai 600 001.

Arb.O.P.(Com.Div.)No.135 of 2024