



Arb.O.P (Com.Div.) No.167 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.167 of 2024

Rishi Ad Promoters,
Rep by its Founder,
Mr.Kamaludeen Azad,
Office at No.189/1, Abinaya Complex,
Aladi Road Cured, Kanmani Nagar,
Vriddhachalam 606 001

Now having office at
No.123/88, Mount Road,
Chennai 600 002.

... Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai 600 002.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996 to



a) appoint an independent and impartial arbitrator to hear and decide the disputes between the petitioner and the respondent arising out of the agreement No.03/2020-21 dated 26.02.2021 as set out under details of claims in para No.23 above;

b) direct the respondent to pay costs of this petition;

For Petitioner : Mr.P.Chandra Sekar

For Respondent : Mr.R.Ramanlal,
Additional Advocate General,
Assisted by Mr.G.Gauthamaraj

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint an independent and impartial Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that the respondent had issued three tender notifications dated 13.01.2021, 29.01.2021 and 22.02.2021 for display of advertisement in 500 buses, 630 buses and 400 buses respectively. The petitioner was the successful bidder



in all the aforesaid tenders and hence, the agreements were executed between the parties on 26.02.2021 for a period of 11 months. Due to COVID pandemic situation, no transport operations were carried out and hence, the petitioner was unable to display the advertisement on the requisite number of buses. In this regard, the petitioner submitted several representations and reminders before the respondent seeking permission to remit license fee only in respect of buses which carried advertisement fixed by petitioner. Thereafter, accepting the petitioner's request of waiver of license fee, the respondent passed an order directing the petitioner to pay a sum of Rs.2,46,68,376/- on or before 24.11.2021. Since the said order was not complied with by the petitioner, the respondent terminated the Agreements vide communication dated 05.01.2022 and adjusted the security deposit against the pending dues.

3. He would further submit that aggrieved over the said communication dated 05.01.2022, the petitioner filed W.P.Nos.881, 888 and 891 of 2022, which were allowed by this Court vide order dated 17.05.2022. The said order of this Court was challenged by the respondent in



W.A.No.1396, 1400 and 1401 of 2022, wherein the order dated 17.05.2022 was set aside by the Hon'ble Division Bench of this Court by granting liberty to the parties to invoke arbitration clause on all factual issues in terms of the Agreement dated 26.02.2021. Pursuant to the said order, the petitioner invoked arbitration vide notice dated 27.01.2024 and 23.02.2024. However, the respondent had not replied for the same. Since the present dispute, which is arising out of the Agreement dated 26.02.2021, is arbitrable in terms of Clause 23 of the said Agreement, this petition has been filed for appointment of Arbitrator.

4. In reply, the learned counsel for the respondent had also accepted the submission made by the learned counsel for the petitioner and requests this Court to appoint an independent and impartial Arbitrator to adjudicate the disputes between the parties.

5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.



6. In the present case, it appears that the dispute between the parties is arising out of the Agreements dated 26.02.2021. Upon perusal of the said agreement, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 23 of the said Agreements, which reads as follows:

“23. ARBITRATION

All disputes/differences between the Licensor and the Licensee under the agreement shall be referred to the Sole Arbitrator appointed by the Licensor and the proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996. The venue of Arbitration hearings shall be at Chennai and the Arbitrator's decision/order shall be final and binding on both the parties. In case of disputes, the Courts within the city of Chennai shall be the jurisdiction.”

7. Considering the submissions made by the learned counsel for the petitioner and the respondent and also in view of the fact that the dispute between the petitioner and the respondent squarely falls within the purview of clause 23 of the Agreements dated 26.02.2021, this Court is inclined to appoint a sole Arbitrator.



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8. Accordingly, this Court feels it appropriate to pass the following order:

i) **Mr.M.Ilangovan, Former District Judge, residing at No.10, W-Block, 5th Main Road, Anna Nagar, Chennai 600 040, Mobile No.8111022221 & 7010319425,** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned 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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.



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9. This Arbitration 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 Arbitrator.

13.06.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
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