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W.P.No.13236 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

**W.P.No.13236 of 2021**

**and**

**W.M.P.No.14041 of 2021**

Shana Constructions,  
Rep. by its Proprietor  
Madhu Suthanan

.... Petitioner

Vs

1. The Assistant Garrison Engineer (I),  
Redfields Post,  
Coimbatore – 641 018.

.... Respondent

**Prayer:-** Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of order dated 05.04.2021 in letter No.8344/98/E8 in CA No.GE/WEL/CBE/17 of 2017-18 passed by the respondent herein and quash the same.

For Petitioner : Mr.N.Ponraj  
For Respondent : M/s.M.E.Sarashwathy  
Special Panel Counsel

### **ORDER**

This Writ Petition has been filed challenging the order dated 05.04.2021 passed by the respondent, thereby ordered to recover a sum of Rs.72,450/- from the petitioner on account of GST rate revision from 18% to 12%.



2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The learned Special Panel Counsel appearing for the respondent pointed out that as per the contract Clause No.70, there is an Arbitration. It is relevant to extract Clause No.70 of the General Conditions of the Contract, which is hereunder:

*“70. Arbitration :- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.*

*Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos.55, 56 and 57 thereof.*

*Provided that in the vent of abandonment of the Works or cancellation of the Contract under Condition Nos.52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed*



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*by or through any other Contractor or Contractors or Agency or Agencies.*

*Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.*

*If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.*

*The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.*

*The Arbitrator may proceed with the arbitration, ex parte, if either party, in spite of a notice from the Arbitrator fails to take part in the proceedings.*

*The Arbitrator may, from time to time with the consent of the parties, enlarge the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.*

*The Arbitrator shall give his award within a period of six months from the date of his entering on the*



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*reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.*

*The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.*

*The award of the Arbitrator shall be final and binding on both parties to the Contract.”*

4. Therefore, the writ petition is not maintainable, since whatever the dispute between the parties to their contract, they have to appoint an Arbitrator to settle the dispute. On perusal of the contract itself shows that it is a commercial in nature and as such, the writ petition is not maintainable and is liable to be dismissed.

5. Accordingly, this Writ Petition stands dismissed. However, the petitioner is at liberty to invoke Clause 70 of the General Conditions of Contract as per law. Consequently, connected miscellaneous petition is closed. No costs.

25.06.2024

Internet : Yes  
Index : Yes/No  
Speaking/Non-speaking order  
Neutral Citation : Yes/No  
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**G.K.ILANTHIRAIYAN, J.**

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