



Arb.O.P (Com.Div.) No.225 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.225 of 2024

M/s.K.S.& Company,
Rep by its Partner,
Mr.K.Sundaresan,
4/150, Lake Area Main Road,
Uthangudi Post,
Madurai 625 107

... Petitioner

Vs.

1.The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry 605 001.

2.The chief Engineer,
Public Works Department,
Puducherry 605 001.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator in terms of Clause 25 of General Conditions of Contract appended to Agreement



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No.80/PW/ID/A2/2014-2015 executed between the petitioner and the respondents to adjudicate all the disputes between the petitioner and the respondents and to direct the respondents to pay the cost of the petition.

For Petitioners : Mr.Mithreyi Kasthurirangan

For Respondent : Mr.Ramaswamy Meyyappan,
Government Advocate (P)

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 Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that the petitioner had participated in the tender and the petitioner's bid was accepted by the respondent and the same was communicated vide Work Order dated 08.8.2014 along with General Conditions of Contract (GCC). During the execution of Contract, due to delays and other breaches committed by the respondents, the petitioner had faced several financial loss and hence, made



a claim for damages. However, no reply was given by the respondents.

Therefore, the petitioner sent a notice dated 12.08.2022, under Section 21 of the Act, invoking Arbitration in terms of the Clause 25 of the GCC. However, no consent was given by the respondent for Arbitration.

3. Further, he would submit that in the present matter, the petitioner had filed a petition in Arb.O.P.(Com.Div.)No.363 of 2023 for appointment of Arbitrator and vide order dated 16.10.2023, this Court appointed the Hon'ble Mr.Justice G.Rajasurya, former Judge of Madras High Court as sole Arbitrator to adjudicate the disputes between the parties. Subsequently, on 28.01.2024, it was informed that the learned Arbitrator was passed away. Hence, this petition has been filed for fresh appointment of the Arbitrator.

4. In reply, the learned counsel for the respondent has also confirmed the submissions made by the petitioner. Further, though he would submit that the respondents are maintaining a panel for appointment of Arbitrator, he would fairly agreed for the appointment of any independent Arbitrator by this Court.



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5. Heard the learned counsel for the petitioner and the respondents 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 Work Order dated 18.08.2014. Upon perusal of the said Work Order and GCC, it is clear that the dispute among the parties can be resolved by virtue of Arbitration as per Clause 25 of GCC which reads as follows:

“Clause 25: Settlement of Disputes and Arbitration- Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions here-in before mentioned and as to the quality of workmanship or material used on the work or as to the any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation,



termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer for writing for written instructions or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period of if the contractor is dissatisfied with the instructions or decision of Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of



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receipt of contractor's appeal. If the contractor is dissatisfied within this decision, the contractor shall within a period of 30 days from receipt of the decision, given notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable adjudication by the arbitrator.

(ii) Except where the decision has become final, binding, and conclusive in terms of sub-para (i) above disputes or difference shall be referred for adjudication through arbitration by sole arbitrator by the Chief Engineer, P.W.D., in charge of the work or if there be no Chief Engineer, the administrative head of the said P.W.D. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor."

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by Chief Engineer of the appeal.



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It is also a term of this contract that no person other than a person appointed by such Chief Engineer P.W.D. or the administrative head of PWD, as aforesaid should act as arbitrator and if any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) and as amended in January 2005, or any statutory 68 modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also the term of this contract that the arbitrator shall adjudicate on only disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases



where the total amount of the claims by any party exceeds Rs.1,00,000/- the arbitrator shall give reasons for the award.

It is also the term of this contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties or in such other manners as may be determined by the arbitrator.

It is also the term of this contract that the arbitrator shall be deemed to have entered on the reference on the date he issued notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties or in such other manners as may be determined by the arbitrator. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such cost or any part thereof shall be paid and fix or settle the amount of costs to be so paid.""



7. Considering the submissions made by the learned counsel for the petitioner and the respondents also in view of the fact that the dispute between the petitioner and the respondents arose out of the Work Order dated 18.08.2014 and the same can be resolved by virtue of Clause 25 of GCC, this Court is inclined to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

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

i) **The Hon'ble Mr.Justice R.Pongiappan, Former Judge, Madras High Court, F-1, DOTE Staff Quarters, Gandhi Mandapam Road, Near Birla Planetorium, Guindy, Chennai 600 025, Mobile No.94436 43366,** 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



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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.

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.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 09.08.2024



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KRISHNAN RAMASAMY.J.,

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