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Arb.O.P.(Comm.Div.) No. 279 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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M.Sulochana

... Petitioner

-VS-

1.The Union of India,
Represented by the General Manager,
Southern Railway, Park Town, Chennai – 3.

2.The Chief Project Director,
Railway Electrification,
Egmore, Chennai – 600 008.

3.The Deputy Chief Engineer,
Railway Electrification,
Egmore, Chennai – 600 008.

4.The Executive Engineer,
Railway Electrification,
Madurai Railway Junction, Madurai.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for following reliefs:-

(a) To appoint the arbitrators to arbitrate all the claims and disputes arising out of the Contract bearing Letter of Acceptance No.CORE-CHENNAI-ENGG/RE-MS-CIVIL-2022-04/00940690057594 dated 07.07.2022 between



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the petitioner and the respondents;

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(b) Direct the respondents to pay the cost of the petition and

(c) Pass such other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.Nawin D'Monte

For Respondents : Ms.S.P.Arthi
Standing Counsel

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 Arbitrators in respect of the dispute that has arisen out of the Contract bearing Letter of Acceptance No.CORE-CHENNAI-ENGG/RE-MS-CIVIL-2022-04/00940690057594 dated 07.07.2022 between the petitioner and the respondents

2. Heard Mr.Nawin D'Monte, learned counsel for the petitioner and Ms.S.P.Arthi, learned Standing Counsel appearing on behalf of the respondents.

3. The learned counsel appearing on behalf of the respondents would



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submit that the issue relating to the appointment of Arbitrator particularly under the Railway Standard General Conditions of Contract is the subject matter of a lis before the Hon'ble Supreme Court and therefore would seek this Court to adjourn the matter awaiting the decision of the Hon'ble Apex Court.

4. It is not in dispute that an agreement that had been entered into upon between the petitioner and the respondents contains a Clause for Arbitration. The general conditions of the contract also stipulates that the contractor will be asked to suggest to the General Manager atleast two names from the panel for appointment of the Arbitrator in respect of a contract which does not exceed Rs.50,00,000/-. In respect of a contract which exceeds Rs 50,00,000/-, the Arbitral Tribunal shall consists of a panel of three retired Railway Officers and for that purpose, the contractor will be asked to suggest to the General Manager two names out of the said panel for appointment of a contractor nominee within 30 days and the balance of Arbitrator will be appointed by the General Manager. The cost of contract that had been awarded to the petitioner is a sum of Rs.2,45,22,332.13/-. Hence, their Arbitral Tribunal should consist of three individuals as per the General conditions of contract.

5. Further, a notice under Section 21 had been issued by the petitioner for



appointment of an Arbitrator on 22.06.2023. Neither the names of the panel Arbitrators were sent to the petitioner for nominating his Arbitrator nor had the General Manager nominated the remaining Arbitrator to enter upon the dispute. Therefore, I am of the view that the respondent had not acted upon the notice under Section 21 of the Arbitration and Conciliation Act, 1996. Section 11(5) of the Arbitration and Conciliation Act envisages the circumstances when the notice under Section 21 had not been acted upon the party issuing the notice can approach this Court for appointment of an Arbitrator. Even though, the learned counsel for the petitioner had sought for an appointment of a sole Arbitrator considering the fact that he had entered upon into an agreement particularly with a clause for an Arbitration, where if the cost of contract is more than 50 Lakhs, the Arbitral Tribunal should have to consist of three Arbitrators. Hence, I reject the stand of the petitioner seeking for a sole Arbitrator.

6. Considering the fact that the contract has been awarded for the construction of the staff quarters, this Court is inclined to appoint two expert Arbitrators from the empanelled list of Arbitrators available with this Court and hereby appoints ***Mr.J.Ganesan, former Principal Chief Engineer (Civil)*** residing at ***Old No.18, New No.24, Viswanathapuram, Second Street, Kodambakkam, Chennai – 600 024, Mr.Ajay Kumar Lal, Principal Financial***



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Adviser & CAO, Indian Railways, residing at DDA, HIG, Block, 3A/101A, Deshbandhu Gupta Road, Motia Khan, New Delhi – 110 055 and Mr.J.Justin David, former District Judge, residing at OAK, B1, Maple Orchard, Ben Foundation, Padikuppam Road, Anna Nagar, West, Chennai – 600 040 as Presiding Arbitrator.

7. The learned Arbitrators are entitled to fix their fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrators to endeavour to decide the dispute as expeditiously as possible.

8. Accordingly, this Arbitration Original Petition is ordered.

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Index :Yes/No
Speaking Order/ Non-Speaking Order
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K.KUMARESH BABU, J.

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