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Arb.O.P.No.(com.div)No.36 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.36 of 2024

R.Saiprasad

... Petitioner

VS.

1.The General Manager,
Southern Railway,
Park Town, Chennai-3.

2.The Deputy Chief Engineer/Workshop/PER,
Carriage & Wagon Works,
Chennai 600 023.

... Respondents

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint the arbitrator to arbitrate all the claims and disputes arising out of the Agreement No.252/CW/PER dated 22.08.2022 between the petitioner and the respondents and direct the respondents to pay the cost of the petition and pass such other orders.



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Arb.O.P.No.(com.div)No.36 of 2024

For Petitioner : Mr.S.Girissh

For Respondent : Mr.G.Ilangovan

ORDER

This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996.

2. The dispute between the petitioner and the respondents is arbitrable in terms of Agreement dated 22.08.2022. Relevant clause reads as under:-

64(3)Appointment of Arbitrator	
(a)(i)	In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a SoleArbitrator whb shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also



WEB COPY



Arb.O.P.No.(com.div)No.36 of 2024

64(3)Appointment of Arbitrator	
	simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.
(a)(iii)	If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
(a) (iv)	The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to



WEB COPY



Arb.O.P.No.(com.div)No.36 of 2024

64(3)Appointment of Arbitrator	
	be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal should record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.
(a)(v)	While appointing arbitrator(s) under Sub-clause (i), (ii) & (iii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute. (a)(v) While appointing arbitrator(s) under Sub-Clause (i), (ii) & (ii) above, due care
(b)(i)	The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom.
(b)(ii)	A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of



Arb.O.P.No.(com.div)No.36 of 2024

64(3) Appointment of Arbitrator

	the award.
(b)(iii)	64.(3) (b) (iii) A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to daims presented in the artbital proceedings but omitted from the arbitral award.
64(4)	In case of the Tribunal, comprising of three Members, any ruling on award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
64(5)	Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
64(6)	The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.
64(7)	Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules thereunder and any statutory modifications thereof shall apply to the arbitration proceedings under this Clause.



Arb.O.P.No.(com.div)No.36 of 2024

WEB COPY

3. The petitioner has issued several notices to the respondents and called upon them to pay the amount due under the Agreement. The petitioner has also issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 10.07.2023 whereby the petitioner has invoked Arbitration Clause in the aforesaid Agreement dated 22.08.2022, which has been extracted supra.

4. However, the petitioner has not quantified the amount. In response, the respondents by a letter dated 13.07.2023 have merely stated that the decision will be taken on the request of the petitioner following the statutory period mentioned in the General Conditions of Contract applicable conditions of contract and the same will be communicated. Since the respondents have not responded to the above notice dated 10.07.2023 positively, it is deemed that the respondents have forfeited their rights to appoint an arbitrator.



Arb.O.P.No.(com.div)No.36 of 2024

5. Considering the same, Court is inclined to appoint Mr. Justice

P.N.Prakash (Retd. Judge) Former Judge of Madras High Court, residing at Lalithalaya, 32, First Cross Street, Kilpauk Garden Colony, Chennai 600 010 (Mobile No.94443 95654) as a sole Arbitrator resolve the dispute between the parties.

6. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

7. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act,



Arb.O.P.No.(com.div)No.36 of 2024

1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

8. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

9. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

25.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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Arb.O.P.No.(com.div)No.36 of 2024

C.SARAVANAN, J.

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Arb.O.P.(Com.Div.)No.36 of 2024