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Arb.O.P. (Com.Div.) No.576 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.576 of 2023

M/s.Prism Contractors,
Represented by its Managing Partner:
Mr.S.Muthukaruppan
No.35, First Floor,
Raja Colony 1st Main Road,
Cantonment,
Thiruchirappalli – 620 001. .. Petitioner

Vs.

1.The Union of India,
Rept.By the General Manager,
Southern Railway,
Head Quarters Office,
Park Town, Chennai – 600 003.

2.The Deputy Chief Engineer/RE/MS
Railway Electrification,
Egmore,
Chennai – 600 003. .. Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an independent and impartial sole arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Contract Agreement



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No.640/RE/MS/2021 dated 09.04.2021 as set out under details of claims in Para No.5 above and to direct the respondents to pay the cost of this petition.

For Petitioner : Mr.A.Vikash

For Respondents : Mrs.S.P.Arthi
Senior Panel Counsel for
Government of India

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2019 to appoint an independent and impartial sole arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Contract Agreement No.640/RE/MS/2021 dated 09.04.2021 as set out under details of claims in Para No.5 above and to direct the respondents to pay the cost of this petition.

2. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 28.08.2023. The said notice addressed to the General Manager, Southern Railway, Head Quarters



Office, Park Town, Chennai – 600 003. The first respondent has also responded to the same on 15.09.2023, wherein, the first respondent has merely forwarded the notice of the petitioner to the other departments. Thereafter, the respondents have not come forward to appoint an Arbitrator as is contemplated in General Conditions of Contract under Clause 64.(3)(a)(ii).

3. It is the specific case of the respondents that the contract of the petitioner is with M/s. Central Organisation for Railway Electrification. Therefore, notice issued under Section 21 to the office of the first respondent on 28.08.2023 cannot be construed to be a proper notice under Section 21 of the Arbitration and Conciliation Act, 1996 on the second respondent. It is therefore submitted that there is no arbitral dispute at present as Section 21 of the Arbitration and Conciliation Act, 1996 has not been invoked so far against the second respondent. It is further submitted that notice for invoking arbitration Clause should have been issued to the General Manager of Central Organisation for Railway Electrification and not to the General Manager Southern Railway as per Clause 64.(3)(a)(ii) of the General conditions of Contract.



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4. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Counsel for the respondents.

5. The offer of the petitioner was accepted by Central Organisation for Railway Electrification which appears to be an Engineering Department for Electrification for the Railways on 16.08.2020. The General Conditions of Contract has been incorporated. Clause 64(3)(a)(ii) of the General Conditions of Contract reads as under:-

“In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) name of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least two 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 atleast one out of them as



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the Contractor's nominee and will, also 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.

General Manager 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 Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.”

6. The letter of acceptance dated 16.08.2020 filed by Annexure 2 Agreement for Work incorporate the above General Conditions of Contract. There is no dispute from a reading of the above Clause that the person who has been vested with the powers to constitute the Arbitral Tribunal is the Railways. Clause 64.(3)(a)(ii) states that for the purpose, the Railway will send a panel of at least four four names of Gazetted Railway Officers of one or more departments of the Railway which may also include the names of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.



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7. Although, the Central Organisation for Railway Electrification is a department of Indian Railways and may have a General Manager, the General Conditions of the Contract has been incorporated for the purpose of agreement under work order dated 09.04.2021. The expression General Manager has not specifically defined to mean the General Manger of Central Organisation of Railway Electrification.

8. The arbitrators to be nominated by the Railways are also from the Indian Railways only. In any case, if there was any doubt regarding notice issued by the petitioner on 28.08.2023 under Section 21 of the Arbitration and Conciliation Act, 1996, it was incumbent on the part of the first respondent who have informed the petitioner that notice was wrongly addressed to the office of the first respondent and that the notice should have been sent to the second respondent or to the General Manager of Central Organisation for Railway Electrification. In any event, Central Organisation for Railway Electrification is a department of Indian Railways and has no independent existence.



9. In any event, in this, the respondents are also represented by the same Counsel. Therefore, the defence of the respondent is rejected. There cannot be further delay in resolution of dispute between the parties.

10. Considering the same, Court is inclined to take a view with the respondents as forfeited their rights to appoint Arbitrator in terms of Clause 64(3)(a)(ii) of the General Conditions of the Contract which forms part of the agreement of work and letter of acceptance dated 16.08.2020 issued by the second respondent Central Organisation for Railway Electrification.

11. Considering the above, **Hon'ble Mr.K.Ravichandra Baabu, Retired Judge of this Court, (Mobile No.9498033336) residing at No.1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai – 20,** is appointed as an Arbitrator to adjudicate and resolve the *inter se* dispute between the parties.

12. 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.

13. 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, 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 respondents.

14. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.



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15. Since the Court has appointed an 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.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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C.SARAVANAN, J.

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