



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

CIVIL MISC. PETITION NO. 326 OF 2017

BETWEEN:

M/S MADHAVA HYTECH ENGINEERS PVT. LTD.,
PROJECT OFFICE NO.19, 8TH "A" CROSS,
PAMPA LAYOUT EXTENSION,
KEMPAPURA, HEBBAL
BANGALORE 560 024
REPRESENTED BY KILARU PRADEEP,
AUTHORISED SIGNATORY

...PETITIONER

(BY SMT. NAMITHA MAHESH B.G., ADVOCATE FOR
SRI. S N PRASHANTH CHANDRA, ADVOCATE)

AND:

1. SOUTH WESTERN RAILWAY
GADAG ROAD,
HUBLI – 580 023
REPRESENTED BY
ITS GENERAL MANAGER.
2. SOUTH WESTERN RAILWAY
NO.18, MILLER'S ROAD,
BANGALORE 560 046
REPRESENTED BY
ITS CHIEF ADMINISTRATIVE
OFFICER (CONSTRUCTION)
3. SOUTH WESTERN RAILWAY
NO.18, MILLER'S ROAD,





BANGALORE 560 046
REPRESENTED BY
ITS CHIEF ENGINEER (CONSTRUCTION)

4. SOUTH WESTERN RAILWAY
NO.18, MILLERS ROAD,
BANGALORE 560 046
REPRESENTED BY
ITS DEPUTY CHIEF ENGINEER (WORKS)

...RESPONDENTS

(BY SRI. D BASAVARAJA, CGC)

THIS CIVIL MISC. PETITION IS FILED UNDER SEC.11 OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING THIS HON'BLE COURT TO (A) APPOINT SHRI S.R.SOMASEKARA (FORMER DISTRICT & SESSIONS JUDGE) BENGALURU, AS THE SUBSTITUTE & SOLE ARBITRATOR, BEFORE THE ARBITRATION CENTRE, KARNATAKA, AT BENGALURU, TO ADJUDICATE UPON THE DISPUTE RAISED BY THE PETITIONER BY ITS REPRESENTATION DATED 12/06/2012, IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION & CONCILIATION ACT 1996 & RULES OF THE ARBITRATION & CONCILIATION CENTRE RULES, 2016, KARNATAKA; (B) GRANT SUCH OTHER OR FURTHER RELIEFS AS THIS HON'BLE COURT MAY DEEM FIT TO GRANT.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL ORDER

This Civil Miscellaneous Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking an appointment of the sole Arbitrator to resolve the dispute between the petitioner and respondents in



accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation Centre Rules, 2016, Karnataka.

2. Brief facts, leading rise to the filing of this petition are as follows:

The petitioner was awarded and entrusted with a works contract bearing No.261/CAO/C/SC/GC.IV dated 27.10.1995 for conversion of track from MG to BG between Kulem-Nandgaon-Vasco Section- (strengthening of sub-structure and providing RCC bed blocks, and replacing the existing MG steel girders with new PSC superstructure for Bridge No.218 and 246) for value of Rs.1,93,58,000/-. The petitioner commenced the contract work. There were certain disputes that the petitioner had raised, and disputes were not resolved with respect to the contract. The petitioner, therefore, invoking Clauses 63 and 64 of the General Conditions of the contract, raised Arbitral Dispute No.W/SWR/CGE/PA/261/95 on 05.12.2001 and again on 08.04.2002 before the learned



Arbitral Tribunal comprising of three Railway Officers of the respondents. In response to the request vide letter dated 08.04.2002, invoking arbitration, respondent No.1 by it's letter No.W/SWR/Arb-29/DGM/261/15 dated 09.01.2006, constituted the Arbitral Tribunal consisting of three arbitrators of the Railway department to adjudicate the dispute arising out of the subject in terms of clauses 63 and 64 of General Conditions of contract. The Arbitral Tribunal commenced its proceedings. The Arbitral Tribunal did not make any material progress in the proceedings. Therefore, the dispute raised by the petitioner is still pending before the Tribunal, even to this day, with no sittings being held. Meanwhile, the Arbitration and Conciliation Act, 1996 was amended, to take effect from 23.10.2015.

2.1. The petitioner received a letter No.W/148/221/ARB/BNC dated 02.06.2017 from respondent No.4, Deputy Chief Engineer, seeking the petitioner's consent to switchover the proceedings under



the Arbitration and Conciliation (Amendment) Act, 2015. The petitioner, vide reply dated 30.06.2017, has expressed its unwillingness to consent for the reasons stated therein, and sought for the transfer of pending dispute to the Arbitration Center, Karnataka at Bengaluru.

2.2. The Arbitral Tribunal stands terminated unless the extension is consented to, by the petitioner. The Arbitral Tribunal has not completed the arbitration proceedings within the time from the date of coming into force of the Amendment Act of 2015. The members of Arbitral Tribunal are changing from time to time without consent of the petitioner. The petitioner issued a legal notice dated 11.09.2017 calling upon the respondents to consent to appoint the sole arbitrator before the Arbitration and Conciliation Centre and transfer the pending arbitral dispute to the Centre for fresh adjudication as per the Arbitration and Conciliation Centre, Karnataka Rules, 2017. The respondents failed to comply



with the requirements made in the legal notice. Hence, this petition.

2.3. Respondent No.4 filed a statement of objections admitting that the dispute was referred to the Arbitral Tribunal and the Arbitral Tribunal did not complete the proceedings. It is contended that the petitioner has absolutely no right to file an application once again under Section 11 of the Arbitration Act seeking appointment of a fresh Arbitral Tribunal and accordingly, prays to dismiss the petition.

3. Heard the arguments of the learned counsel Smt. Namita Mahesh B.G., for the petitioner, and learned CGSC Sri.D. Basavaraja appearing for the respondents.

4. Learned counsel for the petitioner submits that the petitioner was awarded and entrusted the work of contract. The petitioner has completed the work entrusted, and a dispute has arisen between the petitioner and the respondents. The petitioner invoked clauses Nos.63 and 64 of the General Conditions of the contract in



Arbitral Dispute No.W/SWR/CGE/PA/261/95 before the learned Arbitral Tribunal comprising 3 Railway officers of the respondents.

5. The Arbitral Tribunal did not adjudicate the dispute between the parties from 2002 till the filing of this petition. Meanwhile, during the pendency of the proceedings before the Arbitral Tribunal, the Arbitration and Conciliation Act was amended. She submits that respondent No.4 sought consent from the petitioner to switchover the proceedings under the Arbitration and Conciliation (Amendment) Act, 2015). The petitioner did not consent the same. The petitioner issued a legal notice for the appointment of the sole Arbitrator. The respondent did not reply to the same. Hence, prays to allow the petition.

6. Per contra, learned CGSC submits that though the respondents filed a statement of objections, the respondents have no objection in appointing the sole



Arbitrator to resolve the dispute between the petitioner and respondents.

7. Perused the records, and considered the submissions of the learned counsel for the parties.

8. The point that arise for consideration is as follows:

"Whether the petitioner has made out the ground to refer the dispute to the Arbitrator in terms of clauses 63 and 64 of the General Conditions of the contract as per the provisions of the Arbitration and Conciliation Act, 1996?"

9. There is no dispute that, the petitioner was awarded and entrusted a works contract. The petitioner commenced the contract work. There were certain disputes that the petitioner had raised, and disputes raised were not resolved concerning the contract. The petitioner invoked clauses 63 and 64 of the General Conditions of the contract and raised Arbitral Dispute No.W/SWR/CGE/PA/261/95 on 05.12.2001 and on



08.04.2002, before the Arbitral Tribunal comprising 3 Railway officers of the respondents. The Arbitral Tribunal commenced its proceedings. The Arbitral Tribunal did not make any material progress in the proceedings till 2017. The respondent No.4 did not make any material progress in the proceedings. The arbitral tribunal was not holding any sitting. Respondent No.4 vide letter dated 02.06.2017 sought the petitioner's consent to switch over the proceedings under the Arbitration and Conciliation (Amendment Act, 2015). The petitioner declined to switch over all the proceedings under the Arbitration and Conciliation (Amendment) Act, 2015. For more than 15 years, the Arbitral Tribunal could not decide the dispute raised by the petitioner.

10. The petitioner issued a legal notice on 11.09.2017, calling upon the respondents to consent to appoint the sole Arbitrator. The respondents did not comply with the requirements made by the petitioner in the said legal notice. Admittedly, the parties have



approached the Arbitral Tribunal, but the Arbitral Tribunal has not resolved the dispute between the parties for more than 15 years, and there is no dispute regarding the arbitration.

11. Meanwhile, the Arbitration and Conciliation Act was amended in 2015. Thus, in view of the submissions made by the learned counsel for the respondents, the respondents have no objection in appointing the sole Arbitrator to resolve the dispute between the petitioner and respondents. Learned counsel for the respondents submits that the claim made by the petitioner is barred by limitation. The scope of Section 11(6) of the Arbitration and Conciliation Act is minimal. This Court, while considering the application under Section 11(6), must consider whether an Arbitration clause exists. Admittedly, there is an arbitration clause in the General conditions of the contract, which reads as under:

**SETTLEMENT OF DISPUTES - INDIAN RAILWAY
ARBITRATION AND CONCILIATION RULES**



63. Reconciliation of disputes: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the "Chief Engineer" or "Divisional Railway Manager" through "Notice of Dispute" provided that no such notice shall be served later than 30 days after the date of issue of Completion Certificate by the Engineer. Chief Engineer or Divisional Railway Manager shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of conciliator(s) to the Contractor,

The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.

If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement duly signed by Engineer In-charge, Contractor and conciliator(s). When the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated:

By the signing of the settlement agreement by the parties on the date of agreement; or

- By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration; or
- By a written declaration of any party to the conciliator to the effect that the conciliation



proceedings are terminated, on the date of declaration; or

63.1 Matters Finally Determined by the

Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) of Standard General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause.

64.(1): Demand for Arbitration:

64.(1)(1): In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties

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Indian Railways Standard General Conditions of Contract November 2018 on any matter in question, dispute or difference on any account or to the winding up by the Railway of any certificate to which the Contractor may be entitled so that if the Railway fails to make a decision within 120 days, then and in any such case, but except of the "excepted matters" referred to in Clause 63.1 of these Conditions, the Contractor, within 120 days but within 180 days of his presenting his final claim on disputed matters shall



demand in writing that the dispute or difference be referred to arbitration.

12. In view of the above discussion, the petitioner has made out a ground to refer the dispute to the Arbitrator. In view of the above discussion, I answer the point for consideration in the affirmative.

13. Accordingly, I proceed to pass the following:

ORDER

- i. The Civil Miscellaneous Petition is allowed.
- ii. Hon'ble Justice Mr. P.Krishna Bhat, Former Judge, High Court of Karnataka is appointed as an Arbitrator to resolve the dispute between the petitioner and respondents as per the provisions of the Arbitration and Conciliation Act, 1996.
- iii. All the contentions of the parties are kept open, including the plea of limitation.



iv. The office is directed to communicate this order to the Hon'ble Justice Mr. P.Krishna Bhat, Former Judge, High Court of Karnataka and Arbitration and Conciliation Center, Bengaluru.

Sd/-
(ASHOK S.KINAGI)
JUDGE

sks