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Arb.O.P.No.1 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.No.1 of 2025

T.L, Nandagopal President,
G-Care Diabetic Council,
Gandhi Foundation,
No.33,Ganthipuram,
Thiruvallur Taluk and District. 602001.

... Petitioner

Vs.

1.The Chief Secretary,
Chief Secretariat,
Puduchery

2.The Secretary
Ministry of Health Service Government of Puducherry

3.The Director
Directorate of Heath and Family Welfare Service,
Government of Puducherry
DMS complex (Old Maternity Hospital)
Victor Simor Street White Town (Near Old HM)
Puducherry,605001.

4.The Secretary
Ministry of Health and Family Welfare
Government of India
New Delhi.

... Respondents



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PRAYER Petition filed under Section 11 (4) of Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator under MOU entered between the petitioner and respondents on 01.06.2019 for resolving grievance of the petitioner.

For Petitioner : Mr.K.V.Sajeev Kumar
For Respondents : Mr.Ramasamy Meyappan for R1 to R3
R4- Given up. Hence, dismissed as against R4

ORDER

The learned counsel for the petitioner is not pressing this petition as against the 4th respondent. He has made an endorsement to that effect in the court bundle. Accordingly, the petition is dismissed as not pressed as against the 4th respondent.

2. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an arbitrator by this Court.

3. The petitioner has raised a dispute under the Memorandum of Understanding dated 01.06.2019 entered into between the petitioner and the



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respondents. The petitioner claims that the respondents have not fulfilled their obligations as per the Memorandum of Understanding dated

01.06.2019. According to them, due to the same, they have suffered losses.

The Memorandum of Understanding dated 01.06.2019, which is the subject matter of the dispute raised by the petitioner, contains an arbitration clause.

The same is extracted hereunder:-

*“ **Dispute Resolution** :This MoU shall be deemed to have been made / executed at Puducherry for all purposes. In the event of any dispute related to the interpretation or rights for liabilities arising out of this MoU, the same shall, at the first instance be resolved mutually between the parties and in the event of non- resolution the matter may be referred to arbitration.*

***Arbitration:** If any dispute has not been resolved as mentioned above the aggrieved party or the other party shall refer such dispute, to an sole Arbitrator agreed by both parties. The Decision of the role Arbitrator shall be final and binding on the parties. The Arbitrator proceedings shall be Governed by the Indian Arbitration and Conciliation Act, 1996 and the Rules framed, thereunder. The Venue of*



Arbitration shall be at Puducherry and cost of Arbitration shall be borne equally by the parties, hereto”.

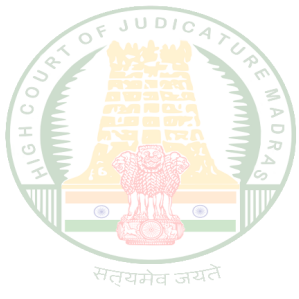
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4. Earlier, the petitioner had filed a writ petition before this Court for mandamus against the respondents in respect of the very same cause of action in W.P.No.35247 of 2023. Based on the representation made by the learned Government Advocate appearing for the respondents in W.P.No.35247 of 2023, this Court had dismissed the writ petition on the ground that there exists an arbitration clause in the Memorandum of Understanding dated 01.06.2019, which is the subject matter of the dispute between the petitioner and the respondents.

5. This Court, while dismissing the writ petition, had recorded the following facts:-

“3. The learned Government Pleader (Puducherry), appearing on behalf of the respondents, brought to the notice of this Court that an arbitration clause has been agreed between the parties in the Memorandum of Understanding.

4. When the arbitration clause has been incorporated in the MOU, claims and disputes have to be resolved only through arbitration under the Act. Thus, the petitioner is at



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liberty to invoke the arbitration clause for the purpose of redressal of his grievances.”

6. Only based on the liberty granted to the petitioner by this court to invoke arbitration and only based on the representation made by the learned Government Advocate appearing for the respondents that there exists an arbitration clause, the petitioner has been constrained to file this petition under Section 11 of the Arbitration and Conciliation Act 1996, seeking for appointment of an arbitrator by this Court.

7. The petitioner has also complied with the requirements of the Section 21 of the Arbitration and Conciliation Act, 1996 by issuing notice to the respondents on 26-06-2024 calling upon the respondents to accept for arbitration. The said notice has also been received by the respondents, however, admittedly, no reply was sent to the same by the respondents.

8. Sufficient opportunities were granted to the respondents to file counter in this petition since 26-03-2025. The respondents accepted notice in this petition as recorded in this Court's order dated 26-03-2025. Once again, the matter was adjourned to 07-04-2025 for the purpose of filing counter. Even on 07-04-2025, the counter was not filed. On a request made



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by the learned Standing Counsel appearing for the respondents, one more adjournment was granted and on the adjourned date i.e., on 22-04-2025 as well, no counter was filed. Thereafter, the matter was adjourned for hearing today. Till date, no counter has been filed by the respondents.

9. However, without filing counter, the learned Standing Counsel appearing for the respondents would submit that under the Memorandum of Understanding dated 01-06-2019, which is the subject matter of the dispute raised by the petitioner, the respondents are not liable to pay any amount to the petitioner. However, the learned counsel for the petitioner would submit that as seen from the Memorandum of Understanding dated 01.06.2019, the respondents undertook to fulfill certain obligations, but, they failed to fulfill the same. According to the learned counsel for the petitioner, due to non-fulfillment of the obligations by the respondents, the petitioner has suffered huge losses.

10. The learned counsel for the petitioner also referred to the arbitration clause contained in the Memorandum of Understanding dated 01.06.2019, which has been extracted by this court in the earlier part of this court's order. As seen from the same, the learned counsel for the petitioner would submit that any dispute arising out of the Memorandum of

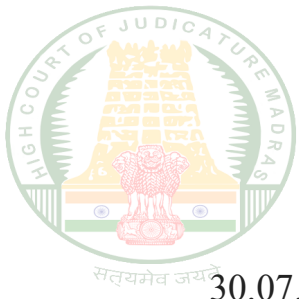


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Understanding is an arbitral dispute. He would also submit that the respondents failed to send any reply to the arbitration invocation notice. He would also rely upon the order passed by this court in the writ petition in WP.No.35247 of 2023 and submitted that only due to the submission made by the learned Government Advocate appearing for the respondents in the said writ petition that there exists an arbitration clause, the writ petition came to be dismissed by granting liberty to the petitioner to initiate arbitration in accordance with the arbitration clause. Therefore, he would submit that, necessarily, since there exists an arbitration clause in the contract and since the respondents themselves have admitted to the existence of the arbitration clause, this Court will have to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

11. On the other hand, the learned Standing Counsel appearing for the respondents 1 to 3 drew attention of this Court to the following decisions to substantiate his contention that the dispute raised by the petitioner is not an arbitral dispute.

a) Indian Oil Corporation Limited Vs NCC Limited reported in (2022) 13 S.C.R.660.



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b) A decision rendered by the Hon'ble Supreme Court dated 30.07.2019 in the case of ***Zenith Drugs & Allied Agencies Private Limited Vs M/s.Nicholas Piramal India Limited rendered in Civil Appeal No.4430 of 2009.***

12. Relying upon the aforesaid decisions, the learned Standing Counsel appearing for the respondents would submit that the dispute raised by the petitioner is not an arbitrable dispute, and therefore, the question of entertaining the petitioner's claim does not arise as it does not fall within the purview of any of the claims, if at all contemplated in the contract.

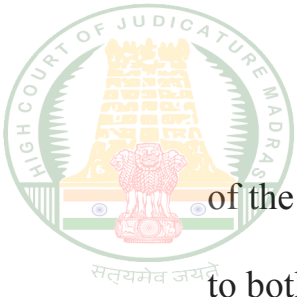
Discussion:

13. The following facts are undisputed

a) There exists an arbitration clause in the contract which is the subject matter of the dispute between the parties in this petition.

b) The respondents are parties to the said contract and they are also parties to the arbitration agreement.

c) The petitioner had invoked arbitration in accordance with the arbitration clause by issuing notices to the respondents on two dates namely 26-06-2024 and 28-09-2024 to comply with the requirements of Section 21



of the Arbitration and Conciliation Act, 1996. Admittedly, no reply was sent to both the notices by the respondents.

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d) In the writ petition filed by the petitioner in WP.No.35247 of 2023, the respondents have represented through the learned Government Advocate (Puducherry) that in view of the existence of the arbitration clause, the writ petition is not maintainable. Based on the said representation and in view of the existence of arbitration clause in the Memorandum of Understanding dated 01.06.2019, which is the subject matter of the dispute raised by the petitioner, this Court had dismissed the writ petition by granting liberty to the petitioner to initiate arbitration in accordance with the arbitration clause. Therefore, the respondents cannot blow hot and cold. Before the writ court, they have represented that there exists an arbitration clause, but, before this Court, they are representing that the dispute raised by the petitioner is not an arbitrable dispute.

14. Admittedly, the same claim was made by the petitioner before the writ court which is now agitated through this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this court.



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15. In view of the undisputed facts, recorded supra, it is clear that the only option left for the petitioner was to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court. The respondents have also failed to send any reply to the arbitration invocation notices sent by the petitioner to the respondents dated 26-06-2024 and 28-09-2024.

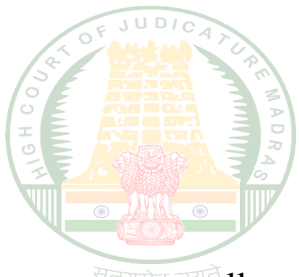
16. This Court, while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996, has to only see the *prima facie* existence of the arbitration clause in the contract, which is the subject matter of the dispute raised by the petitioner. Admittedly, there exists an arbitration clause in the contract which is the subject matter of the dispute raised by the petitioner. The undisputed facts which have been recorded in the earlier part of this court's order also confirm that there exists an arbitration clause which has also been admitted by the respondents before the writ court when the writ petition was dismissed by granting liberty to the petitioner to invoke arbitration in accordance with the arbitration clause contained in the contract.



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17. The decision rendered by the Honorable Supreme Court in the case of ***Indian Oil Corporation Limited Vs NCC Limited reported in (2022) 13 S.C.R.660***, has no applicability for the facts in the instant case as that was a case wherein the High Court had referred the dispute to arbitration by appointing a sole arbitrator to adjudicate the claim which was not a notified claim, which enables the parties to go for arbitration. In the case on hand, certain obligations have to be fulfilled by the respondents under the Memorandum of Understanding dated 01.06.2019, which according to the petitioner were not fulfilled and on that score, the petitioner claims that they have suffered losses and therefore, their claim is an arbitral dispute. The obligations of the respondents under the Memorandum of Understanding are also highlighted in the said contract.

18. Since, on a prima facie scrutiny of the contract, which is the subject matter of the dispute, this Court finds that there exists an arbitration clause, and since the petitioner has complied with the requirements of the Section 21 of the Arbitration and Conciliation Act, 1996, this Court has to necessarily appoint an arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Memorandum of Understanding dated 01.06.2019.



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19. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions :-

a) This Court appoints Hon'ble Tmt. Justice V. Bhavani Subbaroyan, former Judge of Madras High Court having address at No.2A, Plot No.50, Mohanapuri, 3rd Street, Brindavan Nagar, Adambakkam, Chennai - 88 (Mob. No.94440 14072) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the aforesaid agreement.

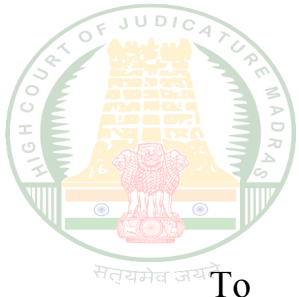
(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

11.06.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To
1.The Chief Secretary,
Chief Secretariat,
Puduchery

2.The Secretary
Ministry of Health Service Government of Puducherry

3.The Director
Directorate of Heath and Family Welfare Service,
Government of Puducherry
DMS complex (Old Maternity Hospital)
Victor Simor Street White Town (Near Old HM)
Puducherry,605001.

4.The Secretary
Ministry of Health and Family Welfare
Government of India
New Delhi.



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ABDUL QUDDHOSE. J.,

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