



Arb. O.P. (Com. Div.) No.467 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.467 of 2024

M/s. Mayilvaganam Lorry Service,
Rep. by its Managing Partner,
P. Senthil Kumar

... Petitioner

vs.

M/s. Bharat Petroleum Corporation Ltd.,
Bharati Bhavan,
4 & 6, Currimbhoy Road,
Ballard Estate,
P.B. No.688,
Mumbai – 400 001.

Currently at :
Regional LPG Manager (South)
No.1, Ranganathan Gardens Off,
11th Main Road,
Anna Nagar West,
Chennai

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator in accordance with Clause 39 of the Transportation Contract Agreement, dated 30.11.2015 to adjudicate upon the disputes that have arisen between the parties in relation to the Agreement.



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For petitioner : Mr. G. Raja

ORDER

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

2. The petitioner had entered into a Transportation Contract, dated 30.11.2015 with the respondent. As seen from the averments contained in the petition, there seems to be a dispute between the parties arising out of the Transportation Contract, dated 30.11.2015. The Transportation contract, dated 30.11.2025 contains an arbitration clause which is extracted hereunder :-

39. All questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration of some other officer of the Corporation by such Director (Marketing) in his place, who is willing to act as such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be Share Holder of the Corporation. The



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arbitrator to whom the matter is originally referred, whether the Director (Marketing) or officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the Agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

3. In accordance with the arbitration clause, the petitioner has issued the statutory notice under Section 21 of the Arbitration and Conciliation Act, 1996 to the respondent on 28.08.2024 calling upon the respondent to agree for arbitration in accordance with the arbitration clause. Though a reply has been sent by the respondent to the said notice



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on 11.09.2024, there has been no consensus between the parties with regard to the arbitration, hence 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.

4. A counter has been filed by the respondent raising the following objections :-

- 1) The claim of the petitioner is barred by limitation.
- 2) The venue of the arbitration and the jurisdiction of the Courts as per the agreement entered into between the parties is at Mumbai and not at Chennai
- 3) The petitioner has already approached the facilitation council seeking for the very same relief and therefore the present petition is not maintainable.

5. Insofar as the 3rd defence raised by the respondent that the petitioner has already approached the facilitation council is concerned, the learned counsel for the petitioner on instructions would submit that the petitioner is willing to withdraw the said claim before the facilitation



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council. The said undertaking given by the petitioner is recorded.

Accordingly, it is made clear that the petitioner shall withdraw the claim before the facilitation council.

6. Insofar as the defence of limitation raised by the respondent is concerned, the petitioner has made certain averments in the petition that the claim made against the respondent is well within the period of limitation. Whether the claim is barred by limitation or not is the subject matter of consideration by the arbitrator to be appointed by this Court. The respondent is always having the liberty to raise all objections by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996 before the arbitrator once an arbitrator is appointed by this Court. Therefore, the said contention need not be decided by this Court in this application filed under Section 11 of the Arbitration and Conciliation Act, 1996. On a prima facie consideration there exists an arbitration clause in the subject matter of the dispute viz., the Transportation Contract, dated 30.11.2015, which has been extracted supra.



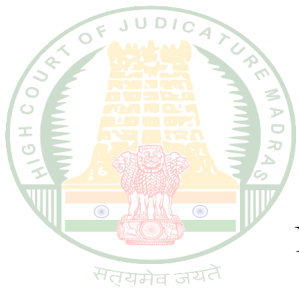
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7. While deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996, this Court will have to be prima facie satisfied that there exists an arbitration clause in the contract. When on a prima facie consideration, this Court finds that there exists an arbitration clause, necessarily this Court will have to refer the parties to the arbitration by appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. As observed earlier, the respondent is always having the liberty to raise all objections by filing an application under Section 16 of the Arbitration and Conciliation Act before the Arbitral Tribunal once an arbitrator is appointed by this Court.

8. For the foregoing reasons, this Court, in view of the fact that there exists an arbitration clause in the Transportation Contract, dated 30.11.2015, which is the subject matter of the dispute between the parties, will have to necessarily appoint an Arbitrator. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions :-

a) This Court appoints Mr. Sundarnarayan, the learned Advocate (Enrollment No. 1376 of 2000), who is having office at No. 155, Linghi Chetty Street, Chennai – 600 001, (Mobile



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No.9790846094) 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.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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