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Arb.O.P (Com.Div.) No.533 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.533 of 2024
and A.Nos.6380 of 2024 and 189 of 2025

Project Director,
Tamil Nadu Road Sector Project II

.. Petitioner

Versus

1.M/s.Om Sakthi Constructions

2.B.K.Thanu Pillai,
Presiding Arbitrator

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 14(2) and 15 of the Arbitration and Conciliation Act, 1996 to declare that the Tribunal consisting of Thiru B.K.Thanu Pillai as Presiding Arbitrator, Thiru G.Narayanasami as Co Arbitrator, Thiru R.Chockalingam as Co Arbitrator has become dejure/defacto and unable to perform its function and consequently substitute the Arbitrator.



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For petitioner : Mr.D.Ravichander,
Special Government Pleader,
Assisted by Ms.K.Aswini Devi,
Additional Government Pleader

For first respondent: Mr.A.Thiyagarajan,
Senior Counsel for
Mr.D.Senthil Kumar

ORDER

The petitioner has filed this petition under Section 14 of the Arbitration and Conciliation Act, 1996 seeking for termination of the mandate of the Arbitrators.

2.A panel of Arbitrators was constituted by consent of both the petitioner and the first respondent. The petitioner had also participated in the said arbitration. However, in the midway, the petitioner claims that the conduct of the Arbitrators raised a suspicion about them and the petitioner claims that they will not be able to get justice from the Arbitrators. To that effect, pleadings have been made in the affidavit filed in support of this petition.



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3.A counter has been filed by the first respondent rejecting the contentions of the petitioner as contended in the affidavit filed in support of this petition.

4.Admittedly, the petitioner has not adopted the procedure prescribed under Section 13 of the Arbitration and Conciliation Act, 1996. As per Section 13(2) of the Arbitration and Conciliation Act, 1996, a party, who intends to challenge an Arbitrator shall within 15 days after becoming aware of any circumstances referred to in sub-Section 3 of Section 12, send a written statement of the reasons for the challenge to the Arbitral Tribunal. Admittedly, the said procedure has not been followed before filing this petition under Section 14 of the Arbitration and Conciliation Act, 1996. Section 14 of the the Arbitration and Conciliation Act, 1996 enables the party to seek for termination of the mandate of the Arbitrator only under the following circumstances:

a)The Arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

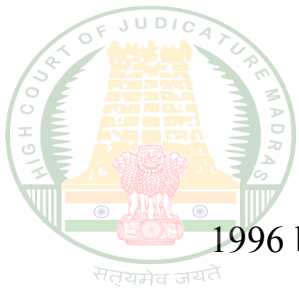
b)He withdraws from his office or if the parties agree to the termination of the mandate of the Arbitrator.



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5.In the instant case, the circumstances for terminating the mandate of the Arbitrator as prescribed under Section 14 of the Arbitration and Conciliation Act, 1996 do not arise. Neither the Arbitral Panel comprising of three Arbitrators have stated that they are unable to perform their functions or it is not the case of the petitioner before this Court that there was an undue delay on the part of the Arbitral Panel to complete the arbitration. The Arbitral Panel have also not withdrawn from proceeding with the arbitration. Therefore, the question of applicability of Section 14 of the Arbitration and Conciliation Act, 1996 does not arise. The grievances as raised by the petitioner that too in a case where the petitioner has earlier given consent for the appointment of the Arbitrators, can be redressed only in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 if at all, an Arbitral Award is passed by the Arbitral Panel against them.

6.This Court is not empowered to grant stay of arbitration under the provisions of the Arbitration and Conciliation Act, 1996. Even in an application filed under Section 16 of the Arbitration and Conciliation Act,



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1996 before the Arbitral Tribunal, if any adverse order is passed against one of the parties, the said party can challenge the said order only after the Arbitral Award comes to be passed under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner may have a grievance against the Arbitral Tribunal and there may be truth in the statement made by the petitioner before this Court, but through a petition filed under Section 14 of the Arbitration and Conciliation Act, 1996, the same cannot be redressed. Necessarily, the petitioner will have to participate in the arbitration and only in the event of an Arbitral Award passed against them, the grounds that they have raised in this petition can be raised by them while they file a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award passed against them.

7. For the foregoing reasons, this Court does not find any merit in this petition. Accordingly, this petition is dismissed. Consequently, connected applications are closed.



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ABDUL QUDDHOSE, J.
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8.It is made clear that the Arbitral Panel shall strictly adhere to the provisions of the Arbitration and Conciliation Act, 1996 by giving fair opportunity to both the parties to the dispute. The Arbitral Panel is directed to fix the next date of hearing of the arbitration by communicating the same to both the parties to the dispute by registered post with acknowledgment to enable both the parties to appear for arbitration.

9.Liberty is granted to the first respondent to file an application under Section 29A of the Arbitration and Conciliation Act, 1996 seeking for extension of the mandate of the Arbitral Tribunal. No costs.

19.02.2025

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