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Arb.O.P.(Comm.Div.) No.493 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.01.2025

Pronounced on:17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Comm.Div.) No.493 of 2024

A.Saravanan

... Petitioner

vs.

- 1.The Chairman
Puducherry Smart City Development Limited,
Puducherry.
- 2.The Chief Executive Officer,
Puducherry Smart City Development Limited,
Puducherry.
- 3.The Chief Technical Officer,
Puducherry Smart City Development Limited,
Puducherry.
- 4.The General Manager (Projects),
Puducherry Smart City Development Limited,
Puducherry.

... Respondents



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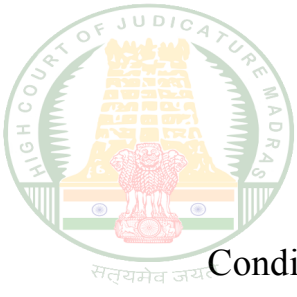
PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an independent Arbitrator to adjudicate upon the claims of the petitioner as per the Arbitration Applications dated 13.02.2024 submitted by the petitioner to the 2nd respondent herein viz., the Chief Executive Officer, Puducherry, Smart City Development Limited as per the Agreement Certificate No.IN-PY42081727323140S dated 20.10.2020 and as per Clause 5.6(1) & (2) of the General Conditions of the Contract Agreement as stated above.

For Petitioner : Mr.N.Thiagarajan

For Respondents : Mr.Ramasamy Meyappan,
Government Advocate (P)

ORDER

This Arbitration Original Petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act for appointment of an independent Arbitrator to adjudicate upon the claims of the petitioner in terms of the Arbitration Application dated 13.02.2024, against the second respondent as per the agreement dated 20.10.2020, Clause 5.6 (1) & (2) of the General



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Conditions of the Contract Agreement.

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2. I have heard Mr.N.Thiagarajan, learned counsel for the petitioner and Mr.Ramasamy Meyappan, learned Government Advocate for the respondents.

3. The learned counsel for the petitioner would submit that the petitioner is the Contractor who was awarded a contract for construction of toilets upgradation at different locations in Puducherry on 30.12.2019. However, according to the petitioner, after issuance of the work order and furnishing of a performance guarantee by the petitioner, the petitioner found that the estimate prepared by the Project Management Consultant was incomplete and several items had not been provided for and that the quantity prescribed for the various items was very meager and not sufficient to cater to all the entire toilets as contemplated under the Contract Agreement.



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4. However, according to the petitioner, the petitioner completed four toilet blocks as per the Agreement and by that time, the quantity was exhausted. The petitioner raised his bills which were submitted and evaluated through the technical wing. However, no steps were taken to settle the bills of the petitioner. The petitioner has sent a letter dated 23.01.2023 to the second respondent to approve the EIS/DIS items. A reply was sent by the second respondent on 31.01.2023, pursuant to which, the petitioner addressed the Chairman viz., the first respondent by letter dated 16.02.2023 requesting him to settle the issue. The petitioner followed up the same with a letter dated 25.04.2023 requesting a DRC to be fixed to solve the issue. However, no steps were taken by the respondents in pursuance of the said communications.

5. According to the petitioner, the respondents, despite having extracted the work from the petitioner, have failed to settle the dues of the petitioner and hence, the petitioner submitted the Arbitration Application on 13.02.2024 to the second respondent nominating an Arbitrator from his side.



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According to the petitioner, the respondents did not reply to the said notice, warranting a second letter dated 20.03.2024 and even a third letter, by way of reminder on 02.04.2024 and finally, on 15.04.2024, the petitioner requested the first respondent for a personal hearing to resolve the issue by referring the dispute for Arbitration. On 13.06.2024, the first respondent sent a notice foreclosing the work under the terms of the General Conditions of the Agreement. With no other option, the petitioner sent a letter on 04.10.2024 appointing the Chief Engineer (Retired), Public Works Department Puducherry as the Arbitrator from his side and requested the respondents to appoint an Arbitrator from their side. As there has been no reply to the said notice, the present Arbitration Original Petition has been filed.

6. The learned counsel for the petitioner, Mr.N.Thiagarajan, would submit that there is no impediment for appointment of an Arbitrator since the claim of the petitioner has not been settled despite several communications and reminders and an arbitrable dispute therefore exists.

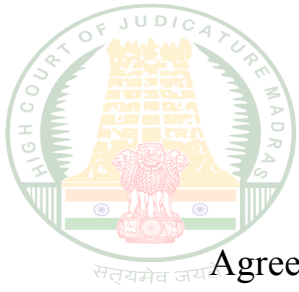


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He would also place reliance on the decision of the Hon'ble Supreme Court in the case of *Trimex International FZE Ltd, Dubai Vs. Vedanta Aluminium Limited, India*, reported in (2010) 1 S.C.R 820, where the Hon'ble Supreme Court held that once there is a concluded contract, orally or in writing, the mere fact that the formal contract has not been prepared and executed by the parties, would not affect either acceptance of the contract so entered into or implementation thereof. The Hon'ble Supreme Court further held that unless an inference can be drawn from the facts that that the parties intended to be bound only when a formal agreement had been executed, the validity of the agreement would not be affected by its lack of formality and on the facts of the said case, the Hon'ble Supreme Court held that even in the absence of a signed agreement, it would be possible to infer an Arbitration Clause from the various documents duly approved and signed by the parties in the form of exchange of e.mails, letters, telex and telegrams, etc.,

7. Per contra, Mr.Ramasamy Meyyappan, learned counsel for the respondents would first and foremost submit that there is no Arbitration



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Agreement between the parties in terms of Section 2(1) (b) and Section 7 of the Arbitration and Conciliation Act, 1996. Secondly, he would submit that the petitioner, on his own account, sent a communication on 03.01.2022 waiving his right to arbitrate the dispute between the parties. Thirdly, even according to Article 5.6 of the Agreement dated 20.10.2020, according to the respondent, there is no dispute since the petitioner himself has accepted the final bill with the respondent on 22.11.2024 and he cannot be permitted to enlarge the scope of the Arbitration proceedings and seek a larger relief thereafter. Fourthly, the contract, even assuming it existed, when it has been foreclosed at the request of the petitioner and the payments due to the petitioner have been settled, the petitioner cannot seek recourse to redressal of the dispute by resorting to Arbitration.

8. I have carefully considered the submissions advanced by the learned counsel on either side.

9. With regard to the first submission that there is no Arbitration



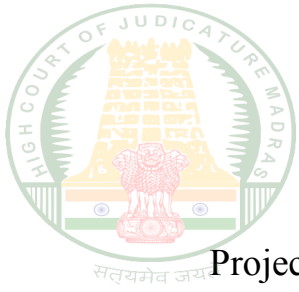
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agreement between the parties, the learned counsel for the petitioner submitted that he has signed the Agreement dated 20.10.2020 and forwarded the same to the respondents, the respondents failed to sign and send back the Contract to the petitioner. On the other hand, it is the contention of the learned counsel for the respondents that the terms were not agreeable to the respondents and that is the reason why it was not signed and sent back and therefore, in the absence of a written agreement as contemplated under Section 7, according to the respondents, the petitioner cannot seek recourse to Arbitration.

10. I find from the letter that emanated from the respondents dated 20.07.2020 in No.1004/PSCDL/Public Toilet/2020/430, that the letter of acceptance has been issued to the petitioner confirming that the e.tender for the work mentioned has been accepted by the respondents and the petitioner was called upon to submit the performance bank guarantee and complete the allotted work within a period of six months from the date of the letter of acceptance. The petitioner was requested to contact the General Manager,

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Projects, PSCDL, Pudcherry for taking possession of the site and starting the work. It is not in dispute that the petitioner was allowed to take possession of the site and start the work. It is also not in dispute that the petitioner completed four of the toilet blocks out of several other blocks which were originally contemplated under the Agreement, which however could not be completed for want of material and funds. All the communications which the respondents themselves have relied on before this Court by way of typedset of papers, there is reference to “Agreement: 3/PSCDL/2020” and therefore, it is too late in the day for the respondents to contend that there is no valid agreement and therefore, the parties cannot be referred to Arbitration. Therefore, the said contention of the respondents cannot be countenanced and is consequently rejected. I also find support in the ratio laid down by the Hon’ble Supreme Court in *Trimex International FZE Ltd’s* case, (referred herein supra), where the existence of the Arbitration agreement can be inferred from the conduct of the parties. Applying the said ratio to the facts of the present case, the agreement has been signed by the petitioner and forwarded to the respondents and

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thereafter, the petitioner has been permitted to take up the construction viz., upgradation work of the toilets and it would clearly imply that the Agreement was accepted by the parties which alone permitted the Applicant to commence the work at site. Therefore, the respondents cannot wriggle out citing that there is no written arbitration agreement between the parties.

11. Coming to the other aspects, regarding the contention there has been no dispute as contemplated and consequently, there is no requirement to arbitrate any issue, I find from the typed set of papers filed by the respondents that the petitioner has submitted a letter to the Executive Engineer, PSCDL/Puducherry. The letter does not contain a date however it has been acknowledged by the respondents, in receipt No.1841, dated 03.01.2022 by PSCDL, Puducherry. The letter is also signed by the petitioner. The petitioner has clearly stated in the said letter that he has executed extra items and deviated items and requested for foreclosing the work. He has also stated that he will not going for Arbitration. On 13.06.2024, acting upon the request of the petitioner for foreclosure, the

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respondents have confirmed that the final bill would be approved by the Board and payment made to the petitioner, as per recorded measurements.

12. In and by, the document dated 22.11.2024, that is, the final account bills, I am able to see that the respondents have made a note acting upon the request of the petitioner that the work is foreclosed on 08.11.2021 and that the Contractor has not made any claim before and has also not sublet the work and consequently, the bill has been processed and final bill of Rs.20,16,279/- was approved and also paid to the petitioner on 22.11.2024. There is a receipt column which is signed by the petitioner as well as the Joint Chief Executive Officer of PSCDL, Puducherry on 22.11.2024, acknowledging the payment of Rs.20,16,279/- in respect of works executed by the petitioner.

13. It is also brought to my notice that after deducting the statutory deductions the due and payable to the petitioner has been arrived at Rs.17,42,643/- and on 23.01.2025 by PFMS, the said amount of Rs.17,42,643/- which was arrived at to be payable by the respondents to the

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petitioner has also been transferred to the petitioner's bank account since the petitioner has refused to receive the same. The petitioner cannot invoke Article 5.6 of the Agreement dated 20.10.2020, when no dispute exists.

14. Considering the above documents and there being no rebuttal to the counter filed by the respondents by way of rejoinder, regarding the payments made and accepted by the petitioner, I do not find that there exists a dispute to be arbitrated in the first place. Further, the petitioner himself has requested for foreclosure of the contract and clearly, informing the respondents that the petitioner is waiving his right for arbitration. This was as early as in January 2022. Having voluntarily foreclosed the contract and also undertook not to go in for Arbitration and subsequently, when the final bill has been arrived at and signed by the petitioner himself and the amounts reflected in the Final bill paid/transferred to the petitioner's account, it is now not open to the petitioner to claim that further amounts are due and payable under the Contract. If at all the petitioner has suffered any damages or losses, it would be open for him to file a Civil Suit and claim the same



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against the respondents. However, having waived the right to arbitrate and also having received the amounts as agreed under the Final bill, it would not be open to the petitioner to take recourse to Arbitration. In view of the above, the request of the petitioner to appoint an Arbitrator cannot be acceded to and accordingly, this Arbitration Original Petition is liable dismissed.

15. In fine, this Arbitration Original Petition is dismissed. However, there shall be no order as to costs.

17.02.2025

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,

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Pre-delivery Judgment in
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