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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2025

Pronounced on : 31.01.2025

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

Arb.O.P.(Com.Div.)No.568 of 2024

M/s.Royal Sundaram General Insurance Co.,Ltd.,
(formerly known as Royal Sundaram Alliance Insurance Co., Ltd.,
Reg.Office No.21, Patullos Road,
Chennai – 600 002.
Corp. Office Vishranthi Melaram Towers,
No.5/319, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097. ... Petitioner

VS.

M/s.RTS Rural Technologies Solutions Pvt., Ltd.,
Reg.Office No.492, Pocket – 02,
Paschimpuri, New Delhi – 110 063.
Represented by its Power of Attorney,
Shri K.Rajhashekharan ... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 18.06.2024 received on 21.06.2024 of the Principal Arbitrator Shri.K.Balasubramanian in the proceedings bearing reference Arbitration Case No.01 of 2017 along with the communications dated 24.03.2024 of Arbitrator Shri.K.Venkata Krishna Kumar and dated 25.05.2024 of Arbitrator Shri.A.S.Velmurugan together with costs.



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For Petitioner : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondent : No appearance

ORDER

This Original Petition has been filed under Section 34(2) & (2A) of the Arbitration and Conciliation Act, 1996, challenging the awards dated 18.06.2024, 24.03.2024 and 25.05.2024.

2.I have heard Mr.M.B.Raghavan, learned counsel for the petitioner. Despite service of notice on the respondent and the name of the respondent also being printed in the cause list, there is no appearance either in person or through counsel. The respondent is called and set ex-parte. Hence, I proceeded to hear the learned counsel for the petitioner and I have also gone through the records.

3.The learned counsel for the petitioner would contend that the Arbitral Tribunal, consisting of three Arbitrators, have published three different awards with material contradictions and therefore, the petitioner/Insurance Company has been constrained to challenge all the three awards in the above Original Petition.



4.The primordial challenge to the awards is on the ground that there is a violation of Section 31(3) of the Act.

5.Taking me through the award of the Principal Arbitrator, the learned counsel for the petitioner would invite my attention to the findings of the Principal Arbitrator and state that absolutely no reasons have been given by the Principal Arbitrator to pass the impugned award. He would further submit that though a reference was rightly made to the memo dated 15.11.2023 filed by the petitioner before the Arbitral Tribunal, the purport of the memo has been grossly misunderstood by not only the Principal Arbitrator but also by the other two Arbitrators who have passed separate speaking and different awards against the petitioner.

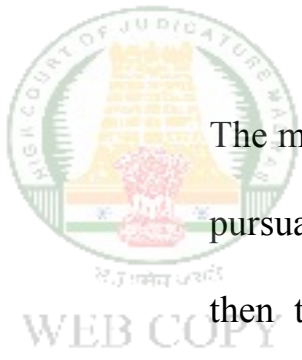
6.The learned counsel for the petitioner would further contend that the petitioner and the respondent entered into an agreement in respect of a Scheme that was introduced by the Government of Uttar Pradesh to enroll below poverty line families under the Rashtriya Swasthya Bima Yojana (RSBY) in twelve districts of Uttar Pradesh. The said Scheme was introduced by the Central Government and given effect through the State



Governments in order to provide health insurance coverage to below poverty line families. The petitioner was selected as the insurer in respect of the said twelve districts and the respondent was the agent engaged for enrolling below poverty line families and also for issuance of Smart Cards to the said families.

7. Admittedly, the respondent though claimed 520759 cards to have been issued / enrolled, the State of Uttar Pradesh rejected 162920 cards finding irregularities and in respect of these cards, no payment was made by the Government. As a consequence, the petitioner contended that as long as the amounts had not been received from the Government, the agent's fees cannot be paid by the petitioner.

8. It is in this connection that the memo filed by the petitioner before the Arbitral Tribunal assumes significance. In the memo dated 15.11.2023, the petitioner stated that in respect of the non-payment by the Uttar Pradesh Government, the petitioner has already initiated proceedings under the Arbitration and Conciliation Act before the High Court of Allahabad and that a retired Judge of the High Court of Allahabad has already been appointed as a Sole Arbitrator and the Arbitral proceedings are still pending.



The memo further states that in the event of the Government releasing funds pursuant to the arbitration proceedings pending in favour of the petitioner, then the petitioner is willing to accordingly release the charges of the respondent/agent herein.

9.The Principal Arbitrator has extracted the said memo and finding it acceptable, proceeded to record the same as well. However, after doing so, the Principal Arbitrator proceeds to pass an award to the tune of Rs.1,19,24,338/-, together with future interest from 01.07.2024, till the date of realization. However, the Principal Arbitrator has subjected the said award to realization of the said amount by the respondent from the Government of Uttar Pradesh and also subject to any pending adjustments or reductions, within a period of six months from the date of the award.

10.One another Arbitrator, Dr.A.S.Velmurugan has substantially agreed with the Principal Arbitrator, but however modified the award towards interest stating that the petitioner can be made liable to pay interest only from the date of recovery of the amounts from the State of Uttar Pradesh. The third Arbitrator, Mr.S.Venkata Krishna Kumar has held that the memo filed by the petitioner cannot be accepted since the claimant



cannot be made to wait endlessly and the award amount has to be paid within three months from the date of award.

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11.Pursuant to the three different awards passed by the Tribunal, the respondent issued a demand notice on 01.07.2024, calling upon the petitioner to pay a sum of Rs.3,12,41,765/- being the award of Rs.1,19,24,338/-, together with interest at Rs.1,93,17,427/-. The said notice was replied to by the petitioner on 11.07.2024, pointing out of the three different awards giving different reliefs to the respondent and further stating that the specific amount of Rs.1,19,24,338/- cannot be arrived at before the claim of the petitioner against the Government of Uttar Pradesh is adjudicated and thereafter, the petitioner has filed the above original petition.

12.As rightly pointed out by the learned counsel for the petitioner, when the Tribunal had accepted the memo and took it on record, the Tribunal could not have quantified the amount payable to the respondent. It is the specific case of the petitioner that the Government of Uttar Pradesh had rejected as many as 162920 cards and the petitioner had no role in the said process and it was in fact the respondent who was assigned the task of enrolling below poverty line families and issuing the cards.



13.The petitioner has fairly stated in his memo before the Tribunal that in respect of how many ever of the cards, the rejection of the State Government of Uttar Pradesh is set aside and payment is received, proportionate charges payable to the respondent would be paid. In fact, even in the Schedule II of the agreement between the petitioner and the respondent, the parties have clearly agreed and understood that the balance payment to the respondent would become payable only upon receipt of payment from the Government of Uttar Pradesh. Clearly, such event has not happened for the claim itself to have been made by the respondent for the first place.

14.In any event, the Tribunal having accepted the memo, ought not to have i) quantified the amount payable by the petitioner ii) directed payment of any interest since admittedly amounts were awaited from the State Government of Uttar Pradesh and iii) fixed time periods when the actual amounts due and payable to the respondent would be become ascertainable only after conclusion of the arbitration proceedings between the petitioner and the Government of Uttar Pradesh. Therefore, the arbitral awards passed by the Principal Arbitrator as well as the two other Arbitrators is clearly violative of the mandate of Section 31 of the Act, besides also being



ambiguous and unclear with the three Arbitrators giving different reliefs to the respondent. Further, the Arbitrators have also lost sight of the contractual terms agreed upon between the parties, especially the obligation of the petitioner to pay the balance money only upon receiving funds from the State Government of Uttar Pradesh. Therefore, it is also a violation of mandate of Section 28(3) of the Act.

14. For all the above reasons, the Original Petition is allowed and the awards dated 18.06.2024, 24.03.2024 and 25.05.2024 are hereby set aside. However, there shall be no order as to costs.

31.01.2025

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P.B.BALAJI, J.,
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