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Arb.O.P.(Comm.Div.) No.106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM

THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

ARBITRATION O.P.(COMM.DIV.) No. 106 of 2021

M/s. SRP Clean Enviro Engineers Pvt. Ltd.,
(A Company incorporated under Companies
Act, 1956)

having its office at:

#21, 1st B Cross, behind Sandhya Tent,
Old Madivala, Bangalore – 560 068

Represented by its Managing Director
Mr.P. VishwakSena Reddy

..Petitioner

Vs.

1. The Commissioner,
Nagercoil City Municipal Corporation,
Nagercoil, Kanyakumari District.

2. The Commissioner for Municipal
Administration,
Urban Administrative Building,
No.75, Santhome High Road,
M.R.C. Nagar, Raja Annamalaipuram,
Chennai – 600 028.

..Respondents

Prayer: Petition under Section 11(4) and (6) of The Arbitration and
Conciliation Act, 1996, to appoint the Arbitrators to adjudicate and decide
the disputes between the petitioner and the 1st respondent.



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For Petitioner :: Mr.Antony Jesus for
Mr. Prabhu Rajadurai

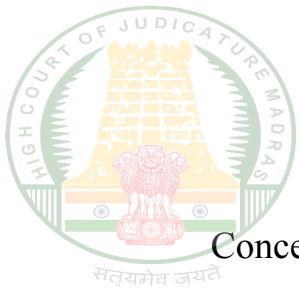
For Respondents :: Mr.A. Edwin Prabhakar,
Govt. Advocate (C.S.)

O R D E R

The petitioner seeks constitution of an Arbitral Tribunal in terms of the Concession Agreement dated 14.09.2013 between the petitioner and Nagercoil City Municipal Corporation.

2. The petitioner states that the above mentioned Concession Agreement was executed in relation to the collection and transportation of garbage and activities allied thereto. According to the petitioner, the original contract period ended on 11.12.2016, but the term of contract was extended by the parties and services were provided up to 12.07.2018. The petitioner asserts that bills raised for the period from 01.01.2018 to 12.07.2018 were unpaid. Consequently, the petitioner claims payment of a sum of about Rs.3.67 crores with interest thereon, aggregating to about Rs. 5.34 crores.

3. After invoking the Arbitration Agreement by a notice dated 15.04.2021 and nominating an Arbitrator in terms of clause 15.2 of the



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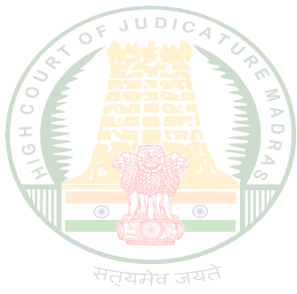
Concession Agreement, the present petition is filed on account of the failure of the respondent Corporation to nominate an Arbitrator as per the contract.

4. The respondent Corporation has filed a counter and opposes the appointment of an Arbitrator on four grounds. The first ground raised by the respondent Corporation is that the term of the Concession Agreement was unlawfully extended. The second ground is that excess payments were made to the concessionaire. The third ground is that criminal proceedings are pending in relation to the excess payment and other irregularities in relation the Concession Agreement. The last ground is that bills were not submitted by the petitioner for the period subsequent to 31.01.2018.

5. The Concession Agreement contains an arbitration clause under clause 15.2 which reads, in relevant part, as under:

"15.2 Arbitration

a) Procedure: *Subject to the provisions of clause 15.1, any dispute which is not resolved amicably shall be finally settled by binding arbitration under the Indian arbitration Act, 1996 or any amendments or additions thereto. The arbitration shall be by a panel of three arbitrators, one to be appointed by each*



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party and the third to be appointed by the Commissioner of Municipal Corporation. The party requiring arbitration shall appoint an arbitrator in writing, inform the other party about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation, the other party fails to appoint its arbitrator, the party seeking appointment of arbitrator may take further steps in accordance with arbitration act. The process of selection of such arbitration shall be a maximum of 30 days.

b) Place of arbitration: *The place of arbitration shall ordinarily be Chennai (insert name of town/city) but by Agreement of the parties, the arbitration hearings, if required, may be held elsewhere."*

Upon perusal thereof, it is clear that the parties have agreed to the resolution of disputes through arbitration by a panel of three arbitrators. Each party to the contract is entitled to appoint one arbitrator. The presiding arbitrator is required to be appointed by the Commissioner of Municipal Administration. In terms of the above Arbitration Agreement, the petitioner invoked the arbitration clause and appointed a retired District



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Judge as Arbitrator. The respondent Corporation did not appoint an Arbitrator as per the Arbitration Agreement in spite of receipt of notice dated 15.04.2021.

6. The objections raised by the respondent Corporation are with regard to the alleged unlawful extension of the contract, non-submission of bills for the period subsequent to 31.01.2018 and pendency of criminal proceedings. Under the revised regime in relation to appointment of arbitrators, these are not valid grounds to reject a petition for appointment of an arbitrator. It is a separate matter that it is open to the respondent Corporation to raise all objections, including with regard to the arbitrability of the dispute, before the duly constituted arbitral tribunal. Therefore, the present petition is liable to be allowed. Although the arbitration clause provides for the appointment of a presiding arbitrator by the Commissioner of Municipal Administration, such appointment by an interested party is not in consonance with the Arbitration and Conciliation Act, 1996.

7. Therefore, Arbitration O.P. No. 106 of 2021 is allowed on the following terms:



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(i) *Mr.M.K. Kabir, learned Senior Advocate, is*

appointed as the second Arbitrator.

(ii) *Mr. Justice K. Ravichandrabaabu, former*

Judge of this Court, is appointed as the Presiding Arbitrator.

(iii) *The Arbitral Tribunal shall enter upon*

reference and adjudicate the dispute.

(iv) *It will be open to the Arbitral Tribunal to fix*

fees and expenses in accordance with the Arbitration and Conciliation Act, 1996.

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nv

Index: yes/no

Internet: yes/no



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SENTHILKUMAR RAMAMOORTHY,J.

Nv/rrg

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