

**IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH**

Dated this the 30<sup>th</sup> day of August, 2013

Before

**THE HON'BLE MR.JUSTICE H.N.NAGAMOHAN DAS**

CMP No.203 OF 2009

BETWEEN

1. SUNIL ELECTRICAL WORKS  
SHOP NO 4, ANKUSH ARCADE  
STATION ROAD, HUBLI 580020  
THROUGH ITS PROP.  
SHRI MOHAN A BADDI

... PETITIONER

(By Sri : SHESHAGIRI S DESAI, ADV.)

AND

1. GENERAL MANAGER  
SOUTH WESTERN RAILWAY  
WORKS BRANCH  
CLUB ROAD  
HUBLI

... RESPONDENT

(By Smt : ANURADHA DESHPANDE, ADV.)

CMP FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO APPOINT AN ARBITRATOR/S OR AN ARBITRAL TRIBUNAL AS THE CASE MAY BE FOR ADJUDICATING THE DISPUTES IN QUESTION IN THE INTEREST OF JUSTICE AND ETC.

This petition coming on for admission, this day the court made the following:

**ORDER**

Petitioner entered into a work contract with the respondent on 22.07.2005 as per Annexure-A. Clause 64 of the agreement provides for an Arbitrator to adjudicate the claim between the parties. According to the petitioner respondent has illegally terminated the agreement and therefore he estimated the losses at Rs.9 lakhs. Clause 64(3) of the agreement reads as under:

*In cases where the total value of all claims in Question added together does not exceed Rupees 10,00,000/- (Rupees Ten Lacs only), the Arbitral Tribunal consist of a sole Arbitrator who shall be either the General manager or Gazetted officer of Railways not below the grade of JA grade nominated by the General Manager in that behalf. The sole Arbitrator shall be appointed within 60 days from the day when a written and valid demand for Arbitration is received by Railway.*

2. Invoking Clause 64(3) petitioner got issued a notice on 11.10.2008 as per Annexure-H calling upon the respondent

Chief Administrative Officer to appoint an Arbitrator. The respondent issued a reply as per Annexure-R1 dated 17.2.2009 stating that the General Manager, South Western Railway has the power to constitute the Tribunal and hence he has to be approached.

3. A reading of Section 64(3) specifies that the Arbitrator shall be the General Manager or a person nominated by him. In the instant case, there is no need for the petitioner to approach the General Manager to appoint an Arbitrator. The reply sent by the respondents is not in accordance with the terms of agreement. In the circumstances, the petition is to be allowed.

Accordingly, the following:

ORDER

- i) Petition is hereby allowed.
- ii) The General Manager, South Western Railways is appointed as sole Arbitrator to adjudicate the dispute between the parties.

- iii) In the event General Manager, South Western Railways is not able to adjudicate the dispute then he is entitled to nominate a person as provided under Clause 64(3) of the agreement.

**Sd/-  
JUDGE**

Dkb