

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 19.06.2017****CORAM****THE HONOURABLE DR. JUSTICE ANITA SUMANTH****O.P.NO.82 OF 2017**

M/s. RSV - Railone (J.V),
represented by its
Authorised Signatory
Mr.I.Mallikarjuna Rao,
S/o.Venkatappaiah,
No.339, Arora Colony-II
Road No.3, Banjara Hills,
Hyderabad 500 034

... Petitioner

Vs

1. The Chief Engineer/CN/
South/MS Southern Railway,
Egmore, Chennai 600 008.
2. The Deputy Chief Engineer/
Construction/Southern Railways,
Tambaram, Chennai 600 003.

.... Respondents

Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 praying for appointment of an independent and impartial Arbitrator to hear and decide the disputes between the petitioner and the respondents in accordance to the section 12(5) of the amended Arbitration and Conciliation Act, 1996 arising out of the Agreement dated 08.05.2009 as set out above and to complete the Arbitration Proceedings within the stipulated time decided by this Court.

for Petitioner : Ms. K. Aparna Devi

for Respondents : Mr.P.T.Ramkumar

ORDER

This petition is filed seeking a reference to arbitration in terms of agreement dated 08.05.2009 between the parties whereunder recourse to arbitration is set out in terms of Article 64(1)(i) of the the General Conditions of Contract.

2. Heard Ms.K.Aparna Devi, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned counsel for the respondents.

3. Learned counsel Mr. P.T. Ramkumar appearing on behalf of the Railways would object vehemently to the raising of a dispute at this stage, pointing out that the petitioner has, in fact, issued three 'No Claim Certificates' dated 6.5.2014, 17.9.2014 and 4.9.2015 respectively to the effect that no claims were due and payable by the Railways to the Contractor.

4. In the light of this categorical assertion, he would state, no dispute has arisen for adjudication by arbitration.

5. Mr.Ramkumar, learned counsel for the respondents

would also state that there has been conscious withholding of the aforesaid information from this court in view of the studied silence in this regard in the Original Petition. He would refer to Article 43(2) of the General Conditions of Contract which stipulates that where a No Claim Certificate has been issued, the contractor shall not be entitled to make a claim against the Railways and moreover, shall be debarred from disputing the correctness of the items covered under the certificates.

6. A perusal of the petition would confirm the aforesaid facts that are not disputed by the learned counsel for the petitioner.

7. Reference has made to a decision in the case of *TCR Selvam (JV) Vs. Union of India and two others*, where the Hon'ble Chief Justice, in an identical factual matrix, has come down heavily upon the petitioner as far as the non disclosure of material facts are concerned. The order concludes that the non-disclosure, by itself is fatal to the petitioner, dis entitling him to any relief whatsoever.

8. Reference was also made to a decision of the Delhi High Court in *M/s.IRCON International Limited V. Shri Krishna Trading Co. and another.*, (2007 (10) AD (Del) 309 enunciating as follows:

"24. The legal position in respect of as to how such a No-Claim Certificate has to be appreciated has been discussed in *Pandit Construction Company v. Delhi Development Authority and Anr.*, 2007(3) Arb LR 205 (Del), a judgment of this Court. It was found that often endorsements are made on the final bill as "accepted in full and final". The judgment of the Apex Court in *Bharat Coking Coal Ltd v. Annapurna Construction*, 2003(3) R.A.J.44 (SC) was averted to where the Supreme Court has observed that merely because a party had accepted the final bill, the same would not mean that it was not entitled to any other claim. In order for the claim to be presumed to be fully settled, it should unequivocally be stated so that no further claims would be raised and thus the Supreme Court held that in the absence of such a declaration, the contractor must be held not to be estopped and precluded from raising any claim. This Court held that in view thereof, the settlement must be recorded in clear and unambiguous terms."

9. In view of above, this petition is dismissed with exemplary costs of Rs.10,000/- (Rupees ten thousand only) payable to the respondents.

19.06.2017

Speaking order/Non -speaking order

Index:Yes/No

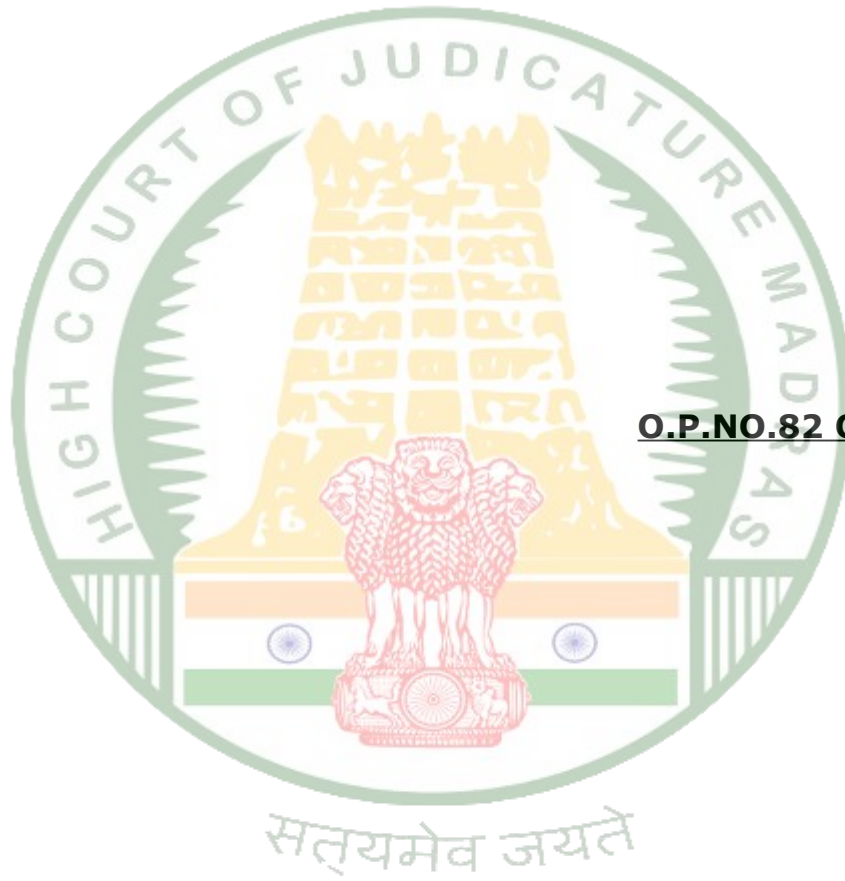
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DR. ANITA SUMANTH,J.

msr/msv



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