

In the High Court of Judicature at Madras

Dated : 03.2.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Original Petition No.606 of 2009

Sri.R.Venkataramaiah,
Engineering Contractor,
Hyderabad-34.

...Petitioner

Vs

1.Union of India, rep.by the Chief
Engineer, Construction/East,
Construction Office, Southern
Railway, Chennai-8.

2.Sri.S.Syed Hasinuddin, Presiding
Arbitrator, Deputy CSTE/Tele/HQ/
Park Town Southern Railway
Headquarters, Park Town,
S & T Branch, Chennai-3.

3.Smt.Hema Suneetha, Co-Arbitrator,
F.A. & C.A.O./CN/MIS/MS Southern
Railway, Park Town, Chennai-3.

4.Sri.R.Rajamani, Co-Arbitrator,
Retired Commissioner, CRS Railway
Safety, Lucknow, Flat No.3,
'Ram Priya', AE-172, 11th Main
Road, Anna Nagar, Chennai-40.

...Respondents

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the Arbitrator dated 12.6.2009 arising out of the agreement dated 441/CN/98 dated 30.10.1998 entered into between the petitioner and the respondent.

For Petitioner : Ms.Aparna Devi
For Respondent-1 : Mr.V.G.Sureshkumar

ORDER

Heard Ms.Aparna Devi, learned counsel for the petitioner/claimant and Mr.V.G.Sureshkumar, learned Standing Counsel for the first respondent - Railway Administration.

2. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act) seeking to set aside the award of the Arbitral Tribunal dated 12.6.2009.

3. The petitioner/claimant is a railway contractor, who was awarded the contract for earth work in formation of bank/cutting construction/extension of minor bridges, pitching slopes of bank, construction of RR retaining wall between Km 7.00 and Jolarpettai Yard - Reach II. An agreement dated 30.10.1998 was entered into between the parties.

4. It may not be necessary to refer to all the factual details, as the dispute in the instant case lies in a very narrow compass.

5. The challenge to the impugned award is primarily in respect of rejection of Claim No.3 with regard to extra rates for blanketing work claimed by the petitioner at Rs.13,12,300/-. The Arbitral Tribunal rejected the said claim. The only ground, on which, the said finding is assailed, is by referring to the minutes of the meeting held on 21.4.2009 in the chambers of the Presiding Arbitrator.

6. By referring to paragraphs 13 to 16 of the minutes, the learned counsel submits that the Arbitral Tribunal had directed a field level graph to be prepared to note the actual blankets involved in the blanketing work done by the petitioner with samples of the soil and jointly tested in the reputed laboratory to confirm whether the work completed meets the correct and specified blanketing standard and a report to that effect be submitted to the Arbitral Tribunal to know the actual site condition.

7. The submission of the learned counsel is that though such was the direction issued by the Arbitral Tribunal, the award came to be passed on 12.6.2009. Pointing out the preamble portion of the award, it is submitted that apart from preliminary hearing on 9.5.2008, the matter was heard on 10 occasions and though the Arbitral Tribunal, in its minutes dated 21.4.2009, directed the matter to be listed on 19.5.2009, there was no such hearing date given and that the award came to be passed on 12.6.2009. Hence, it is submitted that the impugned award calls for interference.

8. I have heard the learned Standing Counsel for the Railway Administration on the above submissions.

9. Firstly, it has to be noted that in the preamble portion of the award, hearing dates have been given in paragraph 5, from which, this Court finds the last hearing date as 10.6.2009. The Arbitral Tribunal, in the concluding paragraph pertaining to Claim No.3, stated that the claimant, at no point of time, protested nor raised any objection while recording of measurement of

earth work and signing of final variation statement to the effect that he did blanketing work and should be paid as if for blanketing material.

10. This finding cannot be properly assailed by the petitioner/claimant. That apart, there is nothing on record before the Arbitral Tribunal to show that the petitioner - claimant had, in fact, carried out the blanketing work. On a perusal of the minutes of the meeting on 21.4.2009, it was clear that there was no direction to the Railway Administration to ascertain the actual thickness of the blanketing work. Rather, it was the Arbitral Tribunal later advised the claimant and the respondent to jointly investigate the field level graphs of the section to know the actual work completed by the petitioner. The advice cannot be taken to be a direction. Secondly, the Arbitral Tribunal cannot enforce such an advise and if the Tribunal had thought fit to issue a direction, it should have directed an officer of the Railways to do such work. Thus, this Court is of the considered view that what has been recorded in the minutes dated 21.4.2009 is advisory and not a mandatory direction.

11. That apart, the claimant did not raise any objection on 10.6.2009, which was the last hearing date before the Arbitral Tribunal. If the stand taken by the petitioner in the above original petition is correct, then the petitioner ought to have raised such a specific stand before the Arbitral Tribunal, when the matter was heard on 10.6.2009, though not heard on 19.5.2009. Thus, there was no error in the award passed by the Arbitral Tribunal. Furthermore, this Court, while exercising jurisdiction under Section

34 of the Act, cannot convert itself into an Appellate Court over the reasoned award passed by the Arbitral Tribunal.

12. Therefore, the challenge to the award fails and the above original petition is accordingly dismissed.

03.2.2017

To
The Chief Engineer, Construction/East, Construction Office, Southern
Railway, Chennai-8.

RS

T.S.SIVAGNANAM,J

RS

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