

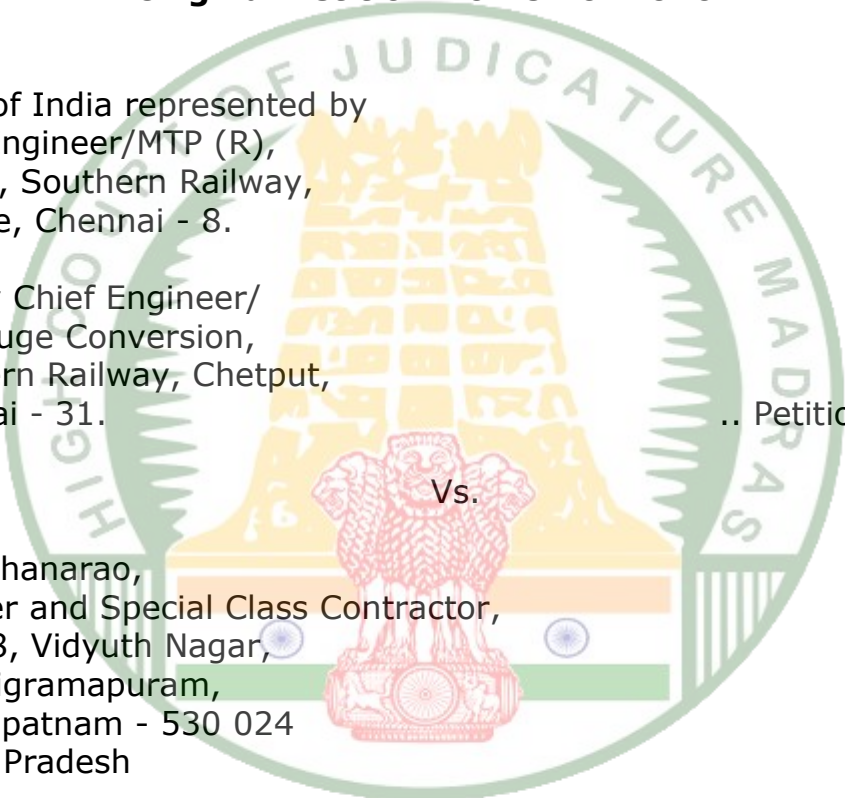
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.187 of 2010

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- 1.Union of India represented by
Chief Engineer/MTP (R),
CN/MS, Southern Railway,
Egmore, Chennai - 8.
- 2.Deputy Chief Engineer/
Gauge Conversion,
Southern Railway, Chetput,
Chennai - 31. ... Petitioners
- Vs.
- 1.K.V.Mohanarao,
Engineer and Special Class Contractor,
49-55-8, Vidyuth Nagar,
P.O.Saligramapuram,
Visakhapatnam - 530 024
Andhra Pradesh
- 2.Siyaram,
Chief Plant Manager,
Indian Railway Catering and
Tourism Corporation Limited,
South Zone, Mc Nicholas Road,
Chennai - 31.
- 3.V.Murali Mohan,
Deputy Financial Adviser and
Chief Accounts Officer/Fur.,
Integral Coach Factory,
Chennai - 38.
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4.G.Panneer Selvam,
Deputy Chief Engineer/General,
Headquarters, Workshop Branch,
Southern Railway,
Park Town, Chennai - 3.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 15.04.2009 passed by respondents 2 to 4 in relation to the disputes arising out of Agreement No.254/CN/2004 insofar as the Award in respect of Claim No.3 and 4(b) are concerned.

For Petitioners : Ms.T.P.Savitha

For Respondents : Mr.P.M.Bakthavatsalam for R1

ORDER

Challenging the award dated 15.04.2009 in respect of Claim Nos.III and IV(B), the present Original Petition has been filed.

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2.The petitioners and the first respondent entered into an agreement by way of contract for the work involving blanketing of existing third line as part of the proposed third line between

Pattabiram and Thiruvallur vide agreement dated 04.06.2004. the work was awarded in favour of the first respondent on 15.04.2004. The period fixed was two months. On the request made by the first respondent, the time was extended on three occasions. The value of the work was for a sum of Rs.1,23,14,880/-. As there was dispute with respect to the payment, the first respondent invoked the arbitration clause. All the arbitrators belong to the Southern Railway.

3.Before the Arbitration Tribunal, the first respondent made four claims. The Arbitration Tribunal rejected the claims with respect to Claim Nos.I, II and IV(A). However, Claim Nos.III and IV(B) were granted partially apart from awarding interest.

4.Though a sum of Rs.73,50,885/- was claimed, the Tribunal awarded Rs.29,90,200/-. Insofar as Claim No.III is concerned, loss due to variation was claimed at Rs.35,93,225/-. The Tribunal awarded 12% interest insofar as Claim No.IV (B) is concerned. This deals with interest *pendente lite* and pre-arbitration period. For this, a sum of Rs.6,79,234/- has been awarded. Challenging the amount awarded, the present original petition has been filed.

5.Learned counsel appearing for the petitioners would submit that the calculation made for Claim No.III is wrong. The Tribunal has taken into consideration the wrong facts. The payment of interest ought not to have been considered in the teeth of Clause 64.5 of General Conditions of Contract (for short 'GCC'). Reliance has been made on the judgments of the Apex Court in **Union of India Vs. M/s.Krafters Engineering and Leasing (P) Ltd., (CDJ 2011 SC 658)** and **Union of India Vs. M/s.Ambika Construction (AIR 2016 SC 1441)**.

6.Learned counsel appearing for the first respondent would submit that the Tribunal consists of Arbitrators nominated by the petitioner itself. The findings are factual in nature and therefore, Section 34 of the Arbitration and Conciliation Act, 1996, cannot be pressed into service. Insofar as interest is concerned, it is submitted that the Tribunal has awarded it by taking into consideration Clause 64.7 of GCC and therefore, no interference is required.

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7.We are concerned with Claim Nos.III and IV (B). Loss due to variation in the blanketing material is not in dispute. Admittedly, the petitioner has given extension to the first respondent. The Tribunal

took into consideration various factors in quantifying the amount. These factors would involve unprecedented rains, problems in the moorum and other impediments in the execution of the work which having not been denied by the petitioner. It took into consideration the fact that the petitioner has taken different contentions. A finding has been given that savings are due to power signal communication cable running at shallow depth restricting excavation. Accordingly, the Tribunal felt that some compensation should be paid to the first respondent towards the heavy sufferings to mitigate its hardship. In such view of the matter, this Court does not find any reason to interfere with the amount of Rs.23,10,966/- awarded towards the loss suffered by the first respondent.

8.The other issue is with respect to the interest levied. This Court finds considerable force in the submission made by the learned counsel for the petitioners. Clause 64.5 of GCC prohibits payment of interest by the Arbitration Tribunal while passing the award for any period till the date on which the award is made. The said clause is reproduced hereunder:

"64.5. Where the arbitral award is for the payment of money, no interest shall be payable on whole or any

part of the money for any period till the date on which the award is made."

9.This clause forms part and parcel of the agreement between the parties. Therefore, it not only binds the parties but also the Arbitration Tribunal. The same view has been echoed by the Apex Court in **Union of India Vs. M/s.Ambika Construction (AIR 2016 SC 1441)**. In such view of the matter, Clause 64.7 of GCC cannot be pressed into service as Clause 64.5 of GCC would govern the parties. When there is a specific clause in the agreement binding the parties, the Arbitration Tribunal cannot ignore it and pass the award. In such view of the matter, the interest of Rs.6,79,234/- awarded by the Arbitration Tribunal stands set aside. Further, the interest awarded from the date of the award till its realisation stands confirmed.

10.With the above modification, the original petition is allowed in part. No costs.

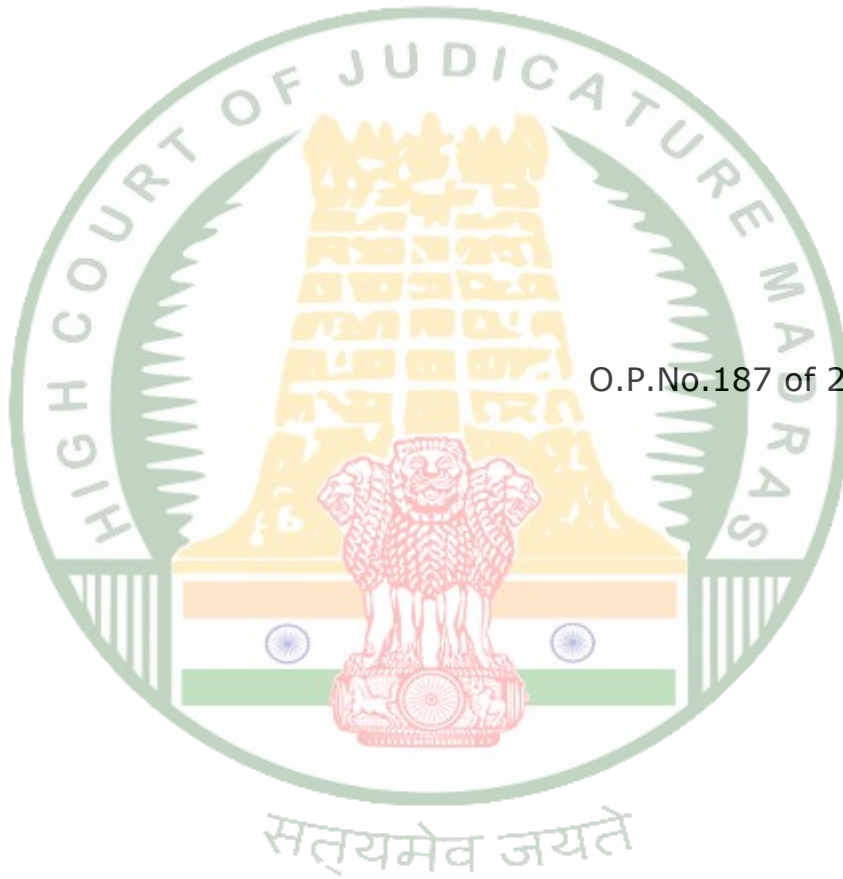
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Index:Yes/No
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M.M.SUNDRESH,J.

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