

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

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

Original Petition No.509 of 2010

M/s.C.V.Transports rep. by its
Proprietor C.Chinnadurai Nadar ... Petitioner

Vs.

1.M/s.Indian Oil Corporation Ltd.,
rep. by its Chief Plant Manager (LBP),
Tondiarpet, Chennai.

2.K.Ramalingam,
Sole Arbitrator,
Chief Manager (HR),
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai - 34.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation

Act, 1996 to set aside the Award dated 10.11.2005.

For Petitioner : Mr.T.A.Srinivasan

For Respondents : Mr.P.A.Sivasubramanian for R1

ORDER

Seeking to set aside the award dated 10.11.2005, the present Original Petition has been filed.

2.The work order was issued to the petitioner by the first respondent for the purpose of transporting lubricant oil. This was done pursuant to the tender called for by the first respondent. Clause 23 of the work order is extracted below:

23.Performance Incentive: It has been agreed by the contractor of the respective State to perform 77 trips per truck per year for Tamil Nadu and Pondicherry and 55 trips per truck per year for Andhra Pradesh/Karnataka/Kerala.

In case of extension of Contract (at Corporation's option) after the initial period of award of one year:

(a) for second and third year of operation, a PERFORMANCE INCENTIVE shall be granted to the contractors fulfilling the laid down performance levels and conditions thereof, details of which would be communicated shortly for specific acceptance by the contractor.

3.The period of work order is for one year. Thereafter, it can be extended for a period of two years. The work order issued in favour of the petitioner was accordingly extended for two years. The petitioner made a claim by submitting the bills and sought for performance incentive in accordance with Clause 23. The guidelines governing the submission of bills prescribed a schedule.

4.The petitioner's request was not acceded to by the first respondent. Therefore, the petitioner has invoked the arbitration clause. Learned Arbitrator rejected the claim on the premise that the dispute was raised after a period of three years from the date of submission of the bills. Challenging the same, the present original petition has been filed.

5.Learned counsel appearing for the petitioner would submit that the technical approach is not necessary. The object of the performance incentive is to make a payment keeping in view the escalation of the price. There is no limitation involved as it has to be seen from the date of denial of payment. Learned counsel for the petitioner has made reliance upon the decision of the Supreme Court in **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority (1988 AIR (SC) 1007)**.

6.Learned counsel appearing for the first respondent would submit that as facts are not in dispute, no interference is required. It is a clear case of non-compliance of Clause 23 coupled with the guidelines. Therefore, the original petition will have to be dismissed.

7.By way of reply, learned counsel appearing for the petitioner would submit that the clauses governing are onerous and impossible of being performed. An agreement was entered into by using the bargaining power of the first respondent. There is a difference between the travel to a place situated on the border of a State and an interior one.

8.As rightly submitted by the learned counsel appearing for the first respondent, this Court cannot rewrite the terms of the agreement nor declare it as against the public policy. The issuance of the agreement is not in dispute. Even otherwise, this Court does not find anything wrong in the clauses introduced. Admittedly, the petitioner has raised the issue seeking performance incentive after a period of three years from the date of submission of the bill. The guidelines mandate the submission of the bill within the prescribed time. Even if the period of three years is reckoned from the date of submission of

the bill, the claim is barred by limitation and a factual finding has been given by the Tribunal that the petitioner has not complied with clause 23. While construing the agreement, literal interpretation is to be given. There is no ambiguity in Clause 23. Therefore, the petitioner has not complied with the mandate of required number of trips. The incentive cannot be granted as a matter of course. It is subject to the compliance by the petitioner. Merely because the contract was extended for a period of two years, it cannot be stated that Clause 23 and the guidelines need not be given effect to. The judgment relied upon by the learned counsel for the petitioner has got no application being given on different factual context.

9. The issue involved is no longer *res integra* as in a similar case this argument of the learned counsel was already dismissed holding that the award of the arbitrator rejecting the claim based upon limitation is correct. Thus, this Court does not find any merit in the Original Petition. Accordingly, the Original Petition stands dismissed. No costs.

08.12.2017

Index:Yes/No
mmi

M.M.SUNDRESH,J.

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