

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.241 OF 2013**

Union of India

Through Dy.Chief Engineer (Construction).. Petitioner
Central Railway @ Panvel

vs

M/s Girish Enterprises Respondent
Thr.its Proprietor Mr.Girisjh Khandagale
Mumbai

Mr.T.J.Pandian for Petitioner

Ms.Vaishali Choudhari for Respondent

Coram : S.C.GUPTE J

Date : 24 NOVEMBER, 2018

P.C

Heard learned counsel for the parties.

2. This arbitration petition challenges an award passed by a sole Arbitrator rejecting the counter claims of the petitioner and directing the petitioner to refund the security deposit of the respondent withheld on account of its counter-claims. The reference arises out of a contract between the parties, under which the respondent was to supply and stack machine crushed stone ballast for railway tracks. During the original period of completion, which was 11 months expiring on 18.3.2000, none of the parties took any steps under the contract. The contract was extended thereafter by

the petitioner up to 31.5.2001. Before the expiry of the extended contract, a notice dated 24.4.2001 was given under section 6 of the General Conditions of contract, followed by a 48 hours' notice purportedly given on 24.5.2001, whereafter the contract was terminated by the petitioner. The petitioner, thereafter, completed the work through another contractor and claimed amounts towards risk and costs from the respondent herein. The respondent also had certain claims arising out of the contract against the petitioner herein. The respondent invoked the arbitration agreement and filed its claim before the learned arbitrator. The petitioner filed its counter-claim. The learned arbitrator, by his impugned award, rejected both the claims and the counter-claims. The learned arbitrator, in doing so, held that neither party took any step for execution of the contract work till 3.10.2001 and that the contract was bilaterally allowed to expire whereafter there was no authority in the petitioner to unilaterally extend the period under the contract and hence, neither party had any lawful claim against the other.

3. This conclusion is a fair and proper conclusion based on the material before the learned arbitrator. It exhibits a possible view of such material. The termination of the contract being invalid and not in accordance with the contract, read in the light of clause 62 of the General Conditions of contract, there was no warranty for

allowing the counter claim.

4. Learned counsel for the petitioner submits that in so far as ED of Rs.3,00,000/- is concerned, to the extent the impugned award orders refund of the same, the award is not in accordance with the terms of the submission since refund of S.D was not in any way part of the counter-claim of the petitioner. Learned counsel further submits that the impugned award, to the extent it grants this refund, clearly deals with an issue not contemplated or not falling within the terms of the submission or contains a decision beyond the scope of the submission. It is clear from the record of arbitration reference that Claim No. A5 of the respondent involved various amounts such as additional cost of insurance, encashment of bank guarantee, etc and this claim was not specified. Since Rs.3,00,000/- was the security deposit which was withheld by the petitioner, on account of the counter- claim that it had against the respondent, this amount can very well be said to be part of this particular claim. In any event, since the award dealt with the dues of the respondent, which were withheld on account of the entire claim which the petitioner had against the respondent and such claim (which was filed in the form of a counter-claim) being rejected by the arbitral tribunal, the arbitral tribunal was clearly within the terms of submission to order refund of the security deposit of Rs.3,00,000/-. No infirmity can be ascribed to the impugned award on account of

the direction of refund. So also, since the learned arbitrator rejected Claim No. A5 but ordered refund of Rs.3 lakh, the award can be clearly said to be within the submission before the learned arbitrator.

5. There is, accordingly, no case either under sub-section (2) of section 34 of the Arbitration and Conciliation Act, 1996 or under sub-section (2 A) of section 34 of the Act.

6. There is accordingly no merit in the petition. The petition is dismissed.

7. Learned counsel for the petitioner prays for stay of the petition. The prayer is rejected.

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(S.C.GUPTE, J)