

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
Original Petition No.71 of 2012

D.Karthikeya

... Petitioner

Vs.

1.Southern Railway,
Chennai - 600 003.
Rep. by the Presiding Officer,
(Arbitration Tribunal).

2.Kannan,
Deputy Chief Engineer,
Southern Railway, Construction,
Canannore.

3.S.Selvadurai,
General Manager,
RCII/MAS,
Southern Railway.

4.K.Rajkumar,
Senior Divisional Engineer,
Co-ordination/TPCI,
Southern Railway.

5.T.Nesamani,
Deputy Financial Accountant,
And Chief Accounts Officer/W/PFR,
Southern Railway

...Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Award dated 16.05.2011 passed by the Arbitral Tribunal in the Arbitration Proceedings in relation to the Agreement No.175/CN/2002, dated 16.05.2002.

For Petitioner : Mr.S.Raghavan

For 1st Respondent : Mr.P.T.Ramkumar

* * * * *

ORDER

This Petition has been filed seeking to set aside the Award dated 16.05.2011 passed by the Arbitral Tribunal in the Arbitration proceedings in relation to Agreement No.175/CN/2002, dated 16.05.2002.

2. The case of the petitioner is that he entered into a contract bearing Agreement No.175/CN/2002 dated 16.05.2002 with the Southern Railway represented by the second respondent herein for the work "Doubling of track" between SR-MAQ-CAN-UAA Section for the proposed protective Works at 253675 to 25420 alongside the new formation in cutting at Udhuma between KQK and KGQ stations (stage I Works). The total contract amount paid by the respondents for executing the work under the contract was Rs.91,24,017/-.

3. As per the contract, the work should have been completed by 15.03.2002 but, it actually continued till 2004, resulting in a delay of more than two years. During the interregnum, the currency of the Agreement was extended several times and finally till 13.04.2004.

4. In the meantime, certain disputes arose between the petitioner and the second respondent and therefore, the petitioner approached the General Manager, Southern Railways seeking for constitution of a Arbitral Tribunal to arbitrate the disputes and claims made by the petitioner. The General Manager, Southern Railways accepted the request of the petitioner and a Arbitral Tribunal was set up to arbitrate the claims of the petitioner.

5. The Arbitral Tribunal examined the claims of the petitioner and awarded a sum of Rs.9,59,400/- with respect to claim No.1 and Rs.6,00,000/- with respect to claim No.8 and rejected the rest of the claims.

6. The learned counsel for the petitioner contended that when claim no.1 is answered in favour of the petitioner, the Arbitrator should have answered the other claims, that includes Idling of Labour, Establishment and overhead charges, Idling of Machinery, etc. in favour of the Respondents/Southern Railway.

7. Though the claim made by the petitioner herein appears to be sound and that claim No.1 is of general in nature and claim Nos.2 to 5 are very specific, the Arbitrator has rejected the request of the petitioner stating that all issues have been considered while granting relief in claim No.1 with regard

to cost escalation. It is also not in dispute that the petitioner has done extra work with the consent of the respondents/Southern Railways, for which he has been paid. Whether cost escalation includes waste of labour or only Idling of Machinery, idling of labour etc., needs to be considered, but, in the present case on hand, it cannot be done so, as there is no challenge to that effect.

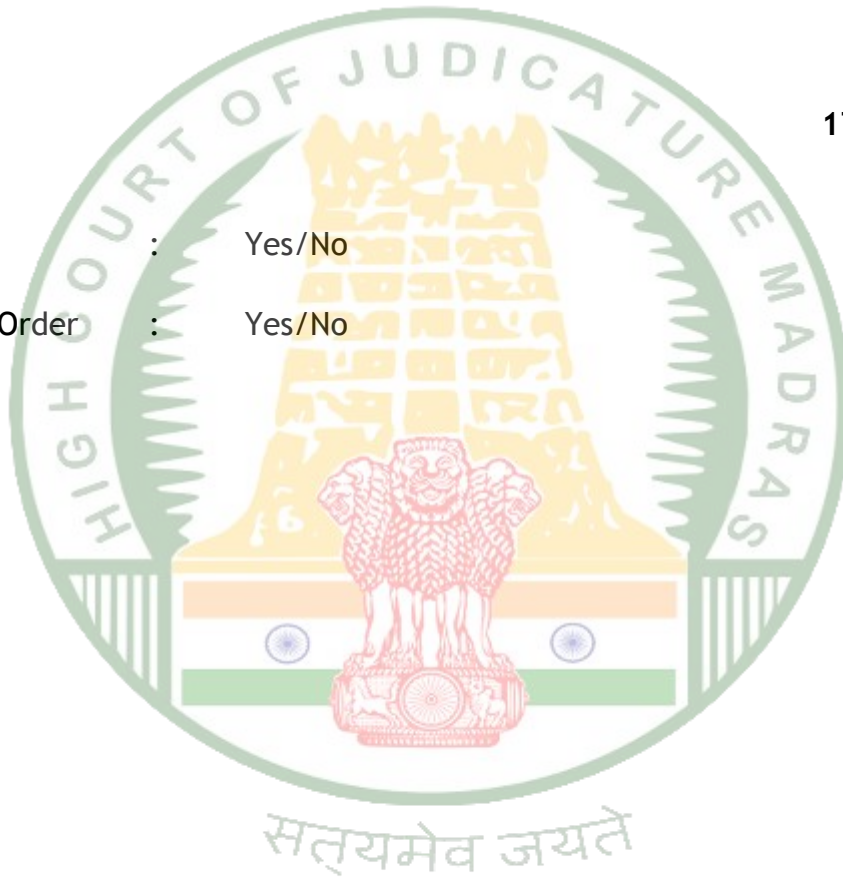
8. In fact, it is clearly mentioned in the Award passed by the Arbitration Tribunal that there is cost escalation of materials to a tune of Rs.8,00,000/- (Rupees Eight Lakhs only). Even though the currency of the Agreement was extended several times and finally till 13.04.2004, and that the Petitioner has been paid for the extra work done by him, he did not question the Award insofar as amount not granted with regard to other items and the prayer is restricted with regard to non-grant of interest, in view of clause No.64.5 of the General Conditions of Contract, which reads as follows:

“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. In view of the above, there cannot be grant of interest in the present case on hand. Hence, I find that the Arbitral Award needs no interference by this Court. **In the result, the Original Petition is dismissed. No costs.**

17.12.2018

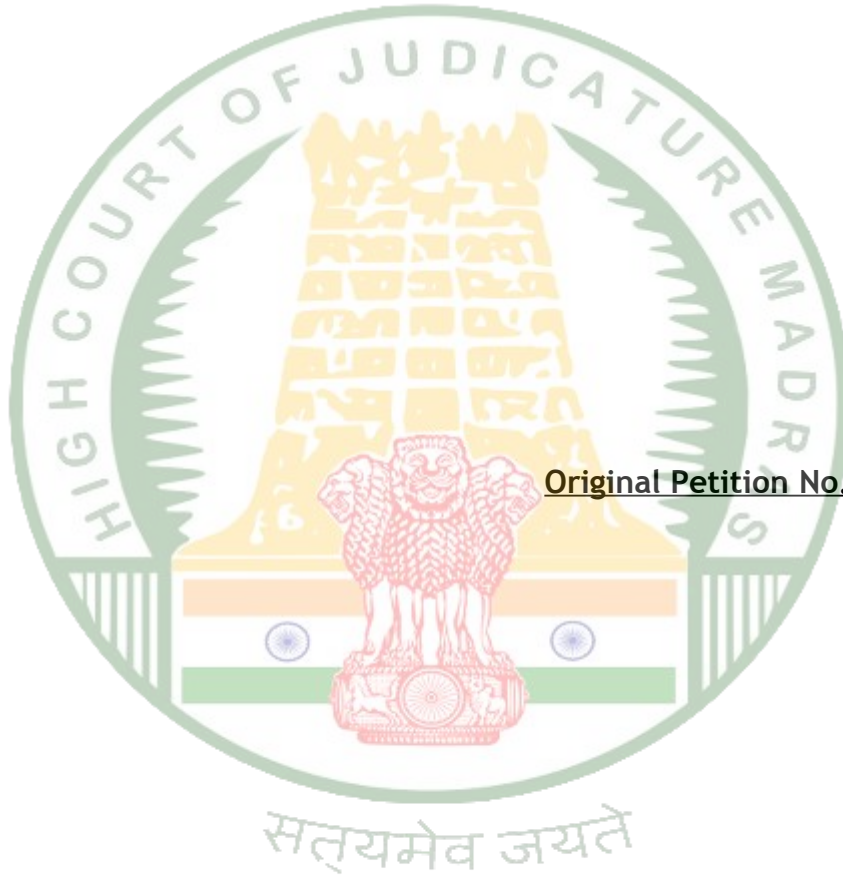
Index : Yes/No
Speaking Order : Yes/No
(tsg)



WEB COPY

S.VAIDYANATHAN,J.

(tsg)



Original Petition No.71 of 2012

WEB COPY

17.12.2018