

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM

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

Original Petition No.314 of 2014

A.Subramanian

... Petitioner

Vs

1. The General Manager,  
Southern Railway,  
Park Town, Chennai – 600 003.
2. The Principal Chief Engineer,  
Southern Railway, Park Town,  
Park Town, Chennai – 600 003.
3. Divisional Railway Manager (Works)  
Tiruchirappalli Division,  
Southern Railway, Tiruchirappalli.
4. Senior Divisional Engineer (North)  
Southern Railway,  
Tiruchy Junction.
5. A.Ravichandran  
Presiding Arbitrator,  
Senior Divisional Safety Officer,  
Madurai Junction, Madurai.
6. Dr.C.Surya Lakshmi,  
Arbitrator,  
Dy. CVO / Accounts/HQ/MAS  
Southern Railway, Park Town,  
Park Town, Chennai – 600 003.
7. Mr.S.Naseer Ahamed, Arbitrator,  
Sr.DEE/G/SA  
Salem Division,  
DRM Office Complex,  
Salem.

... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the award passed by the 4<sup>th</sup> respondent and allow the all claims of petitioner.

For Petitioner : Mr.V.Sivakumar  
For Respondents : Mr.P.T.Ramkumar

**ORDER**

On 19.03.2010, a letter of acceptance has been issued by the respondent in favour of the petitioner for collection and supply of ballast. The period of contract was six months. It followed a series of communications from the respondent to the petitioner on various counts. The petitioner was asked to execute the agreement by duly producing the Performance Bank Guarantee, attend the meeting for preliminary work and then make sure the availability of sample. The petitioner, without attending the meeting and complying with other requirements, wrote letters stating that without furnishing the copy of Letter of Acceptance, he could not proceed further and the space allotted is insufficient. After exchange of communications between the parties and finding that the petitioner was not serious in performing his part of the contract as he has already expressed his desire to wriggle out of it by making a request for return of EMD, an order of termination has been issued as per the procedure. Challenging the same, the petitioner has approached the Tribunal making several claims. The Tribunal rejected the claims made by the petitioner on two grounds, one is with respect to the failure of the petitioner in complying with his part of the contract and other is inability to produce the documents in support of his claim. Challenging the same, the present original petition is filed.

2. The learned counsel appearing for the petitioner vehemently contended that when the space is not available, it would be impossible for the petitioner to go on with the work. This Court is unable to accept the said contention.

3. A perusal of the records reveal that even prior to the above request, the petitioner was unable to comply with the requirements. Initially to begin with the work, he has to comply with the mandatory requirement of production of Performance Bank guarantee which he did not do so. Thereafter, he failed to attend the joint programme chart and to nominate a site engineer. He has also not given the samples. The Tribunal has rightly held that the contention of the petitioner is nothing but an after thought. Insofar as the claims based upon the loss suffered by him, the Tribunal was pleased to hold that there was no absolute materials to back him. Furthermore, he did not do the work even for a day. A factual adjudication has taken place. In such circumstances, there is no need for this Court to interfere with the said order. Hence, the Original Petition is dismissed.

सत्यमेव जयते

07.03.2018

ogy

WEB COPY

**M.M.SUNDRESH, J.**

ogy



Original Petition No.314 of 2014

WEB COPY

07.03.2018