

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.P.NO.255 OF 2017

Chief Engineer/Construction (West),
Chennai Egmore,
represented by Deputy Chief Engineer/Construction,
Salem Division,
Southern Railway,
Salem 636 005.

Petitioner

Vs

1. Sri K.R.Subramanian,
Engineering Contractor,
F3, Sai Gardens,
W-5, ICC Block,
Anna Nagar Western Extension,
Chennai 600 101.
2. Shri M.Elavarasan,
(Presiding Arbitrator)
Chief Signal and Telecommunication
Engineer/Planning,
Southern Railway,
Chennai 600 003.
3. Shri B.Narasimha Rao,
(Arbitrator)
Financial Adviser and Chief Accounts Officer,
Rail Wheel Factory,
Bangalore.
4. Shri M. Selvaraj,
(Arbitrator)
Chief Engineer/Construction,
Southern Railway,
Ernakulam

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the portion of the Arbitral Award dated 3.6.2009

made by respondents 2 to 4 in relation to Agreement No.376/CN/1998 directing payment of interest at 14% per annum from 1.1.2005 to the date of award totalling to Rs.3,45,461/-.

For Petitioner : Mr.P.T.Ramkumar

for Respondents : No appearance

ORDER

The instant application has been filed by the Railways challenging the Arbitral Award dated 3.6.2009 passed against them. The Arbitral Award has been passed against the petitioner for a sum of Rs.2,13,370/- together with 14% simple interest on Rs.2,13,370/- from 1.1.2005 till the date of Award.

2. The service was effected on the respondent through substituted service. The respondent has not entered appearance either in person or through counsel. The name of the respondent has also been printed in the cause list today.

3. The petitioner has challenged the Award primarily on the ground that under the contract entered into with respondent No.1, the petitioner is not liable to pay any interest in respect of any sum payable under the contract.

4. According to the petitioner, the Arbitral Tribunal erred in awarding the interest for the period from 1.1.2005 till the date of the Award. The Arbitral

Tribunal failed to take note of the fact that under the contract between the parties, clauses 16(3) and 64(5) of the General Conditions of Contract, which forms part of the agreement, clearly stipulates that no interest is payable in respect of any sums due under the contract. In view of the same, according to the petitioner, the claim for interest was not sustainable and consequently, the Award passed by the Arbitrator on interest i.e., *pendente lite* interest is against the terms of contract. According to the petitioner, clauses 16(3) and 64(5) of the General Conditions of Contract was not considered by the Arbitrator in accordance with settled principles of law.

5. Learned counsel for the petitioner drew the attention of this Court to clauses 16(3) and 64(5) of the General Conditions of Contract which reads as follows;

' 16).....

.....

(3) No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be payable with interest accrued thereon.'

64(5). Where the Arbitral Award is for the payment of the 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."

would make it abundantly clear, in view of conspicuous absence

of a similar clause in predecessor GCC in force, when the Agreement was entered into by inference that the power of Arbitral Tribunal was not curtailed, does not assist the claim of the 1st Respondent to Interest, pre-reference and *pendente lite*, in view of the principle as to bar to award Interest laid down by the Hon'ble Supreme Court in the line of decisions referred to hereinbefore and in the presence of prohibition contained Clause 16(2)(old) & 16(3) (modified) of GCC which are similar and identical."

6. Under the respective clauses, it is clear that the contract does not stipulate payment of *pendente lite interest* for the sums due and payable under the Contract.

7. Learned counsel for the petitioner Mr.P.T.Ramkumar drew the attention of this court to a decision of this Court dated 2.2.2018 in the case of ***Deputy Chief Engineer (Construction), Southern Railway, Podanur Vs. Vishal Constructions, represented by its Proprietor B.Vijayakumar and another*** reported in 2018(3) CTC 285 following various decisions of Supreme Court as well as our High Court held that when the Contract specifically bars payment of interest, no interest is payable for any sum of money due and payable under the Contract. Even in the judgment cited supra relied upon by the learned counsel for the petitioner, a similar application was filed under section 34 of the Arbitration and Conciliation Act raising the same ground as raised in the instant petition.

8. Following the Supreme Court decisions and our High Court decision, the learned Single Judge, in the judgment cited supra, allowed the section 34 application. I am also satisfied with the grounds raised by the petitioner for challenge in the instant petition. Since the Arbitrator has gone beyond the scope of the contract by awarding *pendente lite interest*, the Award will have to be set aside. Learned counsel for the petitioner submits that subsequent to passing of the Arbitral Award which is under challenge before this Court, the petitioner has already paid a sum of Rs.2,13,370/- to the 1st respondent as directed by the Arbitrator and the petitioner is aggrieved only with award of the Arbitrator in respect of *pendente lite interest* at the rate of 18% per annum.

9. The award of post award interest cannot be interfered with by this Court under section 34 of the Arbitration and Conciliation Act . Under the Award passed, interest at the rate of 18% per annum was directed to be paid by the petitioner to 1st respondent within a period of 30 days from the date of its publication, otherwise, an interest at the rate of 18% per annum is payable for the whole awarded amount.

10. Therefore, for the reasons stated above, the Award passed insofar as pre award and *pendente lite* period alone is set aside and O.P.No.255 of 2017 stands partly allowed. Insofar as payment of Rs.2,13,370/-

ABDUL QUDDHOSE, J.

msr

together with interest at 18% from the date of Award till date of relisation, the Arbitration award remains unchanged and is payable by the petitioner. This Original Petition is disposed of accordingly. No costs.

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Speaking Order/non-speaking order

Index:yes/No

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