

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM

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

Original Petition No.376 of 2011

Union of India rep. by
The General Manager,
Ordinance Clothing Factory,
Ministry of Defence,
Government of India,
Avadi, Chennai - 54.

.. Petitioner

Vs.

1.M/s.Apparel Leather Technics Pvt.
Ltd., rep. by its Managing Director,
Kaikondanahalli, Sarjapur Road,
Near Bellandur Gate,
Carmelrum Post,
Bangalore - 560 035.

2.Dr.P.R.Sudhakar,
Sole Arbitrator.

.. Respondents

Petition filed under Section 34(2) of the Arbitration and
Conciliation Act, 1996 to set aside the Award dated 19.02.2011.

For Petitioner : Mr.V.T.Balaji, CGSC

For Respondents : Mr.T.T.Ravichandran for R1

ORDER

Seeking to set aside the award dated 19.02.2011, the present Original Petition has been filed.

2.The petitioner herein placed some orders with the first respondent for the supply of machineries meant for manufacturing of garments. The first respondent supplied all the machineries. Further, under Ex.C1, the petitioner noted certain defects and accordingly, it was intimated to the first respondent. The first respondent replaced defective machineries. It was followed by joint inspection. Trials were held and the machineries were found to be in order. As some of the machineries were imported, documents were also sought for. These documents have been furnished belatedly, though not found in the supply order.

3.As per the supply order, 80% of the amount payable will have to be made on receipt of the machineries. However, this amount was not paid on the ground that the machineries were not of good quality. Therefore, the first respondent invoked the arbitration clause.

4.The second respondent was appointed by the Ordinance Board. Totally, 12 issues have been framed. Though the first respondent claimed higher amount, the award was passed for a sum of Rs.62,56,224/- at 6% interest per annum. Challenging the same, the present original petition has been filed.

5.Learned counsel appearing for the petitioner would submit that the machineries sought to be replaced have not been complied with. This aspect has not been taken into consideration by the learned Arbitrator. As the supply was found to be defective, the consequence would follow.

6.Learned counsel appearing for the first respondent would submit that the adjudication being factual no interference is required.

7.The basic facts are not in dispute. Admittedly, the supply was made by the first respondent. Some of the supplies were found to be not in consonance with specification and defective. There was a joint inspection held after the replacement of the machineries followed by the trial run in which the petitioner has expressed its satisfaction. Thus the contention of the petitioner was rightly rejected by the learned

Arbitrator. On the replacement of 74 machineries, the learned Arbitrator went into the facts and held that the said contention cannot be countenanced as the request made was not justifiable. The very request for replacement itself was made after two years of initial supply of machineries. The project itself was not turn key project with the default clause relatable to issue qua activity. Therefore, the selection of model was rightly held to be a discretion available to the first respondent. The learned Arbitrator, on facts, found that there was no justification to implement replacement of machineries other than the one replaced. The finding being factual and the learned Arbitrator being technically competent to go into the same, no interference is required.

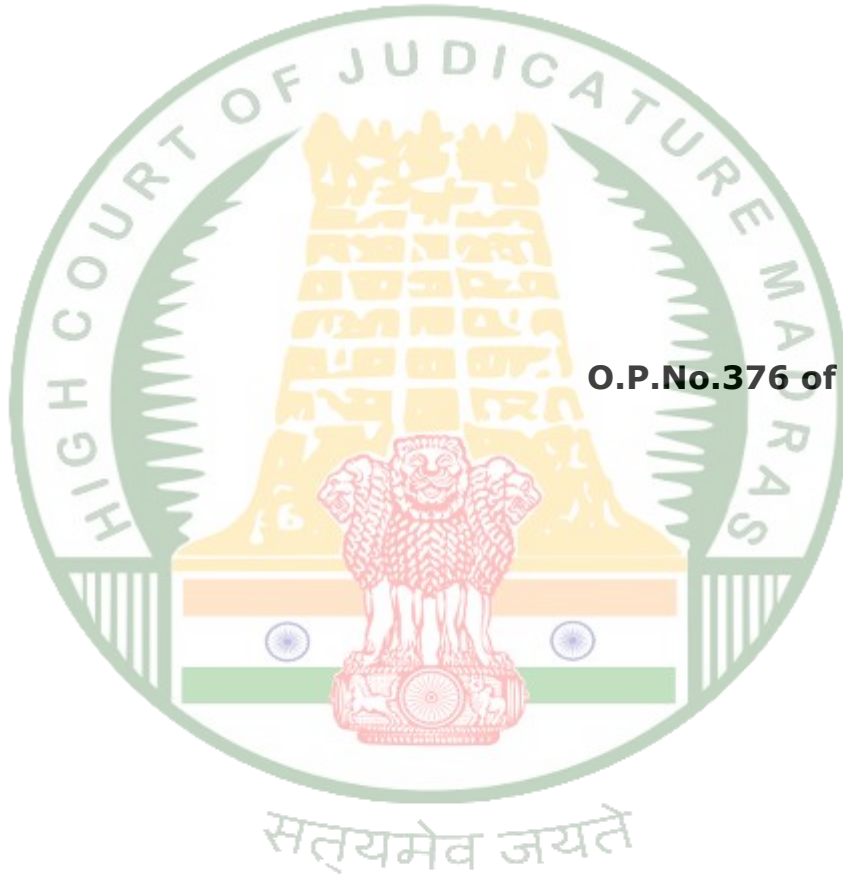
8. The other findings are also not liable to be interfered with, more so, when there is no dispute on the supply made. After all what the first respondent wants is money which it is entitled to for the supplies made, which was rightly considered by the learned Arbitrator. Thus no ground is made out to interfere with the award. Accordingly, the original petition stands dismissed. No costs.

23.03.2018

mmi

M.M.SUNDRESH,J.

mmi



O.P.No.376 of 2011

WEB COPY 23.03.2018