

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****RESERVED ON: 06.07.2018****DELIVERED ON: 12.07.2018****CORAM:****THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE****OP No.497 of 2011**

Union of India, represented by  
The Deputy Chief Engineer/Construction,  
Southern Railway,  
Calicut.

...Petitioner

vs.

1.M/s.Shree Jagannath Constructions Limited,  
6-3-1105, Raj Bhavan Road,  
Somajiguda, Hyderabad – 500 082.

2.Shri.K.K.Sharma,  
Chief Engineer/Construction,  
Southern Railway, Chennai – 600 008  
(PRESIDING ARBITRATOR)

3.Smt.Sujatha Jayaraj,  
Financial Adviser & Chief Accounts Officer/  
Workshop and Stores,  
Southern Railway,  
Perambur, Chennai.  
(ARBITRATOR)

4.Shri.A.K.Singhal,  
Chief Electrical Service Engineer,  
North Eastern Railway, Gorakhpur.  
(ARBITRATOR)

...Respondents

**Prayer:** Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award of Respondents 2 to 4 dated 12.10.2009 made in relation to the disputes arising out of Agreement No.67/CN/1999 between the Petitioner and the 1<sup>st</sup> respondent in so far as the Award of Interest at 10% per annum on the net award amount for a period of 5.66 years in a sum of Rs.1,69,876/- under Claim No.5 is concerned.

For Petitioner : Ms.T.P.Savitha,  
Standing Counsel for Railways

For Respondents : Mr.K.Ganesh Babu for R1  
R2 & R3 – No appearance  
R4 – Arbitrator

**ORDER**

The instant petition has been filed by the petitioner/Railways under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award dated 12.10.2009 passed against them.

2.The Arbitral Award has been passed against the petitioner for a sum of Rs.4,70,011/- comprising of Rs.3,00,135/- towards the net Award amount and Rs.1,69,876/- towards interest. As seen from the petition, the petitioner has accepted to pay Rs.3,00,135/- being the net Award amount to the first respondent/claimant but disputes only the payment of interest awarded under the Arbitral Award.

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 directing payment of *pendente lite* interest at the rate of 10% per annum on the net Award amount for a period of 5.66 years. The Arbitral Tribunal failed to take note of the fact that under the contract between the parties, clauses 16(2) 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(2) and 64(5) of the General Conditions of Contract was not considered by the Arbitrator in accordance with settled principles of law.

5.The learned Counsel for the petitioner drew the attention of this Court to clauses 16(2) and 64(5) of the General Conditions of Contract which reads as follows;

' 16).....

.....

*(2) 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 herein before 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. The learned Counsel for the petitioner Ms.T.P.Savitha drew the attention of this Court to a decision of this Court dated 02.02.2018, 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 the Supreme Court as well as this 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 decisions of the Supreme Court and this Court, 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. As per the contract, there is a bar for payment of *pendente lite* interest but the second respondent/Arbitrator has awarded *pendente lite* interest. Therefore, the Award of the second respondent/Arbitrator suffers from patent illegality only insofar as the Award of *pendente lite* interest is concerned. Insofar as, the remaining portion of the Award, this Court does not find any illegality. The 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.3,00,135/- to the first respondent as directed by the second respondent/Arbitrator and the petitioner is aggrieved only with Award

of the Arbitrator in respect of *pendente lite* interest at the rate of 10% 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 since it has been awarded only as per Section 31(7)(b) of the Arbitration and Conciliation Act, 1996.

10.Therefore, for the reasons stated above, the Award passed insofar as *pendente lite* interest is alone set aside and O.P.No.497 of 2011 stands partly allowed. Insofar as the post Award interest awarded by the second respondent/Arbitrator, the Arbitration award remains unchanged and is payable by the petitioner. However, there shall be no order as to costs.

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**12.07.2018**

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Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

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**ABDUL QUDDHOSE, J.**

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**Pre-delivery order in**  
**OP No.497 of 2011**

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**12.07.2018**