

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM

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

Original Petition No.532 of 2008

S.Manonmony .. Petitioner

Vs.

1.Union of India rep. by
Chief Engineer/Construction/West
Southern Railway, Egmore,
Chennai - 8.

2.T.Archunan,
Presiding Arbitrator,
Sr. Divisional Engineer/Co-ordination,
Divisional Office, Southern Railway,
Madurai - 625 016.

3.M.S.Malathi,
Arbitrator,
Sr. Divisional Finance Manager,
Tiruchirapalli Division,
Southern Railway, Trichy.

4.R.R.Pratap,
Arbitrator,
Sr. Divisional Mechanical Engineer,
Divisional Office, Southern Railway,
Madurai.

.. Respondents

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Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 12.03.2007.

For Petitioner : Ms.M.Chithira Gomathy

For Respondents : Mr.C.V.Ramachandra Moorthy

ORDER

Challenging the award dated 12.03.2007, the present original petition has been filed.

2.A contract valued at Rs.69.72 lakhs was awarded to the petitioner on 24.04.2012 with a time limit of six months. This was for the proposed reconstruction of minor bridges. Finding that the petitioner did not complete the project even within the extended time, an order of termination was passed. The petitioner made about 14 claims as against the three counter claims by the first respondent. The Tribunal passed an award, while holding that the termination order was wrong, granting certain claims in favour of the petitioner. The counter claims of the first respondent were rejected. Though the first respondent did not file any objection challenging the award, as against

the rejected claims, the present original petition has been filed.

3.Learned counsel appearing for the petitioner would submit that though the petition has been filed challenging the non-granting of the other claims, the same may be restricted to Claim Nos.2, 5 and 6 are concerned. Claim Nos.2, 5 and 6 are as follows:

S. No.	Nature of Claim	Claim Amount Rs.	Amount Awarded Rs.
2	Whether the claimant is entitled to get Rs.12,500/- towards the expenditure met with for trucking out the temporary girder from the unloading point to the bridge side.	12,500/-	Nil
5	Whether the claimant is entitled to get Rs.5,38,841/- towards losses on account of non-execution of work on account of unwanted termination.	5,38,841/-	2,69,420/-
6	Whether the claimant is entitled to get Rs.1,04,000/- for the losses on account of materials collected at site but not used and since idling at site.	1,04,000/-	20,000/-

4.Insofar as Claim No.2 is concerned, a sum of Rs.12,500/- was claimed. Learned counsel appearing for the petitioner would submit that the Tribunal has not taken into consideration the case of the petitioner as projected. For this claim, the first respondent did give a reply. The Tribunal considered both the case of the petitioner and the

first respondent and rejected the claim. For coming to the conclusion, the Tribunal held that there was no extra work involved in view of the work other than the works specified in the schedule. The petitioner cannot claim as a matter of right that the running of the train should be stopped, slowed down or to be done during the night time. Having understood the terms of the contract, it cannot be raised as a claim as a matter of right. The Tribunal rejected the claim as not sustainable. As the said decision of the Tribunal is based upon facts, no interference is required.

5. Insofar as Claim No.5 is concerned, a sum of Rs.2,69,420/- was awarded. While dealing with this, the Tribunal was pleased to hold that the petitioner was also responsible in not taking appropriate effort to place box segment. Therefore, the negligence or mistake as the case may be is attributed to both the petitioner as well as the first respondent. Merely because the termination order was found to be wrong, the petitioner is not entitled for the amount as claimed by it. After all, the petitioner is also expected to act in a responsible manner and therefore, there is nothing wrong in the Tribunal granting lesser amount, after having found that the petitioner did not take any action to mitigate the circumstances resulting in loss.

6. Similarly, while dealing with Claim No.6, the Tribunal, on fact, found that the petitioner did not bring any cement for the work to be carried out for Bridge No.67. Therefore, on that factual premise, a sum of Rs.20,000/- was awarded for the transportation and re-transportation and the loss of material.

7. Hence as these two findings are also based upon facts, no interference is required. After all, the Tribunal was constituted by the men of knowledge and experience in the particular field. Therefore, this Court cannot act as an appellate authority and exercise its power under Section 34 of the Arbitration and Conciliation Act, 1996. The original petition is dismissed. No costs.

23.01.2018

Index: Yes/No
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M.M.SUNDRESH,J.

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