IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM

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

O.P.No.402 of 2013

1.The Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park-Town,
Chennai-600 003.

2.The Chief Engineer, Construction (South),
Construction Branch, Egmore,
Chennai-600 008. ..Petitioners

Vs.

1.Mr.S.P.Senthil
No.8, Nizam Colony,
Pudukottai.

2.Sri N.Kasinath,
Chief Signal and Telecommunication
Engineer/Projects, Southern Railway,
Park Town, Chennai-600 003.
(Presiding Arbitrator)

3.Sri Umesh Kumar Varine,
Chief Engineer/South,
Eastern Railway, Garden Reach,
Kolkata (Arbitrator)

4.Sri S.Gunasekaran,
F.A. & C.A.O./Workshop Project,
East Central Railway,
Patna (Arbitrator) .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award of respondents 2 to 4 dated 21.06.2010 insofar as the award of a sum of Rs.7,56,018/- under claim 4 towards loss of profits is concerned.

For Petitioners : Mr.P.T.Ramkumar

For respondents : Mr.Amalraj S.Penkilapatti for R1

ORDER

The petitioners invited tenders for the supply of ballast. The first respondent became the successful tenderer. The contract was awarded for a quantity of 40,000 cum of ballast. The contract also provides for specification of the quality. The first respondent could not complete the work due to non-availability of good quality of raw material. The request for extension was made. But an order of termination was passed. Thereafter, the first respondent invoked the arbitration clause by raising several claims. Six claims have been made by the first respondent. The petitioners have made two counter claims. Claim No.1 was to declare the termination as invalid. Claim No.2 is for the ballast collected. Claim No.3 is with respect to the refund of the security deposit. Claim Nos.4 to 6 relate to compensation towards loss of profits and overheads, idle machinery and labour. The counter claims were for difference in the rate of re-tenders, which were called for pursuant to the termination order and for costs towards the departmental officials engaged in work.

2. The Tribunal awarded some specified amounts for claims 1 to 4 while rejecting claim Nos.5 and 6. This is for the reason that they would form part of other claims made. Resultantly, counter claim was also rejected. Now the challenge before this court is only with respect to claim No.4-loss of compensation and overhead claims. Thus, claim No.1 having been accepted, claim Nos.2 and 3 were satisfied.

3. The Tribunal was pleased to hold that the termination was bad since sufficient opportunity was not granted and there cannot be retrospective operation of such an order. Incidentally, it was held that on facts, the request of the first respondent for extension of the order ought to have been granted.

4. Insofar as Claim No.4 is concerned, it was held that the petitioners were aware of the fact that good quality of the raw materials conformed to the specification was not available, which in fact resulted in the situation created. It also forced the first respondent to modify the properties of the

materials for the future contracts. Therefore, the extension as sought ought to have been granted. Though the first respondent sought for a sum of Rs.75,60,185/- only 10% of the amount claimed was awarded.

5. The learned counsel appearing for the petitioners would submit that there is no basis for awarding the amount of compensation towards loss of profits and overheads. It cannot be presumed that the first respondent would have got 10% as profit. A mere termination per se will not entitle the first respondent in seeking compensation.

6. Per contra, the learned counsel for the first respondent would submit that inasmuch as the claim No.1 was not challenged, the consequence will have to be followed. The Tribunal was constituted by three higher officers of the petitioners. As an award was passed on consideration of the materials, no interference is required.

7. This Court finds considerable force in the submission made by the learned counsel for the first respondent. Once termination was set aside as null and void, claim No.4 will have to be allowed. In the case on hand, admittedly, the condition qua the quality control available to the first respondent was given a go by in the subsequent contract awarded. A

factual finding has been given by the Tribunal that the petitioners were aware of the fact that good quality of the raw material was available at the time of the work awarded in favour of the first respondent. Therefore, this factor alone created the situation. The profit margin cannot be assessed with precision. Certain percentage will have to be given presuming that there would be a profit. Though the first respondent has sought for a sum of Rs.75,60,185/-, the Tribunal has granted only 10%. The other heads of issue were also fractured into the compensation awarded already, which is inclusive of claim No.4. Thus, this Court does not find any reason to interfere with the award passed by the Tribunal.

8. One more submission has been made by the learned counsel appearing for the petitioners in respect of interest awarded. It is submitted that there cannot be an interest at 18% payable on the award passed. This Court finds considerable force in the submission with respect to the interest awarded by the Tribunal at 18%. Considering the fact that the interest levied at 18 % per annum is excessive, the same stands modified to 12% per annum. Accordingly, the the original petition stands dismissed modifying the rate of interest awarded by the Tribunal at 18% to 12% per annum. In all other respects, the award stands confirmed. No costs.

18.01.2018

raa

M.M.SUNDRESH,J.

O.P.No.402 of 2013

18.01.2018