

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

**O.P.No.470 of 2010**

M/s Raja Structural,  
Represented by its Sole Proprietor  
Mr.S.Purusothaman,  
No.41, 4<sup>th</sup> Street, Bharathi Nagar,  
Crawford, Tiruchirappalli-620 012.

..Petitioner

Vs.

(1)The Union of India,  
Represented by the Chief Engineer/  
Construction(North), Office of the  
Chief Administrative Officer (Construction),  
Southern Railway, Egmore, Chennai-600 008.

(2)The Deputy Chief Engineer(Gauge Conversion-II)  
Southern Railway, State Bank Road,  
Opposite:Arun Hotel, Tiruchirappalli-620 001.

(3)Mr.K.Kalyanaraman (Presiding Arbitrator)  
The Deputy Financial Advisor &  
Chief Accounts Officer(Budget),  
Southern Railway, Park Town,  
Chennai-600 003.

(4)Mr.S.Kavathalai Muthu (Arbitrator),  
The Senior Divisional Electrical Engineer,  
Salem Division, Southern Railways, Salem.

(5)Mr.S.Manoharan(Arbitrator)  
Formerly the Senior Divisional Engineer(Metro)  
Salem Division, Southern Railway, Chennai-3.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 19.03.2010 passed in the disputes arising out of the Agreement No.271/CN/2003 dated 21/08/2003 passed by the Arbitral Tribunal, comprising of the Respondents 3 to 5 and pass a fresh award allowing all the claims of the petitioner.

For Petitioner : Mr.Amalaraj S. Penikilapatti

For respondents : Ms.P.T.Savitha

**ORDER**

The petitioner, being the claimant, entered into an agreement with the first respondent for the execution of the proposed widening of existing formation in embankment between Thiruvavur and Nagore stations. The petitioner sought for payment for the work done which was refused by the first respondent. Therefore, separate claim was made on seven heads, which are hereunder.

**“ Claim No.1(e)- Final Bill Value Rs.18 lakhs**

The claimant has originally claimed 10000 cu.m earth work was done. However, the payment as per CC-II has been made for 3000 cu.m. On complete and thorough scrutiny of the working sheet and calculation of cross section submitted by the respondent on 17.02.2010 the work done tantamounts to 5072.15cu.m. There has been some lacuna in the calculation submitted by the

respondent which was brought to the notice of the Tribunal by the Counsel for the claimant in presence of the respondent. The claimant in his further submission of 02.03.2010 said that a quantity of nearly 8000 cu.m work had been completed. The Tribunal is of the opinion that a quantity of 6000 cu.m i.e. approximately 3000 cu.m more than the paid quantity be admitted. Hence payment for the remaining 3000 cu.m be paid to the claimant at the accepted rate-Award -3000 cu.m at the rate accepted in tender schedule.

**Claim No.2 – Security Deposit -Rs.4.45. Lakhs**

Security deposit submitted in cash as E.M.D as well as through on account bills amounting to Rs.4.45 lakhs may be refunded which has also been agreed to by the respondent- **Award -Rs.4.45 lakhs.**

**Claim No.3- compensation towards wrongful rescission of contract and breaching of contract agreement – Rs.12.00 lakhs.**

**Award--** The Tribunal is of the opinion that the claimant as well as the respondent have failed to fulfill the contractual obligations. Hence, both are equally responsible for the termination of the contract. Considering natural justice to both the sides this claim is not agreed to – **No Award.**

**Claim No.4 – Loss of money on expenditure towards mobilization of plant and machinery and**

**paying idle hire charges, paying quarry advances, collection of materials, etc, - Rs.6.00 lakhs.**

**Award** - The value of the contract agreement is less than the monetary limit for which mobilization advance etc., is admissible. Claimant has any way failed to complete the contractual obligations within the time frame i.e. initial period of ten months. Hence, the claim is not agreed to by the Tribunal – **No Award.**

**Claim No.5 – Loss of money due to retaining/withholding of the money on other completed agreement by way of Final bill, Security Deposit, etc., - Rs.6.00 lakhs.**

The risk and cost factor of this contract is not tenable due to lapse of time. Hence, the question of withholding any payment due to the contractor without knowing what is to be recovered is not justified. The Tribunal hereby directs the respondent to release all the withheld payments of other completed agreement if any due to contractor by way of Final Bill, Security Deposit, etc., of other agreement – **No Award.**

**Claim No.6-- Interest @ 18% p.a., from the cause of action arose i.e., 11.10.2004 to the date of award and further interest from the date of award to the date of discharge.**

Not admissible – No Award -- “Interest on default of complying with the award will carry 12% p.a., from the date of completion of 45 days of award to date of payment”.

**Claim No.7. -- Professional Charges**

Not admissible – **No Award.**”

The Tribunal after affording opportunity to the parties, has granted an award for Claim Nos.1(e) and 2 while rejecting the others.

2. The learned counsel for the petitioner would submit that for some of the claims despite a finding given, the petitioner was directed by the Tribunal to approach the respondents 1 and 2. Insofar as the other claims are concerned, the Tribunal did not give its reasons for rejection.

3. The learned counsel for the respondents 1 and 2 would submit that the claims awarded have been honoured. For the rejection of the awards reasons have been assigned. Therefore, they need not be disturbed.

4. This Court has perused the award at length. Two things emerge from the award. Firstly for some of the claims, despite a prima facie finding, the petitioner was directed to approach the respondents 1 and 2, which on the face of it, is sustainable in the eye of law. After all, the Tribunal was

expected to go into the facts and law and thereafter, render a finding. Secondly, while rejecting the claims, the respective contention of the parties, followed by reasons, are not available in the award. The Tribunal merely says that the claims made are not sustainable.

5. In such view of the matter, this Court is of the view that the award requires to be interfered in exercise of the power under Section 34 of the Arbitration and Conciliation Act, 1996 and accordingly, the same is set aside except the awards passed in favour of the petitioner. The remaining claims are to be adjudicated by a newly constituted Tribunal since it is submitted that some Members have since retired. The constitution will have to be done as per the amended Act by consent of the petitioner and respondents 1 and 2, within a period of six weeks from the date of receipt of a copy of this order. After such constitution, the newly constituted Tribunal will have to hear on the claims within a period of four months thereafter.

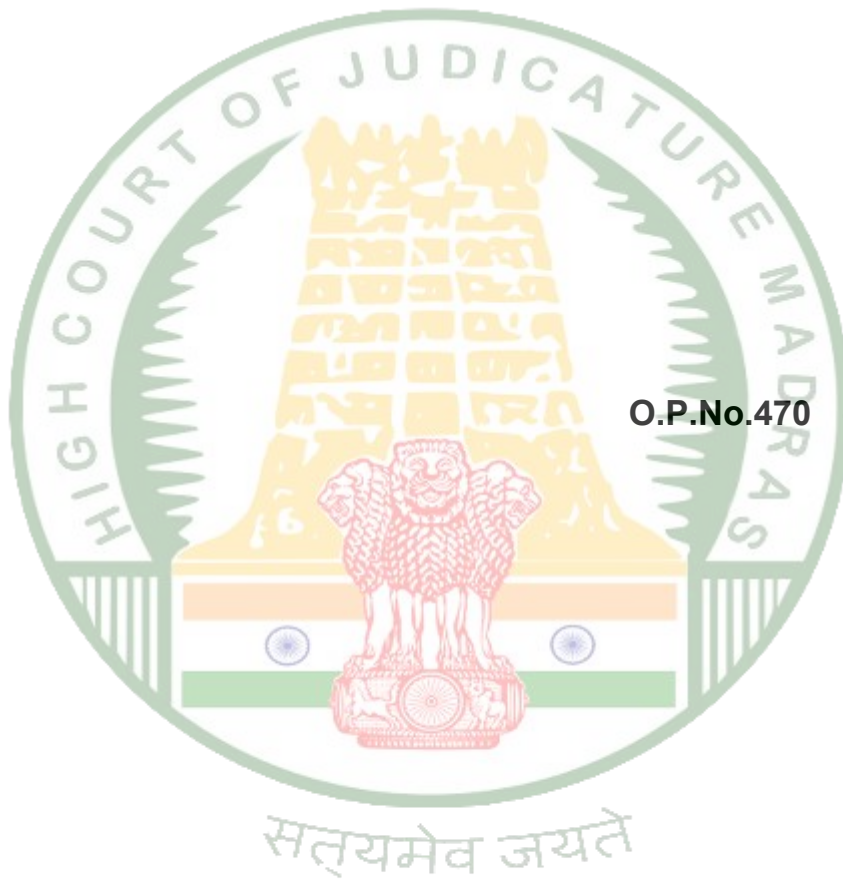
6. The original petition stands allowed in part. No costs.

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**M.M.SUNDRESH,J.**

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