

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.723 of 2007

M/s.Murali Transport,
rep. By its Sole Proprietor,
T.N.Selvarangam,
No.33/2, Tank Bund Road,
Otteri, Chennai-600 012.

... Petitioner

VS.

1.Indian Oil Corporation Ltd., rep. by its
Deputy General Manager (Plant),
Lube Blending Plant,
Tondiarpet, Chennai-600 081.

2.The Senior Manager, (Plant),
Indian Oil Corporation Ltd.,
Lube Blending Plant,
Tondiarpet, Chennai-600 081.

3.P.Venaktaramanan
Sole Arbitrator,
Indian Oil Corporation Ltd.,
Level-4, Tamil Nadu State Office,
139, Nungambakkam High Road,
Chennai-600 034.

... Respondents

PRAYER : This Original petition has been filed under Section 34 of the
Arbitration and Conciliation Act, 1996 prayed to set aside the Award dated

07.03.2007 passed by the 3rd respondent and allow the claim petition of the petitioner as prayed for.

For Petitioner : Mr.K.Premkumar

For Respondents : Mr.A.Abdul Hameed for
M/s.Anand Abudl and Vinodh for R1 & R2

ORDER

This petition is filed to set aside the arbitral Award dated 07.03.2007.

2. I heard the learned counsel for the petitioner and the learned counsel for respondents 1 and 2.

3. The dispute between the parties relates to a contract for the transportation of Lube Oil. This contract was initially entered into in April, 2001 and was renewed on two occasions and admittedly expired on 31.03.2004. The tender documents specified the one way distance as 765 k.ms. from Chennai to Kottayam for transportation of goods. On that basis, the petitioner transported Lube Oil by using the said route and travelling over a distance of 765 k.m. This practice continued through out the period of contract, including the extensions thereof. After the expiry of the contract, the contractor submitted a final bill and while processing the said final bill, the first

respondent, by letter dated 02.08.2005, informed the contractor that the distance indicated in the tender documents is not the shortest distance from Chennai to Kottayam and that the shortest route is through “Dindugul - Vattalakundu - Theni - Kambam - Thekkadi” and the said shortest distance is 671 k.m. and not 765 k.m. On that basis, the respondents notified the petitioner that they are entitled to verify and amend the Round Trip Distance [RTD] if it is found to be incorrect during the period of the contract. It was further informed in the said communication that the Corporation is also entitled to retrospectively recover any over- payment on the basis of such wrong or incorrect RTD. Accordingly, a sum of Rs.98,522.00 was recovered from the dues of the petitioner and the balance of Rs.1,451/- was refunded. This resulted in a dispute wherein the petitioner claimed the said sum of Rs.98,522/- with interest thereon at the rate of 18% p.a. from 20.08.2004 to 30.04.2006.

4. Upon perusal of all pleadings, both the parties adduced evidence. The petitioner filed seven documents exhibited as C1 to C7 before the arbitral Tribunal. Similarly, the respondents also filed eight documents which were exhibited as R1 to R8. By arbitral Award dated 07.03.2007, the arbitral Tribunal rejected the claim made by the petitioner, which is impugned herein.

5. The learned counsel for the petitioner submitted that the route as well as the distance was not selected by the petitioner but was specified in the tender documents. Therefore, he submitted that this route and the distance was selected by the respondents. He further submitted that the same route was used by the petitioner for the purpose of transporting Lube Oil through out the three years of the contract period. On that basis, he submitted that bills were raised from time to time wherein the said route was specified and that such bills were duly paid by the respondents. This position continued until the final bill was submitted after the expiry of the period of contract on 31.03.2004. However, when the final bill was submitted, the first respondent, by letter dated 20.08.2005, notified the petitioner that the RTD was being amended from 765 k.ms. to 671 k.ms. and that, therefore, the respondents are entitled to recover the excess payment of Rs.98,522/- retrospectively. He further submitted that both in the claim statement and in the course of oral arguments before the arbitral Tribunal, it was brought to the notice of the arbitral Tribunal that the revision in the RTD was done after the expiry of the contract period. In specific, he referred to paragraph-13 of the claim statement where the undisputed facts are set out including the fact that till the completion of the contract period, the petitioner/claimant therein was not informed about the shorter route by the Corporation. The fact that this

contention was brought to the notice of the arbitral Tribunal is also evident from the Award at page 159 of the typed set of papers. Therefore, the learned counsel submitted that the arbitral Award is liable to be set aside because the arbitral Tribunal merely referred to clauses 29, 30, 31, 32 and 33 of the agreement and concluded that the respondents are entitled to revise the RTD and to recover amounts retrospectively, on that basis, without examining as to whether the said clauses can be relied upon after the expiry of the contract period.

6. In reply, the learned counsel for respondents 1 and 2 submitted that it is the admitted position that the tender documents specified the distance between Chennai and Kottayam as 765 k.m. for transportation of the subject matter goods. However, he submitted that it is also the admitted position that as per clauses 29 to 33, the respondents are entitled to revise the RTD and, upon such revision, to make recoveries including retrospective recoveries. Therefore, he submitted that the impugned award is based on a reasonable interpretation of the terms of contract and, therefore, not liable to be interfered with.

7. The records were examined and the oral submissions of both sides were considered carefully.

8. The dispute lies within a narrow compass as to whether the respondents were entitled to rely upon clauses 29 to 33 of the agreement after the expiry of the contract period. On examining the said clauses, it is evident that the said clauses enable the respondents to verify and amend the RTD from time to time. It further enables the respondents to make recoveries if it is determined that the earlier RTD was wrong or incorrect. Therefore, there can be no doubt at all that the respondents have the power to amend the RTD during the period of the contract period. However, it remains to be considered as to whether this power can be exercised after the expiry of the contract period. This question was canvassed by the petitioner both in pleadings and arguments before the arbitral Tribunal. However, from the relevant portion of the Award at page 165, it is noticeable that there is no discussion or finding on this question. Therefore, there is a patent illegality in the Award and it goes to the root of the matter in as much as if it is concluded that such revision cannot be carried out after the expiry of the contract period, the claims would be liable to be allowed. Consequently, I am of the view that this is an appropriate case for the exercise of jurisdiction under Section 34 of the

Arbitration and Conciliation Act as per the principles laid down in several judgments of the Hon'ble Supreme Court leading up to **Associate Builders vs. Delhi Development Authority AIR 2015 SC 620.**

9. For the foregoing reasons, the arbitral Award dated 07.03.2007 is liable to be set aside. Nevertheless, the petitioner has to initiate *de novo* proceedings for the purpose of making the monetary claims that were the subject matter of this arbitration. If such *de-novo* proceedings are initiated by the petitioner as per the contract, the petitioner shall be entitled to the benefit of Section 14 of the Limitation Act, 1963 and the arbitral Tribunal is directed to dispose of the same within a period of six months from the date of entering upon reference.

10. In the result, the arbitral award dated 07.03.2007 is hereby set aside and this Original Petition is disposed of subject to the above direction.

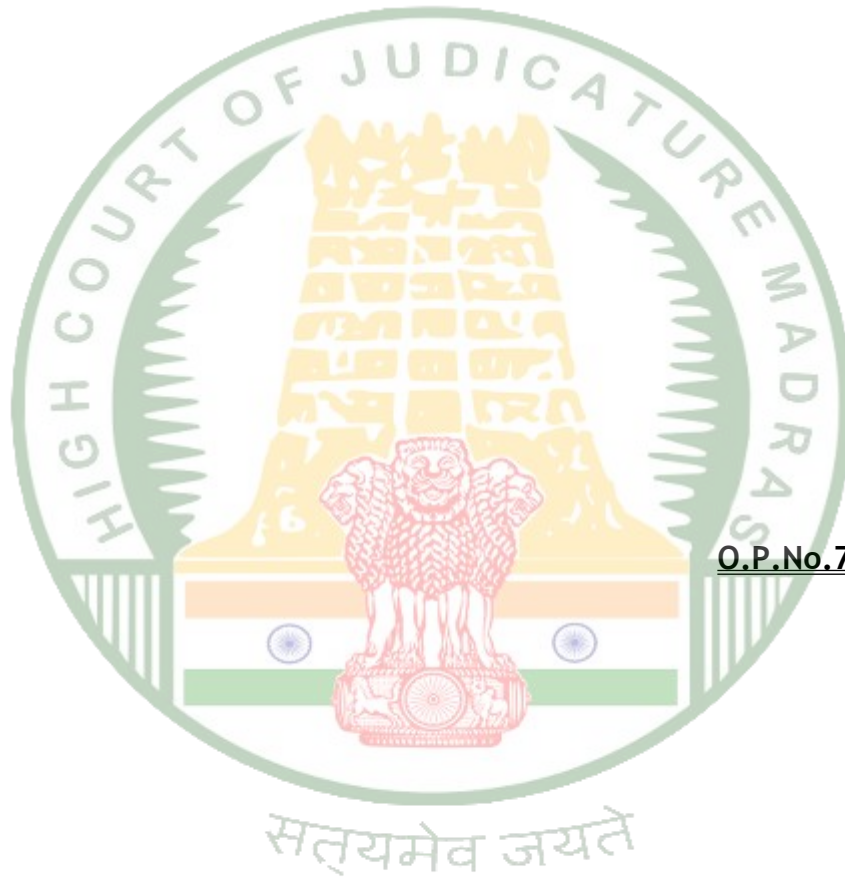
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