

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.114 of 2017

R.Chandrasekar
(Claimant/Proprietor)
Elektro Metal Castings,
No.90, Sripathy Nagar,
Nanjundapuram Road,
Coimbatore - 674103.

... Petitioner

vs.

The General Manager,
Southern Railways,
Park Town,
Chennai 600 003.

... Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act,
1996 to set aside the Arbitral Award dated 21.07.2016.

For Petitioner : Mr.C.T.Mohan

For Respondent : Mr.P.T.Ramkumar

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The Petitioner herein, who is the Claimant before the Arbitrator, has
come up with this Petition seeking to set aside the Arbitral Award dated
10.05.2010.

2. It is the case of the Petitioner that he is a Contractor for supply of essential signal equipments, i.e. components for High Thrust Point Machine, Lock Rods, Detector Rods, Power Transmission Assembly, Contractor Unit Assembly and All Gear Drive Mechanism and other accessories etc. to the Southern Railways of Signal and Telecommunication work shop at Podhanur.

3. According to the Petitioner, the Southern Railways deliberately delayed the payment due to him, despite repeated demands. Hence, as per the terms and conditions of the Agreement entered into with the Respondent/Southern Railways, the Petitioner filed a Claim Petition before the Arbitrator for a sum of Rs.34,36,946/- in respect of Earnest Money Deposit, Risk Purchaser Procedure violation, Risk Purchase Loss, Detector Rod Insets, Contractor Unit Assembly and All Gear Drive Mechanism.

4. It is the contention of the Petitioner that the Respondent/Southern Railways has not chosen to file any document to substantiate their defence before the Arbitrator, whereas, the Petitioner has produced all documents and necessary evidence running to six sets of files before the Arbitrator in support of his claim.

5. The grievance of the Petitioner is that the Arbitrator, without looking into the documents produced by him and also without taking into account that no contra evidence has been adduced by the Respondent/Southern Railways, has awarded only a sum of Rs.4,88,621/- along with simple interest at 12% from the date of payment of the said amount, against the claim of Rs.34,36,946/-.

6. Aggrieved by a portion of the Award dated 21.07.2016 with regard to Risk Purchase, the Petitioner filed a Review before the Arbitrator on 17.08.2016. However, the same was disallowed by the Arbitrator on the basis of the Railway Board's Circular No.2001/RG (G) 779/14, dated 21.09.2007, wherein, it is stated that in respect of orders for materials other than safety items, where 10% security deposit has been taken from firms, Risk Purchase clause may be deleted and in case of default by such firms, the Security Deposit shall be forfeited.

7. Learned Standing Counsel for the Respondent/Southern Railways contended that the Petitioner was awarded Contract for supply of essential signal equipments, however, the Petitioner did not supply equipments within the stipulated time. According to the learned counsel, the Railway Board's

Circular dated 21.09.2017 may not be applicable to the facts and circumstances of this case and it has not been produced by the Petitioner before the Arbitrator. Even assuming that the said Circular had been produced before the Arbitrator, it has only prospective effect.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is not in dispute that the Petitioner is a Contractor and he has supplied essential signal equipments to the Respondent/Southern Railways. Admittedly, the Railway Board's Circular dated 21.09.2007 has not been marked by the Petitioner before the Arbitrator. The Arbitrator has come to a conclusion that Risk Purchases are made only after the delivery date is over in all cases and that the said Circular referred to by the Petitioner will be applicable to Non-safety category only.

10. For better appreciation, the Railway Board's Circular dated 21.09.2007 is extracted hereunder:

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

RBS No.14/2007

No.2001/RS(G)/779/14

New Delhi, Dated 21.09.2007

General Manager/All Rlys & Pus

Sub: Deletion of clause for Risk Purchase

Board has been considering the proposal of deletion of clause for Risk Purchase in Stores Contracts. The matter was discussed in the 65th Conference of Controller of Stores held at Rail Bhawan, New Delhi on 2nd and 3rd August, 2007, wherein, it was proposed to discontinue risk purchase action on same lines, as has been done recently for works contracts.

The matter was examined in detail and accordingly, it has been decided that:

(1) Risk Purchase clause action may be deleted for all orders for safety items, as levy of 10% Security deposit has been made compulsory in all such orders (except in case of vendors registered with NSIC up to the monetary limit of their registration for the items ordered). Whenever such contracts are rescinded, Security Deposit shall be forfeited. Such failure shall be recorded and will be considered by Railways on merit in future cases.

(2) In respect of orders for materials other than safety items, where 10% security deposit has been taken from firms, Risk Purchase clause may be deleted and in case of default by such firms, the Security Deposit shall be forfeited.

(3) In such cases as covered under (1) and (2) above, the quantities unsupplied shall be procured independently without risk and cost of the original firm/supplier.

(4) Adverse performance of such firms may be recorded and to be intimated to the approving authority & also to be taken into account in future tender cases on merit.

(5) Such cases which are not covered under para (1) &

(2) above, Risk Purchase provisions shall continue for them as per existing guidelines.

IRS conditions of Contract shall be suitably modified as above.

11. A reading of the Railway Board's Circular dated 21.09.2007 (extracted supra) makes it clear that Risk Purchase clause action may be deleted for all orders for safety items and in respect of materials other than safety items, where 10% of the Security Deposit has been made, the Security Deposit shall be forfeited. From the documents produced before this Court, it is clear that the Petitioner has deposited 10% of the Security Deposit in respect of materials under non-safety category. Though, according to the Respondent/Southern Railways, the said Circular dated 21.09.2007 had not been marked by the Petitioner before the Arbitrator, in the Award, the Arbitrator has clearly held that Risk Purchase clause is still available for items under Arbitration, as they belong to non-safety category.

12. It is seen that apart from raising the issue with regard to Risk Purchase violation in this Original Petition, the Petitioner has challenged the same before the Arbitrator by way of a Review Petition. Though according to the Petitioner, recovery of amount by the Respondent/Southern Railways is made in a haphazard manner, it does not mean that the Respondent/Southern

Railways is not entitled to recover any amount from the Petitioner. According to the Respondent/Southern Railways, a sum of Rs.45,000/- on account of erroneous calculation has been refunded to the Petitioner and as per the Board's Circular, the present one on hand cannot be applicable to the facts and circumstances of this case, as it was not in force. Even assuming that the Board's Circular is well in force, as 10% of the Security Deposit has been taken by the Respondents/Southern Railways from the payment made to the Petitioner and that the Arbitrator has also taken into account that the Security Deposit has been recovered, the Petitioner is not entitled to any other relief. It is made clear that if any amount is lying under other heads, it can be adjusted towards the balance amount that shall be payable.

13. In view of the above, this Court finds no reason to interfere with the Arbitral Award and accordingly, the Original Petition stands dismissed.

No costs.

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Index : Yes

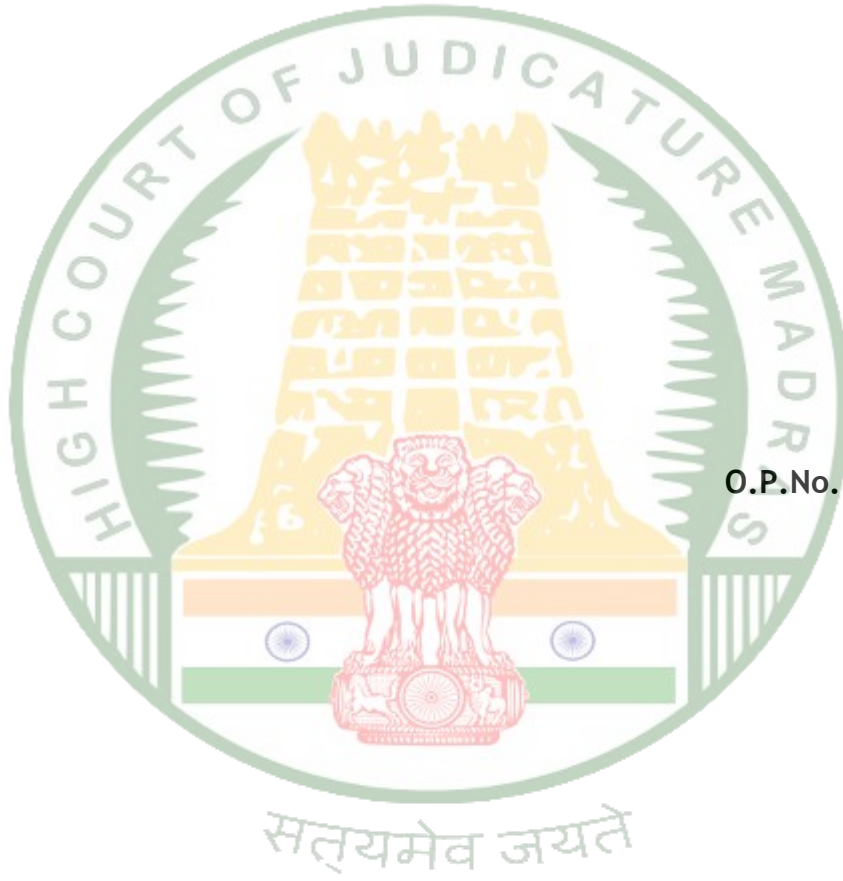
Speaking order : Yes

Note to Registry: Issue copy of this order on or before 31.01.2019.

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S.VAIDYANATHAN,J.

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