

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.701 of 2017

Om Spun Pipes & Concrete Works,
B-43, Sterling Gangers,
Kattupakkam,
Chennai – 600 056.

.. Petitioner

Vs.

1. The Chief Engineer Construction,
Southern Railway,
Egmore, Chennai – 600 008.

2. The Senior Divisional Engineer/North
Works Branch, Southern Railway,
Tiruchirapalli.

.. Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 07.02.2017 passed by the Arbitral Tribunal in dispute between the petitioner and the respondents made in Arbitration Dispute, bearing letter No.G.16/DGM/ARB/2011/24, dated 06.07.2011 and thereby, allow the petitioner's claim.

For Petitioner : Mr.D.Padmanabhan
for Mr.Francis Xavier

For Respondents : Mr.P.T.Ramkumar

ORDER

This petition has been filed challenging the Award dated 07.02.2017 passed by the Arbitral Tribunal.

2. Originally, the letter of acceptance was given to the petitioner on 12.10.2007 for construction of subways in various places. The time for completion of work is nine months and the work has to be completed on or before 11.07.2008. The contract also provides that the contractor has to obtain test reports from the Government authorities. As the performance of guarantee has not been executed by the contractor till 27.05.2008, the contract has been foreclosed on 19.06.2009. In view of the same, claim has been preferred on various heads as detailed below :

Claim No.	Description of Claim	Amount claimed (Rs.)
1.	Idling of labour and machiner awaiting to start the work from 01.12.2007 to 07.04.2009 (493 days) that is till the foreclosure of the work	2,37,40,000/-
2.	The materials were purchased for the work and could not be utilized due to not allowing the work to be executed and some lost in wear and tear and theft and balance resold in market at 50% of the price purchased and hence 50% of cost of materials is claimed	17,17,750/-
3.	Claim for expenditure incurred on test reports which were not finalized (approx.)	60,000/-
4.	Loss of expenditure incurred on	2,00,000/-

Claim No.	Description of Claim	Amount claimed (Rs.)
	establishment of office building, godown for materials, sheds and mess charges	
5.	Loss o profit at 10% of the agreement value for not allowing the work to be executed.	24,38,522/-
6.	Damages claimed on the expenditure incurred on claim Nos.1, 2, 3 & 4 at 15% p.a. till the date of their payment	Not quantified

3. The Arbitral Tribunal has awarded only Rs.39,545/- towards expenditure incurred on test reports which were not finalized and the rest of the claim has been dismissed by the Arbitrators.

4. The learned counsel for the petitioner submitted that Arbitral Tribunal has not appreciated the fact that the respondents 1 to 3 have committed breach of contract by unilaterally terminating the contract without any justifiable reasons and thereby caused, huge loss to the petitioner, who had done all the required works for commencing the work allotted to the petitioner. The Arbitral Tribunal has not considered the entire evidence and mechanically negated the claim of the petitioner and the Award has to be set aside.

5. The learned counsel for the respondents submitted that even after a lapse of five months, the petitioner has not even executed the bank guarantee and has not commenced the work. The petitioner has not produced any evidence to substantiate his claim. The Arbitral Tribunal has considered the

entire evidence and rightly passed the Award and the same cannot be interfered.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the entire materials available on record.

7. Despite opportunity has been given to the petitioner no documents whatsoever have been filed to substantiate the claim. The learned Arbitrators have factually found that the vouchers have been created only to show the expenditure incurred by the petitioner. The learned Arbitrators have made threadbare analysis of the entire documents and found that the vouchers have been fabricated only for the purpose of the claim. Therefore, the contention of the learned counsel for the petitioner that the Arbitrator has not considered the entire evidence and mechanically negated the claim of the petitioner cannot be countenanced.

8. Admittedly, the work has not been commenced by the petitioner even for a single day. Before commencement of work, the contract itself has been foreclosed. These are all matter of evidence and the same is not in dispute. Such being the position, paying huge amount for the labourers and claiming amount under head of idling of labour and machinery is highly improbable. Infact, the learned Arbitrators have taken into account the entire evidence and

found that those vouchers have been written by the single handwriting and that the corresponding ledger entries have also not been filed. When the learned Arbitrators have factually found that the claim of the petitioner has not been proved, this Court cannot re-appreciate the entire evidence as an appellate Court. Hence, I do not find any ground as contemplated under section 34 of the Arbitration and Conciliation Act to interfere with the Award passed by the Arbitral Tribunal.

9. Accordingly, this Original Petition is dismissed. No cost.

11.07.2019

vrc

Index : Yes/ No

Internet : Yes

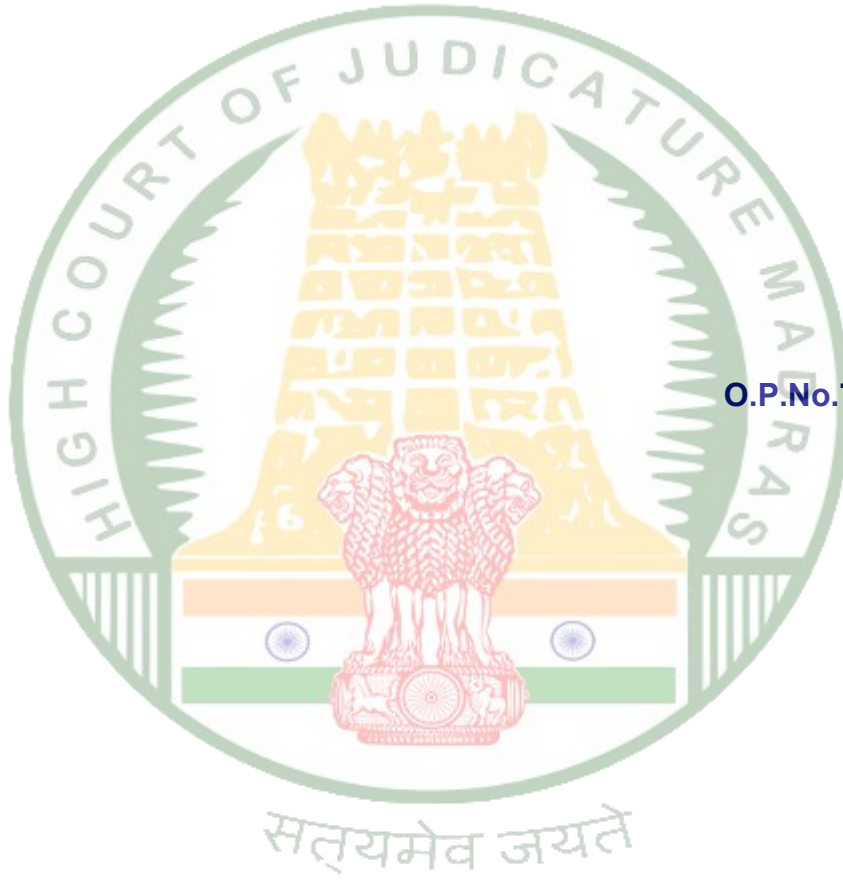
Speaking/Non-speaking Order

To

1. The Chief Engineer Construction,
Southern Railway,
Egmore, Chennai – 600 008.
2. The Senior Divisional Engineer/North
Works Branch, Southern Railway,
Tiruchirapalli.

N.SATHISH KUMAR, J.

VRC



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