

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.No.257 of 2014

M/s. Ranipet Engineering Industry,
No.6/42, Harleys Road,
Kilpauk, Chennai- 600 010.
Represented by its Partner Mr.S.Chandramouli

...Petitioner

Vs

1. The Union of India
Represented by the Chief Engineer,
Metropolitan Transport Project (Railways)
Southern Railway, Poonamallee High Road,
Chennai- 600 008.

2. Smt. Sujatha Jayaraj,
Divisional Railway Manager,
Salem Division, Southern Railway,
Salem-636 005.

3. Shri A.K.Agarwal,
Divisional Railway Manager,
Bangalore Division, South Western Railway,
Bangalore.

4. Shri M. Selvaraj,
Chief Engineer, Integral Coach Factory,
Chennai- 600 038.

...Respondents

PRAYER: Original Petition is filed under Section 34 of Arbitration and Conciliation Act 1996 praying to set aside the Award passed by the Arbitral Tribunal for the counter claim No.1 to a tune of Rs.8,03,270.59 and duly deducting the petitioner's claim award of Rs.3,62,650/- and to pay the balance amount of Rs.4,40,620.59/- in favour of the first respondent together with interest at 12 % per annum from the date of clarification (21.10.2013) till the date of realization since it has been proved that this award passed by the Arbitral Tribunal is (a) Patently Illegal and (b) affects the policy of union of India.

For Petitioner : Mr. Jayanthi Venkatesh
for C. Prasanna Venkatesh

For Respondents : Mr. P.T. Ramkumar, Standing Counsel
for Railways for R1 to R4.

ORDER

The contractor is the petitioner before this Court challenging the Award passed by the Arbitral Tribunal only in respect of the grant of the counter claim of Rs. 8,03,270.59/-. The short point on which the Award is challenged is on the ground that the Arbitral Tribunal had utilised a circular issued by the Government of India much after the termination of the contract of the petitioner by the respondent to allow the counter claim. Since the issue is on the short campus, this Court is not delving into the entire facts of the case. Suffice it to state that when the arbitral proceedings was initiated at the instance of the petitioner herein, the respondent had filed a defense statement in which they had claimed a sum of Rs.8,03,270.59/- towards risk and cost tender which is a difference between the value of the contract given by the petitioner and the price quoted by the subsequent contractor for completing the contract.

2. The respondent railways had contended that on 15.04.1999 during the currency of the contract a 7 day notice was issued calling upon the petitioner to rectify the defects. Thereafter since the

petitioner had not come forward to rectify the defects and show progress, the respondent railway was constrained to issue the 48 hours notice on 09.06.1999 and ultimately by a notice dated 05.10.1999 the respondent has rescinded the agreement which they had entered into with the petitioner with effect from 11.06.1999 and had informed that they would get the work completed through another agency at the risk and cost of the petitioner. Therefore from the narration it is evident that the contract had been rescinded on 05.10.1999, which came into effect from 11.06.1999. The reading of the Award would indicate that this counter claim has been allowed on the basis of the railway board's letter bearing No.99/CE-I/CT/28(Pt)dt.17.5.2004 in which it has been stated as follows:

" in rare cases, the reason for which should be recorded if such an eventuality does arise it is advised that notice claiming damages also for the failure on the part of contractor should be issued. The contractor has not sought/is not trying to seek extension even

after expiry, original or extended as the case may be. The respondent has argued as per this letter, provision is there to terminate the contract which has no currency."

3. This letter has come into existence nearly five years after the contract had come to an end. Therefore, the Award of the Arbitrator suffers from patent illegality and on this ground the Award, so far as the counter claim is concerned set aside and OP is allowed. It is needless to state that the railways shall make arrangements to comply with the Award at the earliest.

12.02.2020

mrn

Index : Yes/No

Speaking order/non-speaking order

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P.T.ASHA, J.

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To,

1. The Union of India

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Metropolitan Transport Project (Railways)

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Chennai- 600 008.

2. Smt. Sujatha Jayaraj,

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Represented by its Partner Mr.S.Chandramouli

4. Shri A.K.Agarwal,

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