



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No. 79 of 2008

In the matter of Arbitration and
Conciliation Act, 1996.

and

In the matter of Arbitration Award
dated 15.12.2017.

M/s.Bharathwaj Constructions,
Civil Structural – Supply of
Aggregates, Quarry Materials ,
Rep. by its Proprietor
Mr.V.L.Narasimhan,
No.7, Rukmaniammal Street,
Purushottaman Nagar,
Chrompet, Chennai-600 044.

... Petitioner

..Vs..

1. The General Manager,
Southern Railway,
Park Town,
Chennai.
2. The Divisional Engineer West,
Southern Railway,
DRM Office, Park Town,
Chennai.
3. Mr.R.Selvaraj,
Deputy Chief Accounts Officer/
Cash and Pay,
Ground Floor, G.M. Building,
Southern Railway,



Chennai-600 003.
(presiding Arbitrator)

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4. Mr.Shaji Zachariah,
Senior Divisional Engineer/
Co-ordination,
Divisional Railway Manager's Office,
Southern Railway, Trivandrum.
(Arbitrator)

5. Mr.T.Jayam,
Deputy Chief Electrical
Engineer/Planning,
Electrical Department,
Head Quarters Office,
Southern Railway,
Chennai-600 003.
(Arbitrator)

... Respondents

Original Petition praying that this Hon'ble Court be pleased to set aside the Arbitration award dated 15.02.2007 passed by the Respondents 3 to 5 and to adjudicate the dispute arises in this agreement.

This Original Petition coming on this day before this Court for hearing through video conferencing in the presence of Mr.Srenik Jain for M/s.P.Subba Reddy, Advocates for the petitioner herein and Mr.P.T.Ramkumar, Standing counsel, appearing for the respondents herein and upon reading the petition and the award dated 15.02.2007 filed herein and this Court is of the view that the learned Arbitrator has considered claims on facts and law and found that termination of the contract is valid one, merely because, the petitioner has lost some amount by way of advance with the quarrying owner, the same cannot be



a ground to clothe the liability on the railways, hence, this Court do not find any materials to show that any of the grounds made out to interfere with the award passed under Section 34 of Arbitration and Conciliation Act, it is ordered as follows:-

That the O.P.No. 79 of 2008 be and is hereby dismissed.

2. That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 21ST DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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08/11/2021

4

O.P. No. 79 of 2008

ORDER

DATED : 21.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 09/11/2021

APPROVED ON: 09/11/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.79 of 2008

Bharathwaj Construction,
Civil Structurals – Supply
Aggregates, Quarry Materials ,
Rep. by its Proprietor
Mr.V.L.Narasimhan,
No.7, Rukmani Ammal Street,
Purushottaman Nagar,
Chrompet, Chennai-600 044.

... Petitioner

..Vs..

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4. Mr. Shaji Zachariah,
Senior Divisional Engineer/
Co-ordination,
Divisional Railway Manager's Office,
Southern Railway, Trivandrum.
(Arbitrator)

5. Mr. T. Jayam,
Deputy Chief Electrical
Engineer/Planning,
Electrical Department,
Head Quarters Office,
Southern Railway,
Chennai-600 003.
(Arbitrator)

... Respondents

PRAYER : Original Petition filed under Section 34(2)(b)(ii) of Arbitration and Conciliation Act, 1996, to set aside the the Arbitration award dated 15.02.2007 passed by the Respondents 3 to 5 and to adjudicate the dispute arises in this agreement.

For Petitioner : Mr. Srenik Jain for
Mr. P. Subba Reddy
For Respondents : Mr. P. T. Ramkumar,
Standing Counsel

ORDER

(This case has been heard through video conference)

The challenge has been made against the award passed by the Arbitrator dated 15.02.2007.



follows :-

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The dispute is mainly referred to resolve the dispute arose on the basis of a contract entered between the parties with regard to the supply of ballasts. The respondent has invited tender for supply of ballasts. As the petitioner herein quoted lowest value of Rs.79,38,000/-, the same was accepted by the respondents 1 and 2 and a letter of acceptance was issued on 19.08.2002 to the petitioner. The contract agreement executed between them on 07.10.2002. As per the agreement, 21000 cubic meter ballasts agreed to be supplied. However, only 2741 cubic meter ballasts were supplied in the short span of time. Therefore, the contract was terminated by the respondents invoking conditions on 24.03.2003.

3. The claimant has raised several claims, out of which, in claim No.1, the claimant has made a claim of Rs.3,75,000/- towards running bill with interest and in claim No.2, for refund of EMD and security deposit, he has made a claim of Rs.1,25,000/- and in claim No.4, he has made a claim of Rs.4,95,000/-. As against the termination of contract and also the amount deposited with the quarry owner, the claimant has claimed the so-called amount spent for getting license from the State Government in claim No.5 and in Claim No.6, he has made a claim of



and in claim No.9, he has made a claim of Rs.25,000/- and in respect of claim No.8, he has not quantified. The learned Arbitrator after considering the materials produced before him, awarded a sum of Rs. 2,03,592/- under claim No.1 and all other claims have been rejected. As against which, the present petition has been filed.

4. The contention of the petitioner challenging the award mainly on the ground that the award has been passed against General Conditions of Contract and the termination of contract by the Railways is illegal. Further, the petitioner is not given opportunity to supply the balance ballasts within the contract period and the contract was terminated before completion of contract period. However, the interest awarded by the learned Arbitrator is also against law. Except this, none other grounds raised challenging the award canvassed during submission.

5. The main contention of learned counsel for the petitioner is that the learned Arbitrator has failed to note that the contract period was not specifically mentioned in the agreement. Further, the contract has been terminated suddenly and the non-supply of ballasts is beyond the control of the petitioner herein. As the State Government has abruptly cancelled



the quarrying license, which lead to the circumstances for non-supply of ballasts. These facts have not been taken note of by the learned Arbitrator and the amount paid as an advance for supply of ballasts ought to have been awarded by the learned Arbitrator. Hence, it is submitted that the award passed rejecting all other claims except one claim is not proper.

6. Whereas, the learned counsel appearing for respondent would submit that the contract has been terminated as per the General Conditions of Contract. The learned Arbitrator has rightly considered each and every claims and rejected the false claims. Therefore, he prayed for dismissal of this petition.

7. With regard to the contention of learned counsel with regard to termination, the learned Arbitrator has found that the termination of contract was made after issuing mandatory 7 days and 48 hours notices as per clause 62 of General Conditions of Contract and also found that the termination was made as per law. When the contract itself provided for termination in a particular manner, the same has been followed after issuing notice, it cannot be said that the contract has been prematurely

terminated. It is not the case of the petitioner that despite supplying the



required ballasts within a time, the contract has been prematurely closed.

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It is not disputed that only 2741 cubic metric tone ballasts alone was supplied, which is also considered by the learned Arbitrator in claim No.3, and the supply of minimum quantity was completed in a period of seven months, whereas the contract for entire supply is 12 months as per the contract. When the learned Arbitrator has concluded that 2741 cubic metric tone was supplied by the petitioner, it cannot be said that he has acted as per the contract and supplied the required quantity. Yet another contention that quarrying license has been cancelled by the State Government abruptly. Therefore, he has lost some amount paid by way of advance to some other party. The learned Arbitrator in claim No.4 in para 4, has discussed in detail after considering the factual aspects put before it. It is recorded that the so-called agreement was executed with the quarrying owner on 20.06.2002 even before awarding the work by the Railways. Hence, the learned Arbitrator has discussed the factual aspects in detail. Therefore, this Court is of the view that the learned Arbitrator has considered claims on facts and law and found that termination of the contract is valid one. Merely because, the petitioner has lost some amount by way of advance with the quarrying owner, the same cannot be a ground to clothe the liability on the railways. Hence, I

do not find any materials to show that any of the grounds made out to



interfere with the award passed under Section 34 of Arbitration and Conciliation Act. Accordingly, this Original Petition is dismissed. No costs.

Sd./-N.S.K.J.
21.09.2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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