

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.170 of 2021

1. The Union of India,
rep. by the General Manager,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Divisional Railway Manager/Works,
Southern Railway, Park Town,
Chennai - 600 003.Appellants

Vs.

1. M/s.J.Venkatesan,
No.25/16, 3rd Street, T.Nagar,
Arakonam,
Vellore District.
2. Hon'ble Justice K.M.Natarajan,
Sole Arbitrator,
136, L.B.Road,
Kamraj Nagar, Chennai.Respondents

PRAYER: Appeal filed under Order XXXVI Rule 1 of the Original Side Rules, 1956 read with Clause 15 of the Letters Patent and Section 13(1) of the Commercial Courts Act against the order dated 15.07.2019 passed in O.P.No.72 of 2011.

Prayer in O.P.No.72 of 2011:

Petition filed under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the award dated 20.04.2008 passed by the Arbitrator in Arbitration case No- Nil dated 20.04.2008 and for cost of the proceedings.

For Appellants : Mr.M.Vijay Anand

For Respondent : Mr.Amalaraj S.Penikilapatti
for respondent No.1

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

Only two grounds have been urged on behalf of the railways in challenging the judgment and order of July 15, 2019 rendered on a petition challenging an arbitral award dated April 20, 2008.

2. The second respondent is the arbitrator, who has been needlessly impleaded.

3. By the impugned order, the quantum awarded by the arbitrator has been reduced. It is submitted on behalf of the first respondent that following the first respondent's concession before the arbitration Court that the first respondent was not entitled to pendente lite interest in view of clauses 64.5 and 16.2 of the general conditions governing railway contracts, such reduction was made. The first respondent is willing to accept the modified award.

4. The two grounds raised by the railways are that the arbitrator failed to appreciate the documents that were carried by the railways before him and the arbitrator failed to recognise that the first respondent contractor had abandoned the work and had left the site without issuing any notice, even though a mandatory notice in such regard was required to be issued.

5. It is evident that the value of the work to be executed in terms of the contract dated April 29, 2005 was in excess of Rs.1.64 crore. The work pertained to the collection and supply of stone ballast bearing 50MM size and included the loading and unloading charges. The tenure of the contract ran out by January 28, 2006, but the railways purported to terminate the contract in January, 2007 upon the contractor allegedly not completing the work.

6. The railways seek a re-assessment of the matter at this level, which is impermissible. It is evident from the judgment impugned that the contention of the railways before the arbitration Court was that the arbitrator had not considered the general conditions of the contract and that the arbitrator failed to notice that the contractor had violated the contract and not discharged the obligations as per the contract. It was also asserted before the first Court that the arbitrator had not considered the entire evidence and allowed the claim without any or adequate material in support thereof.

7. The arbitration Court found that the arbitrator had referred to the facts and the evidence before the arbitrator and sufficient reasons were apparent from the award which justified

the same. The arbitration Court recorded that it was not for a Court in seisin of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 to re-assess the matter and only the grounds made out had to be looked into. The exercise undertaken by the railways at this appellate stage is the same. No case has been made out that the award is opposed to public policy or otherwise unconscionable or palpably erroneous. On the basis of the facts as the arbitrator noticed, the arbitrator found in favour of the contractor and indicated cogent reasons to justify the findings.

8. The Court of the first instance applied the appropriate principles and found that no legal grounds had been made out under Section 34 of the Act to interfere with the award. The Court deleted the award of pendent lite interest on the concession of the contractor. More than this, the arbitration Court could not have interfered with the award in the light of the prevailing law and the limited authority available under Section 34 of the Act.

9. The judgment and order impugned dated July 15, 2019 do not call for any interference. It is recorded that the first respondent has no grievance against the award as modified by the order impugned.

10. O.S.A.No.170 of 2021 is dismissed. C.M.P.No.7498 of 2021 is closed. There will be no order as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The General Manager,
Union of India,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Divisional Railway Manager/Works,
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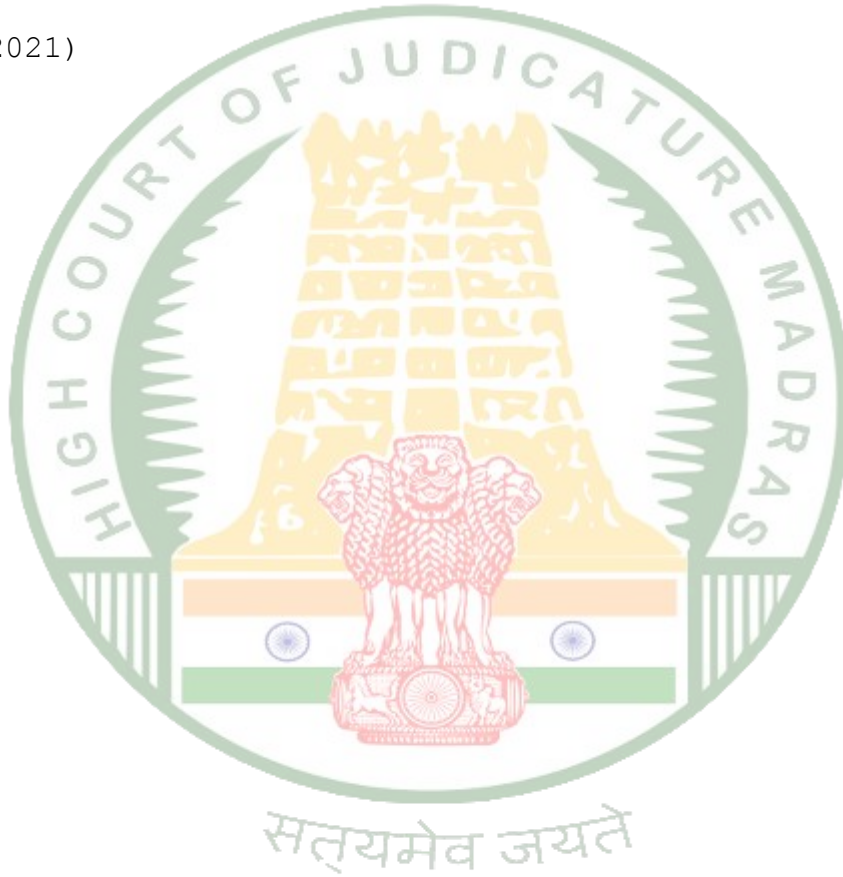
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The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1 CC to Mr.M. Vijay Anand, Advocate sr 25196.

O.S.A.No.170 of 2021

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