

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P No. 265 of 2018
and O.A.No.264 of 2018

1.The Union of India
Represented by its General Manager,
Southern Railway, ParkTown,
Chennai – 600 003.

2.The Chief Engineer(Construction),
O/o.The Chief Administrative Officer,
(Construction),
Southern Railway,
Egmore, Chennai- 600 008.

3.The Deputy Chief Engineer
(Gauge Conversion),
Southern Railway,
Mc.Nicholas Road,
Chennai – 600 031.

... Petitioners

Versus

M/s.Y.Chinna Reddy,

... Respondent

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 20.04.2016 passed by the learned Arbitrator in respect of Claim Nos.9,13,14 and 15.

For Petitioners : Mr.P.T.Ram Kumar

For Respondent : Ms.Judy Selva
for M/s.Amalraj S.Pennikilapatti

ORDER

This original petition has been filed to set aside the Award dated 20.04.2016 passed by the learned Arbitrator in respect of Claim Nos.9,13,14 and 15.

2. The contract of proposed construction of new Foot Over Bridge (hereinafter called as “FOB”) was entered between the petitioners and the respondent. The respondent's tender was accepted and Letter of Acceptance was given on 21.01.2006 and subsequently, an agreement dated 29.03.2006 was entered between the respondent and Railways by duly setting out the detailed terms and conditions of contract.

3. The dispute arose between the parties mainly with regard to the Claim Nos.9 and 13 and the dispute has been referred to the learned Sole Arbitrator in respect of the agreement dated 29.03.2006 for construction of FOB.

4. The total value of the work awarded was Rs.1,68,24,688/-. The work has to be completed within a period of three months from the date of issuance of LOA i.e., on or before 19.04.2006. The respondent/contractor was not

able to complete the contract work within the stipulated time and sought for extensions. All the extensions were granted under Clause 17A(ii) of General Conditions of Contract, meaning delay was neither on the part of Railways nor on the part of the respondent. However, six extensions were granted and finally, the contractor has completed the work only on 31.05.2007, after a delay of 13 months.

5. As there was some dispute raised by the respondent/claimant, the matter has been referred to the Sole Arbitrator. The claimant has raised the following claim:

i.Final Bill amount	Rs.4,00,000/-
ii.Refund of Security Deposit	Rs.8,48,734/-
iii.Extra work	Rs.8,40,000/-
iv.Supply of bolts and nuts	Rs. 52,500/-
v.Erection of re-fabricated steel (over and above the rate given in Schedule B)	Rs.5,25,000/-
vi.Hire charges for cranes due to Cancellation of 'line-block'	Rs.4,00,000/-
vii.Labour charges for the above	Rs. 40,000/-
viii.Cost of the extra work	Rs. 28,44,239/-
ix. Compensation for idling of establishments, Overheads	Rs.31,47,080/-
x.Under utilisation of labour	Rs.17,00,000/-
xi.Extra rate for 40mm. Nuts	Rs. 25,000/-

xii.Value for quantities executed

beyond 25%

Rs.5,00,000/-

Totalling in all

Rs.1,13,22,553/-

xiii.Plus interest on the compensation and the Costs of the Arbitration to be quantified.

6. On 20.04.2016, final award has been passed by the learned Sole Arbitrator. Paragraph 31 of the award dated 20.04.2016 reads as follows:

“31.Therefore an Award is passed in favour of the Claimant. The respondents shall pay a sum of Rs.18,82,317/- (Rupees Eighteen Lakhs eighty two thousand three hundred and seventeen only), to-gether with interest at the rate of 18% per annum from the date of award till the date of payment.”

7. Now the only challenge under Section 34 of the Arbitration and Conciliation Act,1996 is against the above award with regard to the claim No.9 and also to the cost of the arbitration payable by the parties namely claim No.13.

8. Though several grounds have been raised in the petition, Mr.P.T.Ramkumar, learned counsel placed his argument only with regard to Claim Nos.9 and 13. As far as Claim No.9 is concerned, it is his contention that the Arbitrator without any evidence has allowed the sum of Rs.3,19,000/- payable by the Railways. Hence, it is his contention that the above claim is liable to be

interfered since the Arbitrator has passed the award without any evidence and similarly, as far as arbitration costs is concerned, both parties should have shared the cost and paid to the Arbitrator, but, the Arbitrator has directed the Railways to pay the entire amount of the arbitration cost. It is against the clause 64.6 of GCC. Hence, he submitted that considering that aspect, the claim has to be set aside.

9. Ms.Judy Selva, learned representing counsel for Mr.Amalraj S.Penikilapatti, submitted that the learned Arbitrator has considered the entire issues and fairly concluded in Paragraph No.22 of the award that both the claimant and the respondents are responsible for the delay are bound to bear half the amount of Rs.3,10,000/- as compensation. Learned Arbitrator has considered entire records. However, taking note of the the nature of work, places of work, employment of three diploma engineers and three supervisors would be necessary. Though no document in proof of payment of salary has been filed and only a statement has been made, since the quantum is not disputed, the same is taken as correct, as it does not appear unreasonable and recorded his findings. Therefore it cannot be said that the finding is without any evidence.

10. As far as claim No.9 is concerned, learned Arbitrator had taken note of the nature of contract and salary which was not in dispute. Therefore, this Court

is of the view that merely because no documents was filed, that cannot be a ground to interfere with the final award passed by the learned Arbitrator.

11. As far as Claim No.13 is concerned, learned Arbitrator has clearly recorded in Paragraph 29 of the award that the Arbitrator's fee of Rs.3,50,000/- including the secretarial expenses, has been fixed as per the 2016 Ordinance. That has to equally shared and paid by the parties. Under that circumstance, only the petitioners herein are bound to bear the costs of the arbitration proceedings. It is to be noted that, despite the fact that a specific finding has been recorded by the Arbitrator that there was delay on both sides, directing the Railways to pay the entire cost, is against the very contract. Clause 64.6 of GCC reads as follows:

“64.6. The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s) as per the rates fixed by the Railway Administration from time to time.”

12. When the parties have agreed specifically in the contract itself as to the manner in which fees has to be paid, the award directing only one party to pay the entire fees against the contract is nothing but beyond the scope of terms agreed between the parties. **In such view of the matter, the very direction to pay the entire amount by the Railways, is alone is set aside.** However, since the amount is already paid by the respective parties and the claim with regard to the item No.9 is also up held, the Original Petition filed by the Railways is dismissed.

13. It is also brought to the notice of this Court that the amount shown in S.Nos.2 and 3 in paragraph 31 of the award is actually included in S.No.1. Despite the same, the amounts have been shown as a separate amounts. Accordingly, the amounts in S.Nos.2 and 3 are to be struck off.

14. With the above direction, this original petition is dismissed. Consequently connected original application is closed.

18.08.2021

msv

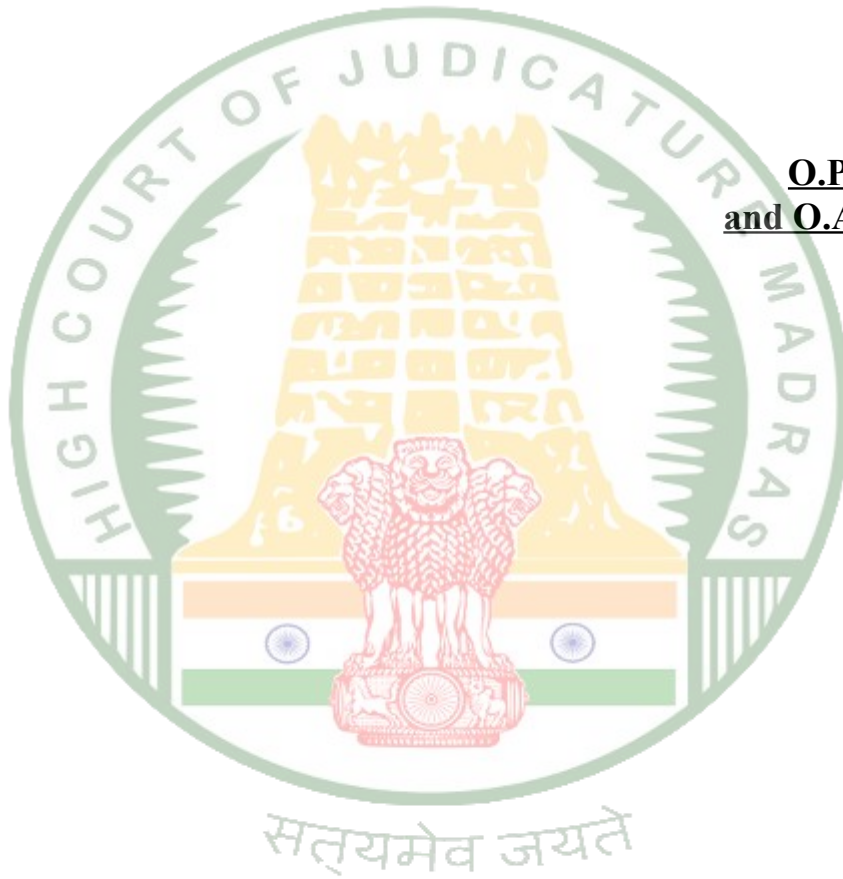


WEB COPY

O.P No. 265 of 2018

N.SATHISH KUMAR,J.

msv



O.P No. 265 of 2018
and O.A.No.264 of 2018

WEB COPY

18.08.2021