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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 08th DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No.784 of 2018

In the matter of Arbitration and
Conciliation Act, 1996

And

IN THE MATTER OF Rail One
Project Pvt. Ltd. and The General
Manager, Southern Railway in
relating to Agreement No.56/CN/2013
dated 21.06.2013 for Earth Work for
forming Bank to BG standard in
between KM. 169-160(Both inclusive)
Reach IIA-Karaikudi & Pattukottai
Stations including construction of
LUS.

M/s Rail One Project Pvt. Ltd.
Represented by its Director
Mr. Kotti Reddy
339, Arora Colony-II Road,
No-3, Banjara Hills, Hyderabad 500034

...Petitioner

-Versus-

1. The Chief Engineer/CN/South/MS
Southern Railway, Egmore,
Chennai-600008

2. The Dy. Chief Engineer/Works
For Chief Administrative Officer
Egmore, Chennai-600 008

...Respondents

Original Petition praying that this Hon'ble Court be pleased to set

aside the award dated 24.02.2018 passed by Learned Arbitrator Mr.



K.Palanisamy, District Judge(Retd.) and allow the claims of Petitioner.

WEB COPY This Original Petition coming on this day before this Court for hearing in the presence of Mr.V.Sivakumar, Advocate for the petitioner herein and Mr.C.V.Ramachandra Moorthy, Advocate for the respondents herein and upon reading the petition and the award dated 24.02.2018 filed herein and this Court having observed that the petitioner failed to discharge the burden of proof by not filing or calling for the production of the measurement book, which was prepared pursuant to joint inspection, and the petitioner has failed to make out a case to interfere with the impugned Award, it is ordered as follows:-

That the Original Petition No.784 of 2018, be and is hereby dismissed.

2) That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 08th DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR(O.S.-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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3

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17.12.2021

O.P. No.784 of 2018

ORDER

DATED : 08.12.2021

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 29.12.2021

APPROVED ON : 03.01.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No.784 of 2018

M/s. Rail One Project Pvt. Ltd.
Represented by its Director,
Mr.Kotti Reddy,
339, Arora Colony-II Road,
No-3, Banjara Hills, Hyderabad- 500 034

... Petitioner

Vs.

1. The Chief Engineer/CN/South/MS,
Southern Railway, Egmore,
Chennai-600 008.

2. The Deputy Chief Engineer/Works,
For Chief Administrative Officer,
Egmore, Chennai-600 008.

...Respondents

PRAYER: Arbitration Original Petition filed under Section 34 of Arbitration and Conciliation Act 1996, to set aside the award dated 24.02.2018 passed by Learned Arbitrator Mr.K.Palanisamy, District Judge(Retd.) and allow the claims of Petitioner.



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5

For Petitioner : Mr..V.Sivakumar

For Respondents : Mr.C.V.Ramachandra Moorthy

ORDER

The petitioner assails an arbitral award dated 24.02.2018 (the Award).

The petitioner was the claimant in the arbitral proceedings.

2. The petitioner was awarded a contract for the execution of earthwork for the formation of a bank between kilometres 169 to 160 between the Karaikudi and Pattukottai stations. The said contract was a measure and pay contract with a bill of quantities (BoQ) annexed thereto. The contract envisaged the submission of running account bills, which are described as C.C. bills, by the contractor while execution of work progresses. The petitioner submitted a C.C. bill in October 2014 for a sum of Rs.35,13,113/-. Since it is a measure and pay contract, measurements were taken on 27.10.2014 and recorded in the relevant measurement book. The admitted position is that this bill was paid. The petitioner submitted a 2nd CC bill in November 2015. The 2nd C.C. bill was for a sum of Rs.55,03,721/-. In relation thereto, measurements were taken on 28.10.2015 and recorded in the relevant measurement book. This bill was also paid in



However, work was not completed. The petitioner alleges that delay in completion of work is attributable to the respondent, whereas the respondent alleges that such delay is attributable to the petitioner. For purposes of the present petition, it is not necessary to enter any findings on said issue. The contract was terminated by the respondent by issuing a communication dated 28.06.2016.

3. In these facts and circumstances, the petitioner initiated arbitral proceedings. In such proceedings, the petitioner made claims for an aggregate sum of Rs.6,30,57,703/-. Such claims included a claim of Rs.21,34,670/- towards payment of the final bill. The respondent filed a counter statement and refuted these claims. Both parties adduced documentary evidence. The petitioner exhibited 29 documents, which were marked as Exhibits C1 to C29. The respondent filed three sets of documents under Book A, Book B and Book C. The documents under Book A were exhibited as Exhibits R1 to R15; the documents under Book B as Exhibits R1 to R3; and the documents under Book C as Exhibits R1 to R12. The arbitral proceedings culminated in the Award. By such Award, all the claims made by the petitioner herein were rejected. In addition, the Arbitral Tribunal concluded that the respondent is permitted to forfeit the security deposit of Rs.19,76,260/- and encash the performance guarantee for a sum



of Rs.92,46,239/-. The Award is assailed in this petition.

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4. Although a challenge is made to the Award, the petitioner has confined such challenge to the rejection of the final bill claim. Therefore, it is sufficient to examine that aspect of the Award. As indicated earlier, the final bill claim was for a sum of Rs.21,34,670/-. The said claim is pursuant to a communication dated 08.05.2017. The said document was marked as Exhibit C17. By this letter, the petitioner claimed a sum of Rs.10,38,968/- towards the final bill; a sum of Rs.6,87,379/- towards price variation or escalation in relation to CC I, CC II and CC III; and a further sum of Rs.4,08,323/- towards price variation. The details of such claims are set out in schedules A, B, C and D to the said communication. As stated earlier, CC I dealt with work which was measured as on 27.10.2014. CC II dealt with work which was measured as on 28.10.2015. The question that arises for consideration is whether the petitioner had adduced evidence in relation to work done subsequent to 28.10.2015 and whether vital evidence in such regard was disregarded by the Arbitral Tribunal.

5. The respondent makes brief submissions. According to the respondent, only two bills were raised by the petitioner in respect of work done and both these bills were paid in full. Therefore, the respondent states



that the claim towards final bill was liable to be rejected and that such rejection does not call for interference.

6. With regard to the appraisal of evidence, the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) is limited. An arbitral award may be interfered with if it is based on no evidence or if irrelevant evidence was the basis of the award or if vital evidence was disregarded. In the factual context of this case, it should be examined as to whether the Arbitral Tribunal disregarded vital evidence. On this issue, the petitioner relies on Exhibit C17. The petitioner contends that this document was not taken into consideration by the Arbitral Tribunal. Therefore, the findings of the Arbitral Tribunal on this issue should be examined. At internal page 25 of the Award, the Arbitral Tribunal considered the claims towards final bill. The Arbitral Tribunal expressly adverted to Exhibit C17, which is a letter issued by the petitioner in May 2017. Upon considering the evidence on record, the Arbitral Tribunal recorded as under:

“.... He has not furnished calculation of filed copy of measurement book”.

7. The Arbitral Tribunal, thereafter, proceeded to refer to the evidence adduced by the respondent. In specific, reference was made to



Exhibits R10 to R15. On such basis, the Arbitral Tribunal recorded that a sum of Rs.35,13,113/- was paid on 11.12.2014, and that a sum of Rs.55,03,721/- was paid on 07.11.2015. With regard to work done for the period subsequent to 28.10.2015, the Arbitral Tribunal recorded as under:

“ There was no progress till the contract was rescinded on 28.06.2016....The documents filed by the respondents reveals that, the completed work was measured and paid. Thereafter there was no progress of work, and payment of final bill does not arise and the claimant is not entitled to claim Rs.21,34,670/- and the respondent also is not liable to pay the amount. This dispute is resolved as above.”

8. From the above discussion and conclusion, it is evident that the Arbitral Tribunal engaged with the evidence on record and drew conclusions on such basis. While the petitioner relied upon Exhibit C17, the said document does not constitute actionable evidence that work was carried out in the period subsequent to 28.10.2015 and clearly does not constitute evidence of the value of such work. As indicated above, the said document was considered by the Arbitral Tribunal, which, in exercise of reasonable discretion, decided on the materiality and weight thereof. The petitioner failed to discharge the burden of proof by not filing or calling for the production of the measurement book, which was prepared pursuant to joint inspection. Therefore, in the facts and circumstances, the petitioner



has failed to make out a case to interfere with the impugned Award.

Consequently, Original Petition No.784 of 2018 is dismissed without any order as to costs.

Sd./-S.K.R.J.

08.12.2021

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Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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