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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.834 of 2017

In the matter of Arbitration &
Conciliation Act 1996.

and

In the Matter of Arbitration of
claims/disputes arising out of Agreement
No. MTP/Civil/41703, dated
008.10.2003

And in the matter of Award dated
03.05.2013.

Shri.Y.V.Sesha Reddy
Represented By Power of Attorney
R.Sekhar Babu,
No. 27-1-1305, Ground Floor,
2nd Main Road,
Vasavi Nagar,
Nellore, Andhra Pradesh
Now Changed to
No.20-590, Ist Floor,
Namasthe Board Lane,
Kadapa – 516 001.

. . . Petitioner

Versus

1. Chief Engineer,
Metropolitan Transport Project/Rlys,
Poonamallee High Road,
Southern Railway, Egmore,
Chennai – 600 008.



2. Shri. Sudhanashu Sharma
Chief Engineer/Construction/Central,
Southern Railway,
No.183, E.V.R. Periyar Road,
Egmore, Chennai – 600 008.
3. Smt. Sujatha Jayaraj
Divisional Railway Manager,
Southern Railway,
Salem.
4. Shri.V.Ajith Kumar
Additional Divisional Railway Manager,
Southern Railway,
Madurai.

. . . Respondents

O.P. No.834 of 2017

The Original Petition praying that this Hon'ble Court be pleased to set aside the award of the Arbitrator, dated 03.05.2013 arising out of the agreement No.MTP/Civil/41703 dated 18.10.2003 entered into between the petitioner and the respondents.

This Original Petition coming on this day before this court for hearing in the presence of Mr.A. Vikash for Mr.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 03.05.2013 filed herein and this court having observed that the scope of interference by this Court under section 34 of the Arbitration and Conciliation Act is limited and re-appreciation of evidence is also not



premissible, unless any of the grounds adumbrated under section 34 of the Arbitration and Conciliation Act is made out, therefore, this court cannot interfere with the award merely on the ground that the arbitral tribunal has taken a different view and **it is ordered as follows:-**

1. That the O.P. No.834 of 2017 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 OF MADRAS AFORESAID, THIS THE
15TH DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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12.10.2021
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O.P. No.834 of 2017

ORDER
DATED 15/09/2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 22/10/2021

APPROVED ON: 22/10/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **15.9.2021**

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.834 of 2017

Y.V.Sesha Reddy
Rep. By Power of Attorney R.Sekhar Babu,
No.20-590, 1st Floor, Namasthe Board Lane,
Kadapa – 516 001.

...Petitioner

Vs.

1. Chief Engineer,
Metropolitan Transport Project/Rlys,
Poonamallee High Road,
Southern Railway, Egmore,
Chennai – 600 008.
2. Sudhanashu Sharma
Chief Engineer/Construction/Central,
Southern Railway,
No.183, E.V.R. Periyar Road,
Egmore, Chennai – 600 008.
3. Sujatha Jayaraj
Divisional Railway Manager,
Southern Railway, Salem.
4. V.Ajith Kumar
Additional Divisional Railway Manager,
Southern Railway, Madurai.

...Respondents

Prayer:- Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the Arbitrator, dated 3.5.2013 arising out of the agreement No.MTP/Civil/41703 dated 18.10.2003 entered into between the petitioner and the respondents.



For Petitioner : Mr.A.Vikash for
Mr.P.Subba Reddy
For Respondents : Mr.P.T.Ramkumar
Standing Counsel

ORDER

The challenge has been made against the award passed by the three members arbitral tribunal rejecting the claim made by the claimant/petitioner under various heads.

2. The claim made by the claimant under various heads are as follows:

Summary of claim amount

<i>SL.No.</i>	<i>Description of Claims</i>	<i>Amount claimed (Rs.)</i>
1.	Enhanced rate for executed value during the extended currency period	26,67,522/-
2.	Loss of profit due to deprivation of agreement value	11,19,744/-
3.	Refund of alleged recovery	7,67,288/-
4.	Idling hire charges	10,00,000/-
5.	Extra expenditure due to modification towards silt removal	5,00,000/-
6.	Interests compensation on the excess amount towards SD held by the respondent	3,68,229/-
7.	Extra expenditure incurred towards fabrication of liners for extra depth of pile driven	5,00,000/-



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3. **Brief facts leading to filing of the present Original petition are as follows:**

Letter of acceptance was issued on 12.5.2003 for the proposed construction of retaining wall at Indira Nagar station consisting of pile foundation and general RCC works in the raft, tie beams, pile caps, RCC works etc. The work was entrusted to the claimant by letter, dated 8.10.2003. The agreement value was Rs.2,12,34,763/-. The period stipulated for completion of the work is nine months. As per the letter of acceptance, dated 12.5.2003, the work ought to have been completed on 11.2.2004. However, the work was not completed within the stipulated period. There were several extensions granted invoking Clause 17 (2) of G.C.C. Aggrieved by the claimant alleging non payment for the work executed, the claimant has invoked arbitration clause provided in the agreement.

4. The arbitral tribunal after considering the evidence adduced before it, rejected the claim by order, dated 3.5.2013. As against the said order, the present petition has been filed to set aside the award.

5. It is the contention of the learned counsel appearing for the



petitioner that despite completion of work, payment has not been made for the work actually done. Therefore, he raised claim under various heads as stated supra. It is contended by the petitioner that the delay attributed to the Railways. However, the respondents disputed the same. The learned counsel appearing for the petitioner contended that finding of the arbitral tribunal that there was no document has been produced to substantiate the claim is contrary to the facts. In fact, various documents available on record that has not been taken note of by the tribunal. Merely because claim certificate is signed by the claimant that will not absolve the liability of the Railways. It is contended that Ex.C68, C69 and C70 available on record have not been taken note of by the arbitral tribunal. Therefore, the very finding of the tribunal goes to the root of the matter is nothing but perversity. Railways having used the bridge after its completion, the claim has to be settled and liable to pay compensation as per Sec.70 of the Contract act. The tribunal has not given proper reason to reject the claim made by the claimant. Therefore, the award has to be set aside on this ground. Further, there is no document produced to show that contract has been foreclosed, whereas documents filed by the claimant clearly shows that reference about reconciliation. Therefore, the entire award passed by the arbitral tribunal, not based on proper appreciation of evidence which is



the learned counsel appearing for the petitioner relied upon the judgment reported in **1999 (3) SCC 500 [DWARAKA DAS VS. STATE OF MADHYA PRADESH AND ANOTHER]** to contend that even after claim certificate has been signed, the petitioner is entitled to make claim for damages.

6. The learned counsel appearing for the respondent would submit that though reasons given in the award are not elaborate, the tribunal has rightly found that the claim is not maintainable. The tribunal recorded a fact that despite several extensions were granted, the work has not been completed. The claim itself indicates that 100% work has not been completed. Further, the claim itself clearly shows that the claimant has claimed 10% of the balance amount that has not been executed. Therefore, claim made under various heads on the ground that work has been completed cannot be countenanced. Tribunal has given proper reason. It is also stated that rider of the agreement also executed by the claimant which stipulates that no enhanced rates would be paid during currency of contract. Therefore, tribunal rightly rejected the claim of the petitioner on proper appreciation of evidence and hence, prays for dismissal of the petition. In support of his submission, he relied upon the judgment reported in **(2018) 3 SCC 373 [ONGC MANGALORE PETROCHEMICALS LTD. VS. ANS CONSTRUCTIONS LTD. AND ANOTHER]**.



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7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

8. The tribunal has found that the work was not completed even after obtaining 7 extensions by the claimant from time to time and the final extension was granted upto 31.8.2006 under Clause 17(2) of GCC. The work has been short-closed on mutual agreement between both the parties without any liability on either side. The final bill actually paid was Rs.1,00,36,346/-. The claimant has submitted 'No Claim Certificate', signed the final bill and received the security deposit. Taking the above facts into consideration, the tribunal rejected the claim made by the petitioner.

9. It is not disputed that though originally, 9 months time stipulated in the contract, work was not completed within the stipulated period. There were 7 extensions granted by Railways, final extension was granted on 31.8.2006, The arbitral tribunal also took note of the fact that rider agreement also signed by the claimant at the relevant point of time, wherein it is specifically agreed by the parties that no enhanced rate would

be paid on account of extension of time. When the parties agreed to the



terms not to claim any enhanced rate beyond the contract, the claimant is not entitled to claim enhanced rate. Therefore, this Court is of the view that when the tribunal consisting of technical members have found that there is rider agreement, it is also not disputed that extensions were granted under Clause 17(2) of GCC and the above clause stipulates that on such extension, no compensation or any other claim is maintainable on account of extension granted and also, the parties are governed by the specific contract, besides no claim certificate is also issued, the petitioner is not entitled to make such claim.

10. It is also to be noted that extra work has been done in claim 2, the tribunal found the very claim itself shows that what was claimed is 10% of the balance amount that has not been carried out, that itself clearly shows that entire work has not been completed. To contend that entire work has been completed and the Railways retained the money, such contention this Court is of the view that no legs to stand since there was short-closure of the agreement and the claimant also has given no claim certificate.

11. Such view of the matter, when the contract was already foreclosed and no claim certificate is also issued, the claimant cannot make any such claim. If really the amount is actually due, a normal prudent man



will demand the outstanding payment at the time of foreclosure of the contract and while issuing no claim certificate, which was not done so by the claimant in the present case. Therefore, this Court cannot find fault with the findings of the arbitral tribunal. The Arbitrator also taken note of the material statement and no claim certificate to prove the fact that the claimant has accepted the recovery. As far as the claim No.4 is concerned, tribunal took note of the fact that no break up details furnished by the claimant before the tribunal for claiming lump sum amount for keeping his machineries idle for 5 months. In so far as claim No.5 and 7, the arbitral tribunal recorded a factual finding which cannot be find fault.

12. The learned counsel appearing for the petitioner relied upon the judgment reported in *1984 (2) Scale 56 : (1984) 4 SCC 59 [M/s.A.T.Brij Paul Singh and Bros. vs. State of Gujarat]* to contend that the claimant is entitled to claim damages. Absolutely, there is no dispute in the finding of the above judgment. But the fact remains that the claimant has not established that entire work has been completed. Therefore, the claimant cannot claim damages without establishing completion of the work. Hence, the above judgment will not rescue the petitioner.



the judgment reported in **(2006) 13 SCC 475 [M/s.Ambica Construction vs.**

Union of India] to contend that despite no claim certificate issued that will not take away the right to make claim. There is no dispute in the above judgment. But in the case in hand, besides no claim certificate issued, rider agreement also executed by the petitioner which stipulates that no enhanced rate will be payable by the Railway. That apart, Clause 17(2) of GCC also specifically stipulates that no enhanced rate is permissible on account of the extensions granted under Clause 17(2) of GCC. Therefore, the petitioner cannot take shelter in the above judgment.

14. In **ONGC Mangalore Petrochemicals Ltd. vs. ANS Constructions Ltd., [(2018) 3 SCC 373]** the Hon'ble Supreme Court held as under:

"31. Admittedly, no-dues certificate was submitted by the contractee company on 21-9-2012 and on their request completion certificate was issued by the appellant contractor. The contractee, after a gap of one month, that is, on 24-10-2012, withdrew the no-dues certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the contract site was made vide letter dated 12-1-2013 i.e. after a gap of 3½ (three-and-a-half) months whereas the final bill was settled on 10-10-2012.

When the contractee accepted the final payment in



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full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting final bills that too in the absence of exercising duress or coercion on the contractee by the appellant contractor. In our considered view, the plea raised by the contractee company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not, therefore, justified in exercising power under Section 11 of the Act."

The above judgment makes it clear that when the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the contract at a belated stage which creates an iota doubt as to why such claim was not settled at the time of submitting final bills that too in the absence of of exercising duress or coercion on the contractee by the appellant contractor.



15. Further, this Court is of the view that the scope of interference by this Court under Sec.34 of the Arbitration and conciliation Act is limited and re-appreciation of evidence is also not permissible, unless any of the grounds adumbrated under Sec.34 of the Arbitration and Conciliation Act is made out. Therefore, this Court cannot interfere with the award merely on the ground that the arbitral tribunal has taken a different view.

In the result, the Original petition is dismissed. No costs.

Sd/- N.S.K.J.
15/09/2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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