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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27349 & 27350 of 2014

and

M.P.Nos. 1 and 1 of 2014

S.P.Senthil

...Petitioner in both WPs

Vs

1.The General Manager,
Southern Railways,
Chennai.

2.The Divisional Engineer,
(North), Division Office,
Works Branch,
Southern Railways,
Madurai.

3.The Deputy General Manager,
(LAW), Headquarters Office,
Southern Railways,
Ivth Floor, MMC Complex,
Chennai - 600 003.

...Respondents in both W.Ps

PRAYER in W.P.No.27350 of 2014 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent proceedings in No.U/W.149./MDU/364/2009 dated 22.07.2014 following the proceedings of the 3rd respondent in C356/VI/42/2014/LAW M-5 dated 2.6.2014 quash the same and directing the respondents to pay the amount to the petitioner under the price variation clause in agreement MDU/364/2009 dated 01.10.2009.

PRAYER in W.P.No.27349 of 2014 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent proceedings in No.U /W.149/ MDU/195/2010 dated 22.07.2014 following the proceedings of the 3rd respondent in C356/VI/42/2014/LAW M-5 dated 2.6.2014 quash the same and directing the respondents to pay the amount to the petitioner under the price variation clause in agreement MDU/195/2010 dated 15.06.2010.



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For Petitioner : Mr.Prabhakaran
[in both WPs]

For Respondents 1 to 3 : Mr.P.T.Ramkumar
[in both WPs] for Railways

COMMON ORDER

The writ petitions are filed to call for the records of the 2nd respondent in proceedings dated 22.07.2014 and 02.06.2014 and directing the respondents to pay the amount to the petitioner under the price variation clause in agreement MDU/364/2009 dated 01.10.2009 and in agreement MDU/195/2010 dated 15.06.2010.

2. Admittedly, the petitioner claims price variation based on the clause stipulated in the Contract between the parties. In respect of the price variation request made by the petitioner, the respondents are filed a counter, which reads as under:

"5. The petitioner's request for seeking price variation claims was forwarded to the Accounts Department for consideration. The Accounts Department after scrutinizing the request of the petitioner as per the conditions of contract has informed that the agreement of the petitioner is closed in all aspects and the contractor has received all his dues without any objection. Hence he is not eligible to claim price variation claims as per Clause 43(2) of the General Conditions of Contract. I state that being a renowned contractor the petitioner is well aware of the fact that after issue of unequivocal claims and receipt of dues, his agreement will be treated as closed. Further, he has not made any request for price variation claims towards the part bills and made no remarks even while requesting for final rider agreement for increase of the agreement value. Now as an afterthought he has made this price variation claims. Since the petitioner has submitted unequivocal No Claim Certificate while passing final bills of both the contracts he is not eligible for any further claims including the price variation claims so far as both these contracts are concerned. I submit that in similar issues, the Hon'ble Supreme Court of India has held that the contractor cannot seek any further claim or price variation claim after making submission of unequivocal "No Claim Certificate". Hence the petitioner has lost his right for making any further claim in this case. Security Deposit of the Contractor was refunded on 25.11.2010



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and 22.08.2010 respectively and the agreements were treated as closed. The petitioner has submitted proposal for seeking price variation claim in both the contracts after a long time and at a belated stage after submitting his "No Claim Certificate" much earlier along with his final bills."

3. The learned counsel for the respondents made a submission that the entire bills were settled and therefore, the price variation now sought for cannot be granted.

4. Even presuming that the petitioner has got certain claims with reference to the terms and conditions of the agreement, the petitioner as to approach the competent Court of Law for adjudications of the issues. Contrarily, High Court cannot adjudicate the terms and conditions of the contract as well as the obligations.

5. In the present case, the claim made by the petitioner was considered by the Southern Railway and under these circumstances, this Court is not inclined to entertain the writ petitions. If at all any violation of the terms and conditions of the contract by any of the parties, the Arbitration Clause is also agreed between the parties. Thus, the petitioner has to invoke the Arbitration Clause or otherwise in the manner known to law.

6. With this liberty, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Southern Railways,
Chennai.

2.The Divisional Engineer,
(North), Division Office,
Works Branch, Southern Railways,
Madurai.



3.The Deputy General Manager,
(LAW), Headquarters Office,
Southern Railways,
Ivth Floor, MMC Complex,
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+1cc to Mr.G.Rajan, Advocate SR. No.3737

+1cc to Mr.P.T.Ramkumar, Advocate SR. No.3249

W.P.No.27349 & 27350 of 2014

MT (CO)

PR (08/02/2022)