



Arb. O.P. (Com. Div.) No.331 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.331 of 2023

Mr K Satyanarayana Raju,
Rep by the Managing Partner
M/s MVVS-OSPCW (JV)

... Petitioner

vs.

(1). The Union of India,
Represented by the General Manager,
Southern Railway, Park Town, Chennai-3.

(2). The Chief Engineer (Construction/S&RB),
Southern Railway (Construction), Egmore, Chennai-8.

(3). The Deputy Chief Engineer (Construction-III),
Southern Railway, Tambaram, Chennai-45. ... Respondents

Prayer : Arbitration Original Petition (Commercial Division) has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs :-

(A) Set-aside the Award 31/05/2018 passed in the arbitration arising out of the Agreement No.30/CN/2010 dated 10.03.2010.

(B) Direct the Respondents to pay the cost of the Petition and

(C) Pass further orders as this Court may deem fit and proper



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For Petitioner : Mr.Amalraj Penikilapatti

For Respondents : Mr.K. Ramanamoorthy
Senior Panel Counsel

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award, dated 31.05.2018.

2. The petitioner has challenged the impugned Arbitral Award on the ground of patent illegality, since according to the petitioner, the Arbitral Tribunal while passing the Award has not appreciated the evidence available on record before them. According to the petitioner, if the evidence was properly appreciated by the Arbitral Tribunal, the Arbitral Tribunal would have awarded the claims as prayed for by the petitioner in the arbitral claim made by them against the respondent.

3. Under the impugned Arbitral Award, the respondents have been directed to pay the petitioner certain sums of money and the Arbitral Tribunal has also rejected some of the claims made by the petitioner against the respondents. The details of the Award passed by the Arbitral Tribunal, which is challenged in this petition are as follows

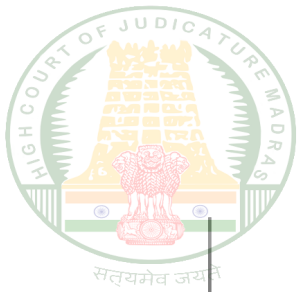
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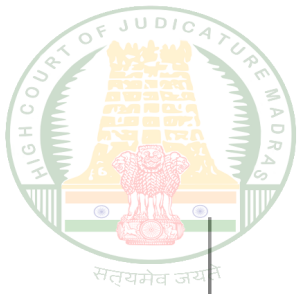
Sl. No.	Description of Claims	Claim Amount (in Rs.)	Award Amount Rs.)
1	Value of work executed up to date of 48 hours notice not paid measurement details is not made known/value claimed is approximate subject to modification / supplementation during the proceedings of tribunal as per agreed clause 64 of GCC.	40,00,000/-	NIL
2	Compensation towards price variation as per agreed clause - not paid by the Railway approximately claimed.	40,00,000/-	24,397/-
3	Compensation towards the loss of working period and manpower with the availability of all resources to complete the work as reported by the petitioner through his letter dated 22.12.2012 for the delay caused by the Railway in issuing approved drawing, handing over site, the delay in land acquisition for abutments, etc.	10,00,000/-	NIL
4	Value of materials supplied at site for execution and completion of work such as Steel. Cement stored at site in the godown, heavy plant and machinery mobilized at site for pile driving work such as rigs, crane etc. Compensation towards loss of working days of this heavy plant and machinery - the value of which was more than 2 Crores. Petitioner at 10% of the value of the plant mobilized and the cost of cement and steel brought to site – available at site	3,00,00,000/-	NIL



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	claim value approximate 3 crores.		
5	Refund of alleged recovery of BG No.03700000025 dated 15.02.2010 issued by Axis bank towards performance guarantee and encashed on 05.04.2012 by the Railway as admitted in the counter affidavit filed by the Railway in the Hon'ble High Court since the termination notice was withdrawn by the respondent through his communication dated 29.01.2013 to be remitted to the bank immediately.	57,79,120/-	57,79,120/-
6	Refund of alleged recovery by the Railway as an interest component on the value of Rs.65,00,000/- and encashed the BG with interest component of Rs.13,71,789/- on 05.04.2012 as admitted in the counter filed by the Railway in the Hon'ble High Court and the interest at 12% for the excess recovery made by the Railway on 13,71,789 from 05.04.2012 to this date of petition dated 31.03.2013 - 12 months at 12% on Rs.13,71,789/-. Note: The mobilization advance paid to petitioner by Railway and encashed by Railway should be refunded as the entire value of these advances are available with the Railway by way of materials etc., as stated in claim No.3.	Principal - 13,71,789.00 Interest - 1,51,614.00 Total - Rs. 15,36,403.00	NIL
7	Extra length of liner used for driving the piles below the ground level for 742mm while the level above the ground level is 63 cm whereas 40 piles have been driven and the Railway had	15,00,000/-	NIL

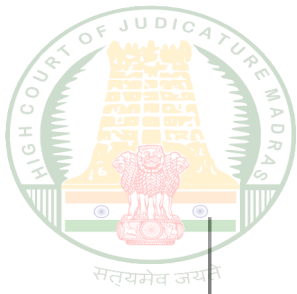


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	filed to record the measurements for idling the difference in extra length driven for about 680 cm of liner have to be paid at the agreement rate. During the execution, the respondent was pleaded with this claim through his letter dated 29.08.2012. Value claimed approximate. Note: The value of claim is subject to modification/supplementation before the tribunal as per agreed clause 64 of GCC.		
8	Compensation towards wrongful rescission of contract - The Railway forced the petitioner to move the Hon'ble High Court for rectifying the defective orders and violating the agreed terms of the contract the evidence for this claim is the counter affidavit of the Railway filed by the respondent Chief Engineer in the Hon'ble High Court of Madras in O.A. No. 1052/2012 and the revocation letter by Chief Engineer, dated 29.01.2013 advising the petitioner that the termination notice is withdrawn. When there is breach of contract by the employer the law provides relief that the aggrieved petitioner contractor is entitled for due compensation the text of the jury version on similar issues decided by the court is furnished entitling the aggrieved contractor to gain compensation for wrongful rescission since the contract is governed by the law as per clauses 3 of GCC and the Indian Contract Act, 1972. (i) Section 53 of Indian Contract	3,00,00,000/-	NIL

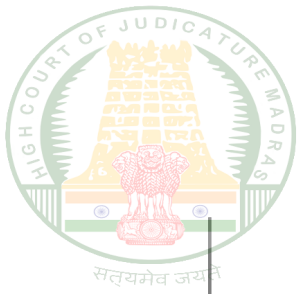


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Act, 1972 deals with a situation where one party to the contract prevents the either party from performing his part of the contract. The prevention may be either to the commencement of the work. In either case, the contract become voidable at the option of the party prevented and he is also entitled to claim compensation from the other party for any loss which he may sustain in consequence of non-performance of the contract. (ii) In case of failure on the part of employer to provide site, facilities etc., whether for service road or for execution of work it is construed as breach of contract. The admission of the site engineer by his letter No.W.148/CN/II/TBM/Palarriver/AF-4, dated 17.04.2010 and W.148/CN/II/TBM/Palar River /AF-4 dated 13.04.2010 proves that the petitioner was not provided with the amenity of the site at the time of issuing LOA and thereby extra time was involved by these time of land acquisition, etc., causing prolongation of work and depriving the completion of work. Mere granting of extension of time will not suffice to compensation the money loss. In case of default by the contractor, Railways is entitled for claiming compensation/liquidity damages by imposing extension of time under clause 17(4) of GCC. The equity of law is the basis for mutual obligations of the contract agreement. The



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	petitioner is claiming for compensatory loss on this account.		
9	Interest at 12% per annum on the claimed amount from the date of 17.12.2012 - 48 hours notice - Exhibit C-10 to the date of petition 31.03.2013. The claim of the interest for the investment made by the petitioner on the borrowing capital and the petitioner contractor was prevented from all acts of the respondent including admitting before the court as wrongful termination notice caused based on mere entitlement of 48 hours notice and breaching clause 62 of GCC as claimed before.	will be quantified before the tribunal	NIL
10	Compensation towards legal charges incurred by the petitioner moving the Hon'ble High Court for correcting the error of law caused by the respondent on this contract management and admitted by the respondent in the counter.	2,00,000/-	NIL
	TOTAL	7,80,15,523.00	58,03,517

4. The respondent has not filed any petition challenging the very same Arbitral Award. They are satisfied with the impugned Arbitral Award. The Arbitral Tribunal under the impugned Arbitral Award has awarded the following amounts in favour of the respondent towards their counter claim made against the petitioner in the arbitration :-



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Sl.No.	Description of Claims	Claim Amount (Rs.)	Amount awarded (Rs.)
1	After adjustment of 75% of payment made towards steel and final measurement after payment of CC V, the net final claim is:	88,167/-	88,167/-
2	Violation in terms of clause	1,99,509/-	1,99,509/-
3	Balance of interest towards Mobilization advance	1,04,691/-	NIL
	TOTAL	3,92,367/-	2,87,676/-

5. As seen from the remaining claims made by the petitioner before the Arbitral Tribunal, for which the Arbitral Tribunal has rejected the said claims stating that they are damage claims arising out of the alleged breach of contract said to have been committed by the respondent. The Arbitral Tribunal has rightly rejected those claims as there is no evidence placed on record by the petitioner to substantiate those claims. Under the impugned Arbitral Award, the Arbitral Tribunal has given correct reasons as to why the remaining claims made by the petitioner have been negated.

6. The Arbitral Tribunal has rightly concluded that in view of the final bill payment being negated as no payments are payable to the petitioner as per the final bill which is also reflected in the joint measurements recorded by the parties.



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7. The Arbitral Tribunal has rightly given a finding that the respondent has established that the payment for the liners and piles was made as per the terms of the contract, which is further strengthened by the joint measurement statement signed by both the petitioner and the respondent.

8. The Arbitral Tribunal has rightly given a finding that the petitioner is also responsible for the improper management of the contract and therefore awarding of compensation in favour of the petitioner does not arise.

9. As seen from the impugned Arbitral Award, the findings rendered by the Arbitral Tribunal are only based on the evidence placed on record. The contentions of the petitioner before this Court have been fully considered by the Arbitral Tribunal on merits and in accordance with the law in the impugned Arbitral Award.

10. For the reasons stated supra, this Court is of the considered view that the Arbitral Tribunal has rightly rejected certain claims made by the petitioner and has rightly awarded the two claims in favour of the petitioner as determined in the impugned Arbitral Award.

11. The scope for interference under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. If the Arbitral Tribunal has



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passed the Arbitral Award only based on the evidence available on record, this Court cannot re-appreciate the evidence. The law is also well settled that in case the view taken by the Arbitral Tribunal is a plausible and a legal view, the question of interference by this Court under Section 34 of the Arbitration and Conciliation Act, 1996 does not arise.

12. For the foregoing reasons, this Court is of the considered view that the Arbitral Award passed by the Arbitral Tribunal does not suffer from patent illegality and it is also not opposed to public policy of India. The petitioner has also not satisfied the other grounds under Section 34 of the Arbitration and Conciliation Act, 1996, compelling this Court to interfere with the impugned Arbitral Award.

13. In the result, there is no merit in this petition. Accordingly this petition is dismissed. No costs.

22.07.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No



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ABDUL QUDDHOSE, J.

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