



Arb O.P (COM.DIV.) No. 566 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

**Arb O.P(COM.DIV.) No. 566 of 2023 and
A.No.6459 of 2023**

Union of India

Represented by The Deputy Chief Engineer /
Construction / 1/MAS,
Southern Railway, Near My Ladys Garden,
Park Town, Chennai-600 003.

Petitioner (s)

Vs

M/S.RPN Engineer Chennai Private Limited
M-60, 9th Street, Anna Nagar East,
Chennai-600 102.

Respondent(s)

PRAYER

Petition filed under Section 34 of the Arbitration and Conciliation Act 1996,

(a) to set aside the Award of the arbitral Tribunal dated 21.02.2023

(b) to direct the respondent to pay the cost of this petition.

For Petitioner(s) : Mr.C.Samivel

Senior Central Government Standing Counsel

For Respondent(s): Ms.K.Aparna Devi,

for Mr.P.Subba Reddy,



Arb O.P (COM.DIV.) No. 566 of 2023

ORDER

WEB COPY

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned Arbitral Award, dated 21.02.2023 passed in favour of the respondent against the petitioner.

2.The respondent was employed as a Contractor for the petitioner, through a contract viz., Letter of Acceptance, dated 29.09.2016, entered into between the petitioner and the respondent. Under the contract, the respondent was to construct a railway over bridge. However, the same did not materialise, due to the non handing over possession of the land to the respondent by the petitioner. The contention of the petitioner is that since the State Government did not hand over possession of the land, where the railway over bridge was to be constructed by the respondent, the petitioner was not in a position to hand over possession of the land to the respondent so as to enable the respondent to commence their work as per the contract awarded by the petitioner to the respondent. The contract was awarded to the respondent by the petitioner in the year 2016 and as per the said contract, the construction work ought to have been completed by the respondent, within a period of nine months. However, only in the year 2020, the petitioner foreclosed the contract on account of impossibility of performance due to the fact that the State Government did not hand over possession of the land to the petitioner to enable the petitioner to hand over



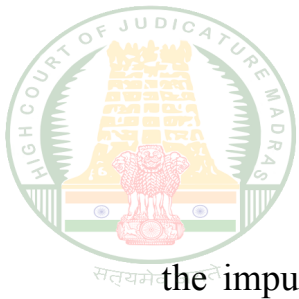
Arb O.P (COM.DIV.) No. 566 of 2023

WEB COPY

possession of the same to the respondent in order to enable the respondent to commence the work of constructing the railway over bridge as per the contract.

According to the respondent, for no fault of theirs, the contract has been foreclosed and on that ground they sought for recovery of the alleged losses suffered by them from the petitioner. In accordance with the arbitration clause contained in the General conditions of contract applicable to railways, the respondent initiated arbitration. They made several claims before the arbitrator against the petitioner and one such claim was damages on account of loss of profit. They have claimed damages for loss of profit at 15% before the Arbitral Tribunal.

3. Similar claims were made by the very same petitioner in respect of other contracts arising out of the very same construction of railway over bridge against the respondent before the Arbitral Tribunal. As is the case with other cases, prior to the initiation of arbitration by the respondent, in this case as well, the petitioner had refunded the Security Deposit amount to the respondent. On account of the long delay in foreclosing the contract by the petitioner, which according to the respondent/claimant, is arbitrary and illegal, they made claims against the petitioner before the Arbitral Tribunal. Both the parties have participated in the arbitration. Even though various claims were made by the respondent/claimant against the petitioner in the arbitration, the arbitrator under

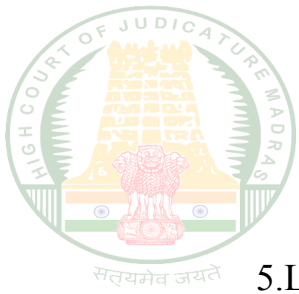


Arb O.P (COM.DIV.) No. 566 of 2023

WEB COPY

the impugned award has awarded a sum of Rs.37,62,808/-, which is towards loss of profit at the rate of 5% on the un-executed value of work, though the respondent had claimed 15% before the Arbitral Tribunal. The arbitrator also awarded another sum of Rs.4,04,073/- being the bank charges incurred by the respondent/claimant. However, in the other arbitration claims made by the respondent pertaining to the very same construction of railway over bridge, the arbitrator did not award bank charges.

4.The case on hand is similar to the case, which was the subject matter of Arb.O.P.No.547 of 2023. Since the claim which is the subject matter of this OP as well as the claim which was the subject matter of Arb.OP.No.547 of 2023 involves the same construction of railway over bridge, there cannot be two different awards. In this OP, the Arbitrator in addition to awarding towards loss of profit at the rate of 5% on the un-executed value of work has awarded a sum of Rs.4,04,073/- towards bank charges which was not awarded by the Arbitrator who had passed the impugned arbitral award in favour of the respondent, which is the subject matter of Arb.O.P.No.547 of 2023. When the losses claimed by the petitioner in both the claims are identical in nature, an award cannot be passed in one claim, awarding loss of bank charges which is the instant case and in the other case, the same was not awarded.



Arb O.P (COM.DIV.) No. 566 of 2023

WEB COPY

5.Learned counsel for the respondent on instructions would submit that in the execution petition filed by the respondent which is pending before the executing court, the respondent will forgo the claim of Rs.4,04,073/-, which has been awarded in the impugned arbitral award in favour of the petitioner towards loss of bank charges. The said undertaking given by the respondent is recorded.

6.In the connected OP filed by the petitioner in Arb.OP.No.547 of 2023 the very same grounds that have been raised in this petition were raised under Section 34 of the Arbitration and Conciliation Act 1996. By a detailed order passed by this Court, this Court had dismissed Arb.OP.No.547 of 2023 on 23.04.2025. The order dated 23.04.2025 passed in Arb.OP.No.547 of 2023 through which this Court dismissed the said petition speaks for itself. Therefore, this Court is not going to repeat the contents of the order, while dismissing this petition as the very same grounds raised in Arb.OP.No.547 of 2023 have also been raised in this petition. This Court cannot modify the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. In view of the same, this Court can only record the undertaking given by the respondent before this Court that the respondent shall forgo the claim of Rs.4,04,073/- awarded in their favour by the Arbitrator under the impugned award towards loss of banking charges. Therefore, in the execution petition filed by the respondent against the petitioner to execute the impugned arbitral



Arb O.P (COM.DIV.) No. 566 of 2023

WEB COPY

award, the respondent shall waive the same i.e., Rs.4,04,073/- from and out of the total amount claimed in the Execution Petition. Since this Court in Arb.OP.No.547 of 2023 has made it clear that the petitioner has not made out any case for interference by this Court under Section 34 of the Arbitration and Conciliation Act 1996, as there is no illegality in the impugned arbitral award which was the subject matter of Arb.OP.No.547 of 2023. Since this petition also arises out of the very same construction of railway over bridge and involved very same petitioner and similar grounds having been raised in this petition as well, this court also does not find any merits in this petition. However, the undertaking given by the respondent before this Court that the respondent shall forgo the claim of Rs.4,04,073/-, which the Arbitrator by the impugned arbitral award has awarded shall be made use of by the petitioner before the executing court.

7. Accordingly, this petition is dismissed. No costs. Since the main O.P. is dismissed, the interim stay granted by this Court in A.No.6459 of 2023 stands vacated.

07-07-2025

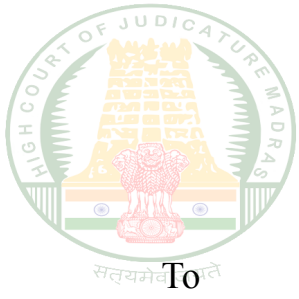
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

sai



Arb O.P (COM.DIV.) No. 566 of 2023

To
WEB COPY

M/s.RPN Engineer Chennai Private Limited
M-60, 9th Street, Anna Nagar East,
Chennai-600 102.



WEB COPY



Arb O.P (COM.DIV.) No. 566 of 2023

ABDUL QUDDHOSE J.

sai

**Arb O.P(COM.DIV.) No. 566 of 2023
and A.No.6459 of 2023**

07-07-2025