



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF JANUARY, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE V KAMESWAR RAO**

**AND**

**THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA**

**REVIEW PETITION NO. 167 OF 2024**

**IN**

**COMAP NO.392 OF 2022**

BETWEEN:

BENGALURU METRO RAIL CORPORATION LTD.  
A COMPANY REGISTERED UNDER THE COMPANIES  
ACT, 1956 HAVING ITS REGISTERED OFFICE AT  
BMTc COMPLEX, 3<sup>RD</sup> FLOOR, KH ROAD  
SHANTINAGAR, BENGALURU - 560 027  
REP. BY ITS MANAGER HEREIN M.MAHESHWAR RAO

...PETITIONER

(BY SRI.S.SRIRANGA, SR. ADV. FOR  
SMT. SUMANA NAGANAND, ADV.)

AND:

1. KARNATAKA COMMERCIAL AND INDUSTRIAL  
CORPORATION PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT 28  
BELLARY ROAD, GANGENAHALLI  
DENA BANK, BENGALURU - 560 032  
REP. BY ITS AUTHORIZED SIGNATORY
2. SECURITY AND INTELLIGENCE SERVICES  
(INDIA) LIMITED, HAVING ITS REGISTERED  
OFFICE AT # 106, RAMANASHREE ARCADE  
1<sup>ST</sup> FLOOR, 18<sup>TH</sup> MG ROAD, TRINITY CIRCLE  
BENGALURU - 560 001 REP BY ITS  
AUTHORIZED SIGNATORY
3. JUSTICE R.GURURAJAN (RETD.)  
LEARNED SOLE ARBITRATOR  
R/AT NO.504, 5<sup>TH</sup> FLOOR  
CHITRAPURA APARTMENTS, 15<sup>TH</sup> CROSS  
MALLESWARAM

Digitally signed by  
MALA K N  
Location: HIGH COURT  
OF KARNATAKA



BENGALURU - 560 003.

...RESPONDENTS

(BY SRI.K.N.PHANINDRA, SR. ADV. FOR  
SMT.LEELA P. DEV ADIGA, ADV. FOR C/R1 & R2)

THIS REVIEW PETITION IS FILED UNDER ORDER XLVII  
RULE 1 OF THE CPC, 1908, PRAYING TO REVIEW THE JUDGMENT  
DATED 22.02.2024 PASSED IN COMAP NO.392/2022  
(ANNEXURE-A) AND ALLOW THE SAID PETITION, IN THE  
INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR HEARING, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:

*CORAM: HON'BLE MR JUSTICE V.KAMESWAR RAO*  
*AND*  
*HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA*

**ORAL ORDER**

*(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)*

This review petition is filed under Order XLVII Rule  
(1) of the Code of Civil Procedure, 1908, by the appellant  
seeking review of the judgment dated 22<sup>nd</sup> February  
2024 passed by this Court in Commercial Appeal  
No.392/2022.

2. Appellant is seeking review of the judgment  
on the ground that respondent No.1 was engaged in the  
business of providing facility of management services to  
public and private sector entities whereas respondent



No.2 is a private security solutions provider in India and Australia.

3. The appellant had floated a request for proposal on 21.08.2012 calling for bids from agencies for providing various house keeping and security services. Respondent Nos.1 and 2 as a consortium are successful bidders. After negotiation, they entered into a contract making several of their records as part and parcel of the agreement. After commencement of the work, bills were raised by respondent Nos.1 and 2, payment was made by the appellant. After audit objection, recovery was effected from respondent Nos.1 and 2. Raising the said issue, respondent Nos.1 and 2 have approached the Court seeking arbitration. Third respondent was appointed as the Sole Arbitrator. The Sole Arbitrator after framing the issues, taking evidence of parties and on hearing the parties passed the award directing the appellant to pay Rs.12,13,15,047/-, reserving liberty to respondent Nos.1 and 2 to submit revised invoices towards the claim of Rs.3,59,78,798/- and rejected the



claim of the respondent Nos.1 and 2 for Rs.1,45,59,026.35 paise and also awarded interest @ 10% per annum.

4. The said award came to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996, before the Commercial Court in Com.A.P.No.84/2020. The Commercial Court after dealing with the matter vide order dated 25.07.2022 answered all the issues framed against the appellant and dismissed the petition. Aggrieved by the same, the appellant has filed this Commercial Appeal before this Court. After hearing both parties, this Court as per order dated 22.02.2024 dismissed the appeal. The appellant has filed this petition seeking review of the said judgment on various grounds.

5. Heard the arguments of Sri.S.Sriranga, learned Senior Counsel on behalf of Smt.Sumana Naganand, learned counsel on record for the petitioner and Sri.K.N.Phanindra, learned Senior Counsel on behalf of Smt.Leela P.Devadiga, learned counsel on record for respondents.



6. Sri.Sriranga has contended that the clause regarding variation in minimum wages has not been agreed upon between the parties, only on the basis of offer letter, claim is made by the respondents. The sole Arbitrator, the Arbitral Court and this Court overlooked the said aspect and came to an erroneous conclusion that the offer letter submitted by the respondents is a part of the agreement and the appellant is bound by its terms.

6.1. It is further submitted that the Tender Evaluation Committee after due negotiation rejected the claim of the respondents for variation of minimum wages and the offer letter of the respondents has to be read considering the entirety of bid evaluation. If that is read harmoniously, there is possibility of taking a view that the respondents are not entitled for escalation of minimum wages as the same does not fall within the framework of the contract.

6.2. It is further vehemently contended that the escalation in minimum wages, which was paid to the



respondents, was not passed on to the beneficiary employees. By taking undue advantage of the clause in the offer letter, the respondents cannot be permitted to enrich themselves, which is against the public policy. This Court has not properly appreciated these aspects, which is causing financial loss to the appellant and same requires modification.

7. Sri.K.N.Phanindra, learned Senior Counsel has contended that all the negotiations between the parties are placed on record black and white. There is a clause in the offer letter of the respondents that the appellant is required to reimburse any escalation of minimum wages and said document is made part and parcel of the agreement. Respondents are engaging the employees, who are doing house-keeping activities with the appellant. If there is any variation in the minimum wages as per the orders of the Government, the appellant is bound to absolve it and the respondents are entitled to claim the same. In true spirit of the terms of the agreement, the appellant has paid the escalation of



minimum wages that has been passed on to the beneficiaries and the same was not a part of the profit in the hands of the respondents. The appellant has accepted the terms of the agreement, paid the amount, only after audit objections, they are re-reading the terms of the contract against the respondents, which is not permissible and the appellant being a public authority must honour the terms of the contract of which one can read and understand. There is no wrong interpretation or misreading of the terms of the contract either by the Sole Arbitrator, Arbitral Court or this Court.

7.1. It is further contended that reviewing the order of this nature is nothing but re-arguing the case on merits. Same is beyond the scope of review. The appellant cannot, after long research, point out any mistake or error in the judgment within the scope of the review. There is no error apparent on the face of the record or any clerical mistake, which requires consideration under review jurisdiction.



8. We have given our anxious consideration to the arguments addressed by the learned Senior Counsel on behalf of both sides and perused the judgment of this Court dated 22.02.2024.

9. The factual matrix of the case is not in dispute. The award of the Sole Arbitrator has been confirmed by the Arbitral Court and again this Court has reiterated the same. The simple ground on which the appellant is seeking review is that the escalation of minimum wages is not a part of contract and the Sole Arbitrator, Arbitral Court and this Court have not read the same properly leading to adverse judgment against the appellant.

10. We have carefully perused the award of the Sole Arbitrator and also the order of the Commercial Court, so also the order of this Court. The claim of the respondents for escalation of minimum wages has been admittedly honoured by the appellant and the payment was made. The officers of the appellant have not re-read the contract, but it is only pointed out by way of audit



objection that the escalation of minimum wages is not a part and parcel of the agreement and therefore, the appellant had ordered for recovery that the respondents are not entitled for the said amount. As observed above, it was contended that the escalation so claimed from the appellant was profited by the respondents without passing on to the hands of the employees.

11. On a careful perusal of the entire records and the evidence, we may notice that the learned Sole Arbitrator in his award has specifically observed each terms and conditions of the Tender, negotiations between the appellant and the respondents, till issuing of the letter of intent and entering into the agreement. All the records pertaining to Tender negotiations are made as part and parcel of the agreement. Sole Arbitrator, Arbitral Court and this Court have observed that Ex.C4 being an offer letter of the respondents is accepted as per Ex.C5, addendum was accepted as per Ex.C6 and Form No.9B has been issued to the respondents. Ex.C7 is the agreement which makes Exs.C4, C5 and C6 as part



and parcel of the contract. There is no express document which could speak that the claim of the respondents for escalation of minimum wages has been rejected either by the Tender Evaluation Committee or by the appellant. In some records, there are terms where the appellant tried to disown that the respondents are not entitled for any escalation of minimum wages. But when Exs.C4 to C5 come into picture, there is no specific reply to the claim of the respondents that they are not entitled for any escalation in minimum wages. When the appellant has accepted and made Exs.C4 to C6 as part of Ex.C7, the terms of each of the records has to be read together and they cannot be read in isolation.

12. As contended by Sri.Sriranga that there is a view possible in favour of the appellant that they have not agreed to pay escalation of minimum wages, such view even if assumed for a while, we do not find any error or mistake committed by the Sole Arbitrator, as he had considered the terms of the Tender, negotiations and agreed terms in finalising the agreement under Ex.C7.



13. We also notice that the Sole Arbitrator while forming an opinion that the appellant has not denied the claim of the respondents to pay escalation of minimum wages, has rightly come to the conclusion that the appellant is bound to pay the escalated amount. We do not find any error or illegality in such formation of opinion by the Sole Arbitrator as we have re-read the evidence and also the terms of the contract. We are unable to accede to the submission made by Sri Sriranga that in a case of this nature, when two views are possible, the view in favour of the appellant has to be put into service. The service rendered by the respondents is house-keeping service through the employees, who are paid meagrely. The Sole Arbitrator considering the totality of the case has passed the award, which the Arbitral Court and also this Court have upheld that there is no error or mistake in the arbitral award.

14. The scope of review has been explained by the Hon'ble Apex Court in ***S.Madhusudhan Reddy -vs-***



***V.Narayana Reddy and Others***<sup>1</sup> that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1CPC.

15. In a case of this nature, re-hearing the appeal on merits or permitting the appellant to read few documents to point out that second view is possible, but when the view taken by the Sole Arbitrator is not tainted with perversity or prejudice, the appellant being a public authority, it has to honour the award being a model employer. We do not find any reason to re-appreciate the entire evidence and re-write the judgment in review. Hence, we are of the view that the review petition is devoid of merits. In the result, we pass the following;

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<sup>1</sup> (2022) 17 SCC 255



**ORDER**

The Review Petition is dismissed.

**SD/-**  
**(V KAMESWAR RAO)**  
**JUDGE**

**SD/-**  
**(T.G. SHIVASHANKARE GOWDA)**  
**JUDGE**

KNM  
List No.: 1 SI No.: 1