



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 254 OF 2024

BETWEEN:

UNION OF INDIA
REP BY THE DIRECTOR GENERAL
GEOLOGICAL SURVEY OF INDIA
MINISTRY OF MINES
GOVERNMENT OF INDIA
HAVING ITS OFFICE AT NO.27
JAWAHAR LAL NEHRU ROAD
KOLKATA 700016.
ALSO AT REMOTE SENSING AND
AERIAL SURVEYS (RSAS)
GEOLOGICAL SURVEY OF INDIA
VASUDHA BHAVAN
KUMARASWAMY LAYOUT
BENGALURU 560078

...APPELLANT

(BY SRI. SHIVA KUMAR, CGC)

AND:

1. M/S MCPHAR INTERNATIONAL PVT LTD
HAVING REGISTERED
OFFICE AT LIBERTY BUILDING,
SIR VITHALDAS THACKERSAY MARG,
NEW MARINE LINES
MUMBAI - 400 020.
ALSO HAVING OPERATIONS

Digitally
signed by
NIRMALA
DEVI

Location:
HIGH COURT
OF
KARNATAKA



OFFICE AT NO.2-674/B/3/1,
BANJARA HILLS ROAD NO.12,
HYDERABAD - 500 034.

2. ARBITRAL TRIBUNAL
COMPRISING OF

2(a) SHRI S SIDDALINGESH
PRESIDING ARBITRATOR
JUDICIAL LAYOUT GKVK POST
BANGALORE 560065

2(b) SHRI KUKKAJE RAMAKRISHNA BHAT
CO- ARBITRATOR NO.1
NO.116/5-1 2ND FLOOR
11TH CROSS MALLESWARAM
BENGALURU 560003

2(c) SHRI A C VIDYADHAR
CO - ARBITRATOR NO.2
NO.776 INCHARA 19TH MAIN
22ND CROSS
HSR LAYOUT 2ND SECTOR
BANGALORE 560102

...RESPONDENTS

(BY SRI. K. ARUN KUMAR, SENIOR ADVOCATE A/W
SRI. VIKRAMMA UNNI RAJAGOPAL, ADVOCATE FOR R1
NOTICE TO R2 IS DISPENSED WITH V/O DATED 01.10.2024)

THIS COMAP IS FILED UNDER SECTION 13 (1-A) OF
COMMERCIAL COURTS ACT 2015 R/W UNDER SECTION 37
OF ARBITRATION AND CONCILIATION ACT, 1996, PRAYING
TO CALL FOR RECORDS OF PROCEEDINGS BEFORE THE
HONBLE LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, COMMERCIAL COURT, BENGALURU (CCH-89) IN
COM.A.P. NO.105/2022 AND SET ASIDE THE IMPUGNED FINAL



ORDER JUDGMENT DATED 20.04.2024 PASSED BY THE
LEARNED LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE (CCH-89) IN COM.A.P. NO.105/2022 VIDE ANNEXURE-C
ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed under Section 13(1-A) of
the Commercial Courts Act, 2015 [**CC Act**] read with Section 37 of
the Arbitration and Conciliation Act, 1996 [**A&C Act**] calling in
question the judgment dated 20.04.2024 [**impugned order**] passed
in Com.A.P.No.105/2022 by the LXXXVIII Additional City Civil and
Sessions Judge, Commercial Court, Bengaluru (CCH-89)
[**Commercial Court**], whereunder the application filed by the
appellant under Section 34 of the A&C Act challenging the award
dated 30.06.2022 passed by the Arbitral Tribunal has been
dismissed.



2. The relevant facts in a nutshell leading to the present appeal are that the appellant [**Union of India (UOI)**] represented by the Geological Survey of India [**GSI**] floated a global tender dated 21.10.2016 notifying the bids for carrying out a pilot project on a "multi-sensor aero-geophysical surveys over obvious geological potential areas of India" [**project**]. The respondent [**claimant**] was the successful bidder with regard to block Nos.1 and 4 of the said tender. The present litigation relates to block No.1 of the said tender. The claimant and the GSI entered into an MOU dated 17.01.2017, whereunder the claimant was required to conduct a survey of an extent of land measuring 59,111 sq.kilomts., falling in different districts of Rajasthan and Gujarat. The total contract price under the said MOU was ₹28,67,11,319/-. On the basis of the said survey, the claimant was required to generate the data and deliverables consisting of maps and other data and upload the same after obtaining the approval of Technical Supervisor Quality Control [**TSQC**]. The said work was to be completed by 30.09.2017. However, undisputedly by mutual consent the time for completion of the work was extended up to 31.12.2018.



3. It was the case of the claimant that it had completed all the work and uploaded all the deliverables within the said date, which was also duly approved by the TSQC. Additional amendments were also sought for by the TSQC at the instance of GSI, which was also completed. After completion of the work, 10% of the contract price plus Goods and Service Tax [GST] of ₹2,70,45,844/- was deducted from the amount payable to the claimant. It was the case of the claimant that deduction of 10% of penalty is illegal and contrary to the terms of the MOU since the work was completed within time. The said dispute was referred for adjudication to the Arbitral Tribunal.

4. The claimant filed a statement of claim for recovery of ₹2,70,45,844/-, which was the penalty amount deducted by the GSI. The claimant also claimed a sum of ₹1,77,617/- as charges towards extending the bank guarantee from January 2019 to September 2019 as also ₹70,02,800/- as cost and expenses incurred between January 2019 to September 2019 to resubmit deliverables in response to modifications and amendments sought for by the GSI.



5. The appellant entered appearance before the Arbitral Tribunal and filed its statement of defence contesting the claim contending, *inter alia*, that the TSQC was only a consultant, which reported to GSI. It was specifically denied that the TSQC was the ultimate and final authority to approve the work done by the respondent. It was also contended that the completion certificate was obtained after the due date on 31.12.2018 and invoice was raised in September 2019. Hence, it was contended that there was a delay in completion of the work and deduction of 10% penalty was justified.

6. The Arbitral Tribunal vide its award dated 30.06.2022 allowed the claim of the respondent and ordered as under:

1. The Claimant is entitled to get from the respondent a sum of ₹2,70,45,844/- for having retained that amount as penalty;
2. The Claimant would be entitled to get a sum of ₹1,77,617/- towards extending the bank guarantee from January 2019 to September 2019.
3. The Claimant is entitled to get the interest on the said amounts i.e., ₹2,70,45,844/- @ 9% per annum from 01.01.2019 till the date of payment.
4. The claim of the Claimant claiming ₹70,02,800/- spent towards substantial cost and expenses due to prolongation of the contract is rejected.



5. The Claimant is not entitled to the interest on the amount of ₹1,77,617/- spent towards extending/renewing the bank guarantee.

6. In the circumstances of the case, parties to bear the cost of this arbitration proceedings.

7. Award is passed in six sets, one each for the members of the Tribunal, one each for the Claimant and Respondent and one set for the Court.

7. Being aggrieved, the appellant preferred the application under Section 34 of the A&C Act. The same was dismissed by the Commercial Court vide the impugned order. Being aggrieved, the present appeal is filed.

8. It is contended on behalf of the appellant that milestones were not completed within the time specified and the approval of TSQC did not tantamount to approval of the appellant as TSQC was merely a consultant.

9. The Tribunal noticed the broad nature of work as agreed between the parties as mentioned in Appendix II of the Agreement (Ex.C5) which was as under:

1.1 To conduct combined magnetic gradiometer and radiometric Aero-geophysical survey as per the specifications over the block-1 with fixed wing aircraft at 300 m line spacing and control line spacing at 3 km. The terrain clearance is set at a nominal height of 80 m.



1.2 Total area of the block is 59,111 sq km and the estimated line-kilometers is 2,16,740 L Km which includes traverses and tie-lines.

1.3 Geophysical data processing, modeling and integrated interpretation to assess the mineral potential of the block, with an interpretation report.

1.4 Obtain necessary approvals from the Technical Supervisor cum Quality Control (TS-QC) Consultant and the Client for the final deliverables including final data, maps and interpretation reports.

1.5 To impart hands-on training to the officers of GSI.

10. The Arbitral Tribunal had framed the following issues:

i) Whether the Claimant proves that it had discharged its obligations under the Memorandum of Agreement and completed the project within the stipulated time therein?

ii) Whether the respondents proves that the Claimants has not submitted final report and deliverables to TS-QC appointed by the GSI as per the terms of the contract or on before 31.12.2018 and did not complete the project within the stipulated period?

iii) Whether the claimant proves that there was delay in revisiting/reviewing the deliverables at the instance of the respondents and thereby delay was caused?

iv) Whether the respondents prove that the delay in submission of final deliverables and report is due to reasons attributable to the Claimant?

v) Whether the Claimant proves that imposing penalty of ₹2,70,45,984/- unilateral, arbitrary and unsustainable in law as contended in para 33 of the claim statement?

vi) Whether the respondents prove that the claimant in order to escape from the penalty clauses after the expiry of the contract period 31st December 2018 uploaded partial incomplete materials, deliverables, map, data, computer-generated grids, etc., to the server of TS-QC Consultant?



vii) Whether the respondents prove that PIA on behalf of the Claimant utterly failed to get approval for the deliverables submitted from TS-QC within 31st December, 2018 and thereby all deliverables are liable to be dismissed as contended in para 7 and 10 of the Objections statement?

viii) Whether the claimant is entitled for the amounts claimed?

ix) Whether the claimant is entitled for the interest? If it so, at what rate?

11. The Tribunal considering the contention that the approval of TSQC did not tantamount to the approval of the appellant as TSQC was merely a consultant, upon noticing clause 1.4 of the scope of the work as contained in Appendix II of Ex.C5 and other material on record, held as under:

39. Relying upon the said decisions, though the words 'approval by TS-QC consultant and the Client as stated in clause 1.4 of Ex.C5 it has to be construed to be general in nature as regarding the approval of deliverables which is the quality control work of TS-QC. Further it is stated in clause 8.2 that " the TS-QC consultant will continue to review the products prepared by PIA until all final deliverables meet the specification." In view of this, it has to be said that it is only the approval of TS-QC for the deliverables is required and not that of the client i.e., GSI. As a result it has to be held that the approval given by TS-QC consultant will hold good and the contention of the learned Counsel appearing for the respondent to the effect that approval of final deliverables by GSI is also required has to be rejected.

40. The completion certificate in respect of milestone 6 of Block 1 has been given as per Ex.C33 at page 162 on 01.06.2018. The completion Certificate in respect of milestone 7 of Block 1 was given on 01.02.2019 as per



Ex.C61 at page 210. In this certificate it has been categorically stated by TS-QC that the Claimants has successfully completed the deliverables in respect of milestone 7 of Block 1 as per Memorandum of Agreement. As far as Ex.C76 is concerned TS-QC has issued the milestone completion certificate which is at page 258 stating that the Claimants has successfully completed the deliverables as mentioned at milestone 8 of Memorandum of Agreement of Block 1 i.e., 100% of remaining deliverables submitted. It is further stated that all the deliverables have been duly verified by them as per MOA of TS QA/QC. This certificate is dated 22.09.2019.

(emphasis supplied)

12. The Tribunal has noticed clause 8.2 of the agreement and other material on record and held that "it is only the approval of the TSQC for the deliverables is required and not that of GSI". Further, the Tribunal has noticed that the claimant vide letter - Ex.C51 addressed to TSQC stated that all the final TSQC approved deliverables for block Nos.1 and 4 were posted on the GSI server. The Tribunal has also noticed that the work had been completed without any delay. Hence, it was noticed that, under the agreement only the TSQC was required to approve the work done by the claimant and, consequent to such approval, the deliverables for block Nos.1 and 4 were posted on the GSI server.



13. Further, it was sought to be contended that the amendments sought for were within the purview of the original contract. The Arbitral Tribunal noticing the same held as under:

53. The Claimant in the e-mail dated 08.07.2019 as per Ex.C72 at page 254 has stated that final deliverables for block 1 and 4 have been posted on GSI server with an intimation to TS-QC and that TS-QC has acknowledged the same. As against this TS-QC has stated that the maps for block 1 and 4 were submitted on 27.08.2019 has been reviewed and accepted by TS-QC and asked them to go ahead of printing 50k and 400k interpretation maps of Block 1 and 4. The said maps are Ex.C74 at page 256.

54. The milestone completion certificate in respect of milestone 8 has been issued by the TS-QC wherein it is stated that the Claimants has successfully completed deliverables as mentioned at milestone 8 of the Memorandum of Agreement for Block 1. This is at Ex.C76 at page 258. As a result, the Claimants has submitted the invoice once again as per Ex.C77. It was contended by the learned Counsel appearing for the Respondent that the Claimants has submitted the invoice on three occasions that is as per Ex.C53 dated 31.12.2018 and Ex.C65 dated 27.03.2019 and Ex.C77 dated 26.09.2019. Such invoices were to be sent by the Claimant for making the payment. Since according to the Claimant the payments are not made as the milestone certificates are not issued and therefore, they have to submit the final invoice as per Ex.C77 for the third time.

55. Having gone through the said correspondence between the Claimant and TS-QC and representative of Respondent, what boils out is that the respondent or its representative TS-QC has nowhere stated that the deliverables or work done by the Claimant are not satisfactory or there has been deficiency in their work or pointed out any defects in their work except asking them to make amendments, corrections, modifications, reviews by the respondent and through TS-



QC. Whether these amendments, corrections, modifications, reviews are within the purview of Ex.C5. It is therefore rightly contended by the learned Counsel appearing for the Claimant that the said works such as amendments, modifications, corrections, review meetings, closure meetings are all outside the scope of the terms of the agreement. If these come within the terms of the agreement Ex.C5 definitely it could be said that the Claimant has not properly appreciated the scope of the project or not properly executed the work of the project. In the absence of such comments or opinion in that regard, we do not see that the work of the Claimants in implementing the project as per the terms of the agreement is lacking in any respect. These additional works as stated above such as modifications, amendments, etc., have to be got done by the Claimants at the instance of the respondent and their representatives to their satisfaction. The time that has been taken by the said authority for the period from 01.01.2019 till the issue of milestone completion certificate in respect of milestone 8 as per Ex.C76 is not at the instance of the Claimant. The Claimants has no role to be played in taking such time nearly more than 9 months except complying with the direction issued by TS-QC/GSI. That period has been taken by the respondent in reviewing the said work of the Claimant.

(emphasis supplied)

14. The Tribunal upon a detailed appreciation of the material on record has noticed that the TSQC has nowhere stated that the work done by the claimant was not satisfactory or that there has been deficiency in the work. It was further held that the additional works including modifications, amendments, etc., were done by the claimant at the instance of the TSQC and GSI. It was noticed that the claimant had no role to play in taking time of nearly



more than nine months, except for complying with the directions issued by TSQC/GSI. The Tribunal recorded a finding that there was no delay on the part of the claimant in executing the work and the same was completed within the extended period as stipulated in Ex.C5. Further, it was noticed that merely since the claimant had sought for extension of the period on three occasions, the same does not mean that the claimant has delayed the implementation of the project. It was also noticed that neither the GSI nor TSQC refused or rejected the request for extension sought by the claimant. Hence, it was held that time was consumed by TSQC/GSI for reviewing the work done by the claimant and for asking the claimant to amend/modify the work done by it.

15. The Commercial Court while considering the application under Section 34 of the A&C Act held as under:

25. It is to be noted that, the above purely factual finding of the arbitral tribunal is based on reliable evidence. In this regard, there is Progress report dated 18-12-2018 [which is part of Ex. C50] which discloses that, in respect of Block 1, the status of all deliverables is approved (said report shows that in respect of Block 4, some work was pending but Block 4 is not the subject matter of this petition). Therefore, this purely factual finding of the arbitral tribunal which is based upon cogent material and analysis of the entire correspondence of the communication by emails between the parties and on a sound interpretation of the contract



between the parties cannot be interfered with in a petition under Section 34 of the Arbitration and Conciliation Act.

(emphasis supplied)

16. It is clear and forthcoming from the aforementioned that the Tribunal upon a detailed appreciation of the material on record has held that the claimant had completed the work as contemplated under the agreement and there was no justification for the appellant to deduct 10% from the amount due and payable to the claimant. The Commercial Court has not interfered with the said award of the Arbitral Tribunal in exercise of its jurisdiction under Section 34 of the A&C Act. We concur with the view of the Commercial Court. The finding of the Arbitral Tribunal is a plausible view based on material on record and cannot be patently illegal so as to warrant interference in the present appeal.

17. The above appeal is unmerited and is accordingly dismissed.

18. The claimant has also filed an application seeking permission to withdraw the amount which is deposited by the appellant before this Court. This Court is also informed that the respondent No.1 has filed a petition under Section 36 of the A&C



Act for enforcement of the impugned award
(Com.Ex.No.619/2023).

19. In view of the above, we direct that the disbursal of the amounts deposited in this Court be made as per the directions issued by the Commercial Court in the said proceedings.

20. All pending applications are disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

ND
List No.: 1 SI No.: 7