



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-07-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 295 of 2020

M/s.S.K.Swamy and Co.
No.30/9, Rajmahal Vilas Extension,
Bangalore 560 080.

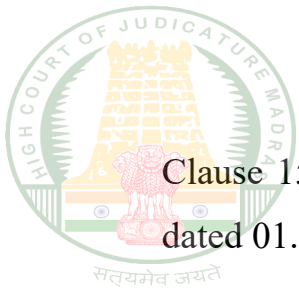
..Appellant

Vs

1. Union Of India
Rep by the Chief Engineer,
Metropolitan Transport Project/Railways,
Chennai 600 008.
2. D.P. Dash
Deputy Chief Electrical Engineer/C and D,
Integral Coach Factory/Fur.,
Chennai 600 038
(presiding Arbitrator)
3. N. Nandakumar
Deputy Chief Electrical Engineer,
Headquarters, Southern Railway,
Chennai 600 003. (Co-Arbitrator)
4. V. Murali Mohan
Deputy Financial Adviser And Chief Accounts
Officer/Shell,
Integral Coach Factory,
Chennai 600 038. (Co - Arbitrator)

..Respondents

Prayer : Original Side Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Order XXXVI Rule 9 of O.S. Rules and



Clause 15 amended Letters Patent Act, to set aside the Judgement and Decree dated 01.07.2019 passed by this Court in OP No.305 of 2010.

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For Appellant:

Mr. K.Harishankar

For Respondents:

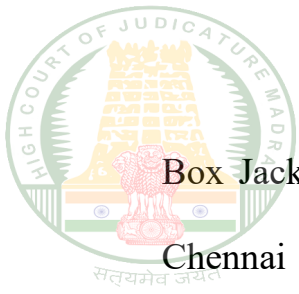
Mr. P.T.Ram Kumar,
Standing Counsel for R1

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

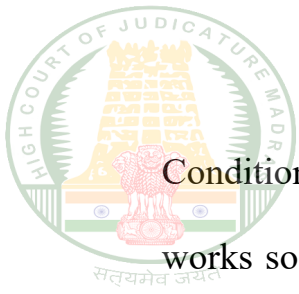
The appellant is the claimant in the Arbitration Proceedings and 1st respondent in O.P. No.305 of 2010. Challenging the order dated 01.07.2019 passed in the said petition, the present Original Side Appeal has been preferred by the appellant / claimant.

2. The case of the appellant, namely M/s. S.K. Swamy & Co, is that, it is a partnership firm and was awarded a contract for a value of Rs.1,83,60,601/- (Rupees One Crore Eighty Three lakhs Sixty thousand Six hundred and one) by the 1st Respondent/Railways and the Letter of Acceptance was executed on 19.03.2003 for (i) design and submission of drawings for box pushing, ii) casting of Thrust bed, RCC Box and box pushing, which is nothing but a contract for design and construction of Road Under Bridge of inside dimension as 12.00m x 4.075 and about 39.10m long in view of existing level crossing No. 19 at KM.19/14-15 between Palavanthangal and Meenambakkam stations by



Box Jacking Technique as part of suburban gauge conversion works between Chennai Beach, Tambaram. Chengulpattu with date of completion to be 18.02.2004 ie. within a period of 11 months from the date of letter of Acceptance.

2.1. According to the appellant/claimant, the 1st respondent/Railways did not provide site of work for commencing the work until 05.03.2004 which is admitted in the 1st Respondent's counter filed during the Arbitration proceedings that the L.C gate was closed and work started on 05.03.2004 whereas, the LOA was issued on 19.03.2003 and the entire contract period lost was solely attributable on 1st Respondent's/Railways account. The Appellant/claimant could not discharge the contractual obligations due to the delay caused on the side of the 1st Respondent/Railways. The delay in handing over the land was mainly due to the prolonged discussion with the Ministry of Defence. From the various correspondence between the Appellant/claimant and the 1st Respondent/Railways dated 02.08.2003, 16.08.2003, 27.01.2004, 03.02.2004, it is evident that the failure and lapses in the work was on the part of the 1st respondent/Railway and the land was handed over to the contractor (Appellant) only on 05.03.2004. Subsequently, The Rider Agreement was signed by the Appellant/claimant which was a contractual obligation for smooth operation of the work, which mentions that the Appellant/claimant agrees to complete the work with the same conditions set out in clause 17(2) of General



Conditions of the contract that "no other compensation shall be payable for works so carried forward to the extended period of time, the same rates, terms and conditions recommended in the original contract itself". This execution of Rider Agreement was a formality for the completion of the work and this cannot be made as a hindrance to the Appellant/claimant from claiming any compensation for increased cost of working, due to un-workability, beyond the original time of 11 months, which expired on 18.02.2004.

2.2. It is further claimed that the CRS's approval for the design and drawings were delayed by the 1^a Respondent/Railways, which is shown via letter dated 16.08.2003 and also the efforts for closure of Level crossing was also prolonged by the 1st Respondent/Railways. These hindrances and negligence by the 1st Respondent/Railways has resulted in huge losses to the Appellant/claimant for no fault on their part on which the Appellant/claimant has sought for compensation. The currency/extension of time for performance was extended up to 18.03.2005- for a period of 13 months against the original contract period of 11 months without penalty, based on the reason that the work was not completed, due to non- availability of the approach land where the RCC box is to be casted by the 1st Respondent/Railways.

2.3. Further, the appellant/claimant could not show any physical progress at work site during the original currency period due to the reason that the 1st



Respondent/Railways had not arranged the approach land upto 04.03.2004 and the LC gate was closed and work started only on 05.03.2004. The fundamental initial requirement to provide site of work for execution rests with the 1st Respondent / Railways and all other requirements follows this initial requirement. The entire work has been completed on 15.02.2005 by the Appellant/Claimant to the satisfaction of the 1st Respondent. Further, the Appellant/claimant has stated that 1st Respondent/Railways has not arranged payment for additional work at site. Hence, there arose a dispute between the parties.

3. Eventually, the matter was referred to arbitration where the Appellant/claimant made the following claims against the 1st Respondent/Railways for loss and damages arising out of it.

Claim No 1: The compensation for increased cost of working, due to un-workability, beyond the original time of 11 months, which expired on 18.02.2004(excluding steel increase claim).

Claim No 2: Compensation for idling of establishment, non-utilization etc. on staff, workers, plant, machinery, equipment etc. deployed on the work including watch and ward.

Claim No 3: Compensation for payment of difference in market price and tendered price for steel and M/S plates used in the work.



Claim No 4: Compensation for proprietors' regular expenditure incurred but not recouped.

Claim No 5: Compensation for the loss of profit at 15% of the contract value.

Claim No 6: Compensation for any other losses that will be suffered till completion/determination of the work and up to receipt of final payments etc.

- a) Insertion of RCC columns in all boxes.
- b) Earthwork for casting and pushing of box (excluding thrust bed earthwork).
- c) Shoring.
- d) Demolition and disposal of tar road.
- e) Miscellaneous works like barricading in zinc sheets etc.

Claim No. 7: Compensation for loss of earning on block of working capital vide claims 1 to 6 above.

Claim No 8: Interest on all the above claims (1 to 6).

Claim No 9: Payment of equivalent amount blocked vide above claims for an equivalent period (starting from 01.01.2004 to the actual date of final settlement).

Claim No 10: Cost of legal charges and other connected expenditures.

4. The Learned Arbitrators, vide their Award dated 06.11.2009, allowed the following claims:

(1) **Claim No 1:** The compensation for increased cost of working, due to un-workability, beyond the original time of 11 months, which expired on



18.02.2004(excluding steel increase claim) - Amount awarded Rs. 17,89,780/-
as against the claim of Rs. 53,99,344/-.

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(2) **Claim No 3:** Compensation for payment of difference in market price and tendered price for steel and M/S plates used in the work - Amount awarded Rs.20,70,000/- as against the claim of Rs.22,71,818/-

(3) **Claim No 6(b):** Compensation for any other losses that will be suffered till completion/determination of the work and up to receipt of final payments etc. which is for the earthwork for casting and pushing of box (excluding thrust bed earthwork) - Amount awarded Rs.10,35,000/- as against the claim of Rs.32,50,000/-.

(4) **Claim No 8:** Interest on all the above claims (1 to 6)- Interest awarded at 9% p.a up to date of award starting from 26.09.2005 on all the claims awarded as against the claim for interest at 24% p.a. from 01.03.2004 till date of realisation.

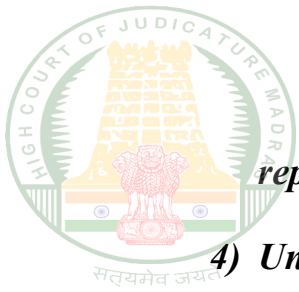
5. Aggrieved by the Arbitral Award dated 06.11.2009, the 1st respondent / Railways filed a petition invoking Section 34 of the Arbitration and Conciliation Act, 1996 (in short "A&C Act, 1996) in O.P. No.305 of 2010 for setting aside the four claims granted by the learned Arbitrator, viz., Claim Nos.1, 3, 6(b) and 8. The learned Single Judge, vide order dated 01.07.2019, set aside the award in respect of claim Nos. 1 and 8. Aggrieved by this, the claimant has preferred the present appeal under Section 37 of the A&C Act,



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6. Mr. K. Harishankar, the learned counsel appearing for the appellant would contend that claim No.1 is in respect of compensation for increased cost of working, due to unworkability, beyond the original time of 11 months, which expired on 18.02.2004. He would submit that the work could not be completed within the time stipulated in the contract due to the negligence on the part of the 1st respondent. Hence, the appellant is entitled for the said compensation. He would further contend that the contractual clause prohibiting a party from claiming damages for project delays are void and such waivers defeat the fundamental rights provided by Sections 54 and 73 of the Indian Contract Act, 1872, violating Section 23 as against public policy. He would further submit that, despite there is no delay by the appellant company, it has been deprived of money which the appellant is entitled to and for which it has to be compensated by way of damages and such damages may be awarded as interest or compensation and the same is permissible under law as held by the Hon'ble Supreme Court in various decisions. To support his contentions, he has relied upon the following judgments:

- 1) *K.N. Sathyapalan V. State of Kerala reported in 2007 13 SCC 43.*
- 2) *K.S.Baburaj Vs. Union of India reported in 2023 SCC Online Mad 8609.*
- 3) *Union of India and Another vs. M/s. Appachi Gounder and Sons*



reported in 2017 SCC Online Mad 15334.

4) *Union of India and Another vs. M/s. Appachi Gounder and Sons*

(order dated 05.09.2019 of Division Bench of this Court in O.S.A.

No.279 of 2018).

5) *Simplex Concrete Piles (India) Ltd., vs. Union of India reported in ILR*

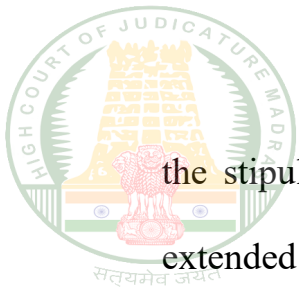
2010 II Delhi 699.

6) *MBL Infrastructure Limited vs. Delhi Metro Rail Corporation, reported*

in 2023 SCC Online Del 8044.

Hence, the learned counsel for the appellant prayed for setting aside the impugned order passed by the learned Single Judge.

7. On the other hand, Mr.P.T. Ramkumar, learned Standing counsel appearing for the 1st respondent would contend that time for completion of the contract was extended without any penalty vide Clause 17(2) of General conditions of the Contract and necessary rider agreement was also executed by the contractor wherein it has been agreed to execute the work during the extended currency period on the same terms and conditions of the agreement. Therefore, when the contractor agreed to complete the work on the same terms and conditions of the contract, the Arbitrators awarding compensation towards additional work is beyond the terms of the contract. It is his further contention that though the contract could have been terminated and woundedup at the inception itself, when the work was not done and could not be completed before



the stipulated time as per the agreement, the very fact that the contract was extended at the same terms of the original contract and executing the rider agreement makes it clear that the contractor is bound by the contract, therefore, the contractor's entitlement of additional cost is certainly beyond the terms of the contract. He would further submit that the appellant is not entitled for *pendente lite* interest since General Contract conditions bars awarding the same.

8. Heard on both sides.

9. The short question that arises for consideration is whether a contractor is entitled to claim compensation towards increased cost of execution during the extended period of contract when (i) the time for completion was extended under Clause 17(2) of the General condition of the contract without levy of penalty and (ii) the contractor executed a rider agreement expressly agreeing to complete the work during the extended period on the same terms and conditions of the original agreement.

10. Admittedly , the 1st respondent awarded the work to the appellant under an agreement incorporating the general conditions of contract. Owing to the delay in completion, the employer extended the time for execution by invoking clause 17(2) of the general conditions of contract. No penalty or



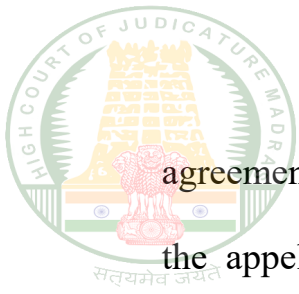
liquidate damage were imposed. In fact, the contractor accepted the extension and executed a rider agreement specifically undertaking to complete the work during extended period on the same terms and conditions as contained in the original agreement. After completing the work, the contractor claimed the compensation alleging escalation in the cost of labour, materials and execution during the extended period . Now it has to be seen whether the contractor is entitled to compensation for the increased cost of execution during the extended period despite having accepted the extension under clause 17(2) and executed a rider agreement agreeing to perform the contract on the same terms and conditions. However, the judgments referred by the learned counsel for the appellant has provided legal frame work for deciding such disputes.

11. In *K.N.Sathyapalan vs. State of Kerala (cited supra)*, the Hon'ble Supreme Court held that escalation or compensation for increased cost may be awarded where the prolongation of the contract is contributable to the employer and that the contract does not expressly prohibit such a claim and entitlement depends on the terms of the contract and facts of the case.

12. The learned Arbitrators found that the entire delay in work was due to the employer and reasonably interpreted Clause 17(2) of the contract. Whereas, the learned Single Judge has held that the contractor having understood the delay and the reasons for such delay and consciously entered into the contract



on the same conditions, the contractor is not entitled for compensation for the extended period and granting such a claim would be certainly beyond the scope of the contract. But, applying the principles laid down in the judgments referred supra by the learned counsel for the appellant, the Hon'ble Supreme Court has consistently held that the contractual clause restricting the parties' right to claim damages for delays are void and unenforceable under Section 23 of the Indian Contract Act. It has been further held that such clause subverts the statutory remedies provided under sections 55 and 73 of the Act, which permits aggrieved party to seek compensation when breach occurs and that the parties cannot contractually waive these statutory rights. But in the present case, claim No.1 pertains to compensation for increased cost of working, due to unworkability, beyond the original time of 11 months, which expired on 18.02.2004. The claim averments before the learned Arbitrators is that the respondents caused delay by not facilitating the claimant to complete the work within the original contract period due to non handing over of the work site for execution, closure of L.C. gate, problems with Ministry of Defence, delays in approving the designs and drawings, being main reasons among other reasons, which forced them to execute the work beyond the time stipulated, wherein the cost of inputs have skyrocketed and hence pleaded for 30% increase on the final value of the work done. This was resisted by the respondents stating that the delay in submitting drawings, extension of time / currency was given without penalty vide clause 17(2) of GCC as per appellant's request and necessary rider



agreement was executed. The learned Arbitrators accepted the contention of the appellant and awarded 10% increase over the complete value of work.

However, no adequate reason is given by the Arbitrators for awarding such compensation and in fact, no evidence was produced to substantiate for increased cost of work. In fact, the Arbitrators have not awarded compensation for Claim Nos.2, 4, 5, 6 (except 6(b)), 7 to 10. The learned Arbitrators allowed Claim Nos. 1,3, 6(b) and 8 pertaining to compensation (i) for increased cost of working, due to un-workability, beyond the original time of 11 months, which expired on 18.02.2004, (ii) for payment of difference in market price and tendered price for steel and M/S plates used in the work, (iii) for any other losses that will be suffered till completion/determination of the work and up to receipt of final payments etc. which is for the earthwork for casting and pushing of box (excluding thrust bed earthwork) and (iv) Interest on the claims 1 to 6. However, there is nothing on record to show that the appellant is entitled for any compensation for increased cost of working. Hence, the judgments relied on by the learned counsel for the appellant is not applicable to the facts and circumstances of the present case. Hence, Claim No.1 was rightly rejected by the learned Single Judge.

13. Claim No. 8 is with regard to *pendente lite* interest. In the judgment in ***Reveechee and Company vs. Union of India*** reported in **2018 (7) Supreme Court Cases 664**, the larger Bench of the Apex Court has held that in the



absence of specific bar to grant interest, there is no bar for the Arbitrator to award *pendente lite* interest. Further in the judgment of this Court in the case of

Deputy Chief Engineer (Construction), Southern Railway, Podanur vs. Vishal Constructions and another reported in ***2018(3) CTC 285*** it is held that when there is specific clause in the contract wherein the parties have agreed to waive their right to claim interest, the claimant is not entitled for *pendente lite* interest. In the present case, clause 16(3) and clause 64(5) of the general conditions of the contract bars *pendente lite* interest. The said clauses read as follows:

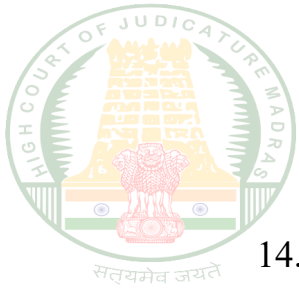
Clause 16(3) of the General conditions of the contract.

“No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-Clause(1) of this clause will be payable with interest accrued thereon.”

Clause 64(5) of the General conditions of the contract.

“Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.”

Hence, the learned Single Judge rightly held that awarding of 9% *pendente lite* interest from 26.09.2005 by the learned Arbitrator, is patently illegal.



14. In view of the aforesaid discussions, O.S.A. No.295 of 2020 is dismissed. No costs.

(P.V.,J.) (K.G.T.,J.)

14-07-2026

Index: Yes/No

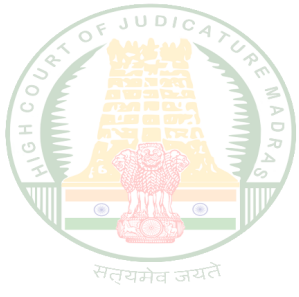
Speaking/Non-speaking order

Neutral Citation: Yes/No

BGA

To

1. Union Of India
Rep by The Chief Engineer, Metropolitan
Transport Project/railways, Chennai 8.
2. D.P. Dash
Deputy Chief Electrical Engineer/C And D,
Integral Coach Factory/fur., Chennai 38
(presiding Arbitrator)
3. N. Nandakumar
Deputy Chief Electrical Engineer,
Headquarters, Southern Railway, Chennai 3.
(co-arbitrator)
4. V. Murali Mohan
Deputy Financial Adviser And Chief Accounts
Officer/shell, Integral Coach Factory, Chennai
38. (co – Arbitrator)
5. The Sub Assistant Registrar, Original Side
High Court, Madras.



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**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

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