

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.348 of 2015
and
M.P.No.1 of 2015

1. The Superintending Engineer, PWD/WRO
Parambikulam Aliyar Basin Circle,
Pollachi 642 003.
2. The Executive Engineer,
Parambikulam Division,
Parambikulam 678 661. ... Appellants/Petitioners

.Vs.

M.Sidda Gounder (died)
1.S.Raju
2.K.K.Alukkusamy
3.Chellammal
4.Kandammal
5.Kamala

(Amended as per Order in I.A.No.2095/2007, dated
09.08.2010, Respondents 3 to 5 are impleaded
as per the order in I.A.No.2005/2007, dated
09.08.2010) ... Respondents/Respondents

This Civil Miscellaneous Appeal filed under Section 37 (1)
(2) of Arbitration and Conciliation Act, 1996 against the
Judgment and decree dated 24.06.2013 made in Arbitration
O.P.No.289 of 2006 on the file of the Principal District Court,
Coimbatore.

For Appellants : Mrs.M.Jayashree,
Government Advocate (C.S.)

For Respondents 1 & 3 to 5 : Mr.N.Manoharan

O R D E R

This Memorandum of Civil Miscellaneous Appeal is filed under Section 37 (1) (2) of the Arbitration and Conciliation Act, 1996 as against the fair and decreetal order dated 24.06.2013 and made in the Arbitration O.P.No.289 of 2006 on the file of the learned Principal District Judge, Coimbatore.

2. The appellants herein are the Superintending Engineer and the Executive Engineer, P.W.D/WRO Parambikulam Division, Aliyar Basin Circle, Pollachi. The deceased first respondent is the claimant/contractor and the respondents 3 to 5 are impleaded as his legal heirs of the deceased first respondent.

3. The work of rehabilitation of Vettaikaranpudur Canal, Pollachi Taluk, Coimbatore District was awarded to the contractor, Sidda Gounder (deceased) the first respondent herein. The period of contract was 24 months. It appears from the records that the nature of the contract is price adjustment contract. It is admitted fact that the work site was handed over to the contractor on 30.03.1998 and the work was completed and the final bill was paid on 22.07.2000. It is to be noted that the contract was executed even prior to the completion of 24 months.

4. The deceased first respondent (claimant) had requested the Superintending Engineer, PWD to settle the price adjustment bill. He had received the final bill subject to settlement of price adjustment bill. Since he had already given a conditional letter to this effect, the price escalation bill submitted by the claimant, was received and passed. However, the bill was kept pending for payment, for getting approval for the revised proposal from the Empower Committee. Thereafter, the claimant had approached this court by way of writ petition in W.P.No.4538 of 2002 to settle the escalation bill.

5. While disposing the writ petition, this court had observed that " when final bill had already been arrived at, it is for the petitioner to go before the competent forum and workout his remedy. As the important question arise as to whether the claimant is entitled for escalation and if so how much, the same has to be gone to the appropriate forum and not in the writ petition".

6. Not being satisfied with the direction given by this court, the claimant filed an appeal in W.A.No.3655 of 2002 and that appeal was also closed on 05.02.2004. Since the claimant was not having any intention to approach the civil court as per

Agreement condition, the contractor as well as the employer had agreed to refer the matter for arbitration. The claimant had claimed that as per clause 43.3 of condition of contract, he was entitled to receive the interest at the rate of 12% per annum for such delayed payments.

7. According to the claimant, the price adjustment bill to the value of Rs.18,23,781/- was claimed by him. Against this amount, the bill was passed for Rs.14,81,944/- and was not paid to the claimant. Therefore, as per clause 47.1 the claimant had claimed a sum of Rs.14,81,944/- and as per clause 43.3 the claimant is entitled for interest at the rate of 12% p.a. i.e. Rs.7,43,976/-. Totally, the claimant had claimed Rs.22,25,920/-.

8. Insofar as, the claim of the claimant is concerned, the employer has contended before the Arbitrator that any claim of the contractor after payment of the final bill would be considered as additional payment and that as already stated once the contractor had certified that the amount received is in full settlement of all demands on account of the contract in the final bill form, then the contractor had no option to claim any sort of additional claim later.

9. It is further contended that the contractor had submitted the price adjustment bill only on 11.10.2000 for making payment i.e. after receipt of the final bill on 22.07.2000 and therefore, the contractor was not entitled, as the final bill was already paid, the claimant in his rejoinder had clarified that he was claiming price adjustment bill only and not any additional payment due to measurements. He has also pointed out that it was clear that condition was accepted by the Engineer from the fact that the price adjustment bill was passed after passing the final bill.

10. It is significant to note hear that the liability period is 365 days (vide contract data - page 2). The defects liability period begins at completion of work. It is also relevant to note that though the escalation bill was prepared and passed for Rs.14,81,944/- it was not paid to the contractor. Under such circumstances, the following four issues were arisen before the Arbitrator for passing the award:

- a) Are the claims belated or time barred?
- b) Does the contract provide for price adjustment?
- c) Does the contract provide for interest for late payment?
- d) Is the claimant entitled to receive price adjustment and interest as claimed by him?

11. On taking into consideration of the claimant's statement as well as the counter statement, the sole Arbitrator had given his finding as under;

12. Clause 57.1 is very clear with regard to the time limit for the submission of detailed account of the total amount that the contractor considers payable under the contract. This limit is before the end of the defect liability period. The work was completed as early as on 27.01.2000 i.e. before the contract period. The liability period is 365 days after completion of work. The contractor has also requested in his letter dated 7.12.1998 for the payment of price adjustment bill.

13. Therefore, the Arbitrator had found that the claim of price adjustment bill of the claimant is not belated and time barred. He has also found that as per clause 16 of Special Condition of Contract, neither party is entitled to bring claim to Arbitration unless the same is made before the expiration of 30 days after defect liability period.

14. Insofar as this case is concerned, the departmental authority subsequently decided to make payment for price adjustment and passed the bill for Rs.14,84,940/-, however, for unknown reasons the payment was not made till date.

15. Keeping in view of the above facts and circumstances, the sole Arbitrator had ultimately found that the contractor had already requested the Department for price adjustment in his letter dated 07.12.1998 and subsequently had given a protest letter dated 17.07.2000 before receiving final bill on 22.07.2000.

16. In view of the above facts, the Arbitrator had proceeded to pass an award in favour of the claimant for payment of the price adjustment bill of Rs.14,81,944/- and directed the Departmental Authority to pay the same to the claimant together with interest at 10% p.a. for the above payment from 07.11.2000 till realisation.

17. Impugning this award, the Departmental Authorities had filed a petition under Section 34 of the Arbitration and Conciliation Act before the Principal District Judge, Coimbatore, seeking the relief of setting aside the award.

18. After hearing both sides and after scrutinization of award, the learned Principal District Judge, Coimbatore, while dismissing the petition on 24.06.2013, had observed as hereunder:

"It is pertinent to note that the Award already passed by the Arbitrator, has not been challenged, whereas, the inclusion of legal heirs of the claimant alone is challenged in this petition. There is no change in the award except the inclusion of legal heirs of the claimant. Mere inclusion of the legal heir will not in any manner change the nature of the award passed by the 3rd respondent. By no stretch of imagination can it be said that the Award can be impugned under anyone of the circumstances indicated in Section 34 of the Act.

19. This Court has considered the submission made by the Special Government Advocate (CS) for the appellant as well as the submission made by the learned counsel for the respondent. The learned Government Advocate has contended that the order passed by the learned Principal District Judge, Coimbatore, seemed to be perverse in nature and the observation made by the learned Principal District Judge, that the Departmental Authority had not challenged the award passed by the Arbitrator was not correct and that the District Judge had failed to consider the material defects committed by the Arbitrator and on this ground, the order of Principal District Judge was liable to be set aside.

20. On the other hand, Mr.N.Manoharan, learned counsel appearing for the respondents has invited the attention of this Court to the impugned order of the learned Principal District Judge, Coimbatore, wherein, the Principal District Judge had specifically observed that the award passed by the Arbitrator was not challenged by the Departmental Authority and therefore, the Award passed by the Sole Arbitrator remained intact and since the Departmental Authority had challenged only the inclusion of the legal representatives of the deceased claimant, the provisions under Section 34 of the Arbitration and Conciliation Act, could not be invoked to set aside the Award.

21. This Court, after giving careful consideration and on the submission made on either side and on perusal of the grounds of appeal as well as the order of the District Court which includes the Award passed by the Arbitrator, finds that the jurisdiction of this Court cannot be exercised and pressed into service to interfere with the order passed by the Principal District Judge, Coimbatore.

22. In the result, the Civil Miscellaneous Appeal is dismissed. The order of the learned Principal District Judge, Coimbatore in A.O.P.No.289 of 2006 dated 24.06.2013 is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer, PWD/WRO
Parambikulam Aliyar Basin Circle,
Pollachi 642 003.
2. The Executive Engineer,
Parambikulam Division,
Parambikulam 678 661.
3. The Principal District Court,
Coimbatore.
4. The Section Officer,
Vernacular Records,
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.36930

C.M.A.No.348 of 2015
and
M.P.No.1 of 2015

RSK(CO)
CA(08/08/2016)

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