

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.10.2016

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THE HONOURABLE MR.JUSTICE **RAJIV SHAKDHER**

O.P.Nos.778 of 2013 and 369 of 2014

O.P.No.778/2013

Telecommunications Consultants India Ltd.,
A Government of India Enterprise,
Ministry of Communications & Information Technology,
Represented by its Senior Manager, Southern Regional Office,
No.20, Potters Street, Saidapet, Chennai-600 015.

.. Petitioner

.Vs.

1. The Bharat Sanchar Nigam Limited,
Represented by the Chief General Manager of
'Chennai Telephones',
No.78, Purasawalkam High Road,
Chennai-600 010.

2. The Deputy General Manager (C&A) NP,
Bharat Sanchar Nigam Limited,'Chennai Telephones'
E-5, III Avenue, Anna Nagar East, Chennai-600 102.

3. Mr.V.Prabhakar (Sole Arbitrator),
Presently employed as the General Manager,
Telecommunications, Bharat Sanchar Nigam Limited,
Trivandrum Telecom District, Kerala Circle,
Thiruvananthapuram-695001.

.. Respondents

O.P.No.369 of 2014

1. The Bharat Sanchar Nigam Limited,
Represented by the Chief General Manager of
'Chennai Telephones',
No.78, Purasawalkam High Road,
Chennai-600 010.

2. The Deputy General Manager (C&A) NP,
Bharat Sanchar Nigam Limited,'Chennai Telephones'
E-5, III Avenue, Anna Nagar East, Chennai-600 102.

.. Petitioners

.Vs.

1. Telecommunications Consultants India Ltd.,
A Government of India Enterprise,
Ministry of Communications & Information Technology,
Represented by its Senior Manager, Southern Regional Office,
No.20, Potters Street, Saidapet, Chennai-600 015.

2. Mr.V.Prabhakar (Sole Arbitrator)
Presently General Manager (Marketing)
BSNL, Chennai Telephones
No.10, Dams Road, Chennai-2.

.. Respondents

Prayer in O.P.No.778/2013 : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award, dated 04.03.2013, passed by the Sole Arbitrator namely the third respondent herein and to pass a fresh Award allowing all the claims of the Petitioner.

Prayer in O.P.No.369 of 2014 : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award, dated 04.03.2013, passed by the second respondent in Arb O.P.No.1 of 2007 and dismiss the claim of the first respondent.

For Petitioner in O.P.No.778/2013
and R1 in O.P.No.369/14 : Mr.Amalraj S.
Penikilapatti

For Petitioner in O.P.No.369/14
and R2 in O.P.No.778/2013 : Mr.S.P.Sidharthan

COMMON ORDER

1. These are two cross petitions challenging the award dated 04.03.2013.

2. The two parties engaged in dispute are Public Sector undertakings, namely, BSNL and TCIL (Telecommunication Consultants India Ltd).

2.1. Both the parties are aggrieved by the award passed.

3. The award dated 04.03.2013 has been passed in favour of TCIL, albeit, partially.

3.1. Under the award, TCIL has been awarded a sum of Rs.21,25,581/-.

4. TCIL is aggrieved by the fact that only 50% of the claimed amount has been awarded in its favour.

4.1. On the other hand, BSNL is aggrieved by the fact that the Arbitrator has passed an award for 50% of the claimed amount without quantifying the work carried out by TCIL.

5. A perusal of the impugned award would show that the learned Arbitrator, while returning a finding in favour of the TCIL, that the work in issue, which involved the removal of excess earth and sea-sand filling was carried out by TCIL.

5.1. The learned Arbitrator, however, goes on to hold that TCIL was not able to establish the quantum of work carried out by it.

5.2. It is the grievance of TCIL that the learned Arbitrator disregarded the material placed before him, which, *inter alia*, included the Measurement Book, the Acceptance Report and the Sea-Sand Calculations.

5.3. As indicated above, BSNL is aggrieved by the fact that the Arbitrator took recourse to adhocism in awarding 50% of the

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claim without any basis. It was the say of BSNL that it was incumbent upon TCIL to prove its claim.

6. Both counsels submit that the matter requires to be revisited.

7. I am also of the opinion that without ascertaining the quantum of work carried out, the Arbitrator could not have proceeded to pass the impugned award. It is clear that the matter requires re-examination.

8. Accordingly, learned counsel for the parties agreed, that the impugned award needs to be set aside. It is ordered accordingly.

06.10.2016

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Note: Issue order copy on 07.10.2016

O.P.Nos.778/13 and 369/14