



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.03.2016

DELIVERED ON : 01.09.2016

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THE HON'BLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE C.T.SELVAM

C.M.A. (MD) Nos.1285 and 1301 of 2014

and

M.P.Nos.1 and 1 of 2014

C.M.A. (MD) No.1285 of 2014

1.The Superintending Engineer, W.R.O./P.W.D.,
Thambraparani Basin Circle,
Tirunelveli - 2.

2.The Executive Engineer, W.R.O./P.W.D.,
Thambraparani Basin Division,
Tirunelveli - 2.

... Appellants/Petitioners

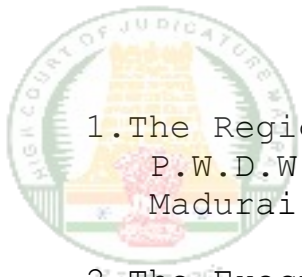
-vs-

1.K.A.Thomas,
Government Engineering Contractor,
Karuottuputhempura House,
Palakuzha Post,
Kothattakulam,
Muvattupuzha,
Kerala.

2.P.Velu,
Sole Arbitrator,
Sole Arbitral Tribunal,
681, Karpaga Nagar,
K.Pudur,
Madurai - 7.

... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 37(1) of Arbitration and Conciliation Act, 1996, against the judgment of learned Principal District Judge, Thoothukudi, passed in A.R.O.P.No.65 of 2007 on 11.08.2014.



1.The Regional Chief Engineer,
P.W.D.W.R.O. Madurai Region,
Madurai.

2.The Executive Engineer,
Korampallam Aru Basin Division,
WRO/PWD,
Thoothukudi - 2.

3.The Superintending Engineer,
Thambaraparani Basin Circle,
W.R.O.P.W.D.,
Tirunelveli - 2.

... Appellants/Petitioners

-vs-

1.K.A.Thomas,
Government Engineering Contractor,
Karuottuputhempura House,
Palakuzha Post,
Kothattakulam,
Ernakulam District,
Kerala.

2.S.Sankaranarayanan
Sole Arbitrator,
Superintending Engineer,
Paramabikulam,
Alliyar Basin Circle,
Pollachi.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 37(1) of Arbitration and Conciliation Act, 1996, against the judgment of learned Principal District Judge, Thoothukudi, passed in A.R.O.P.Nos.65 of 2007 and 221 of 2004 on 11.08.2014.

Appearance:

In both appeals:

For Appellants : Mr.M.Govindan,
Special Government Pleader

For Respondents : Mr.K.Babu Thomas
for Mr.P.Subbaraj

COMMON JUDGMENT

(Judgment of the Court was prepared by **C.T.SELVAM, J.**)

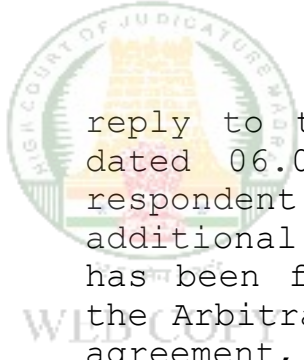
These appeals challenge the judgment of learned Principal District Judge, Thoothukudi, passed in A.R.O.P.Nos.65 of 2007 and 221 of 2004 on 11.08.2014.



2. These appeals arise out of disputes between appellants and first respondents over work allotted to first respondents. Contracts there regards provide for arbitration. Insofar as C.M.A. (MD) No.1285 of 2014 is concerned, initial agreement was in respect of work referred to as package No.TAM-MC-6 for a sum of Rs.1,30,18,700/- and in respect of C.M.A.(MD) No.1301 of 2014, initial agreement was in respect of work referred to as package No.TAM-MC-10 for a sum of Rs.4,35,07,065/-.

3. C.M.A. (MD) No.1285 of 2014:

First appellant/petitioner issued a National Competitive Bidding Notice dated 12.10.1998 for performance of work relating to 'Rehabilitation and Modernization of North Main Canal in Thambaraparani System TAM-MC-6.' First respondent being the successful bidder an agreement dated 30.03.1999 was executed between first appellant and first respondent, for carrying out the work. The agreement provided for arbitration. The work assigned to first respondent was earth work of raising the sides of the embankment and lining the sides and slopes of the North Main Channel in cast-in-situ plain cement concrete of 75 mm thick and random rubble masonry for rehabilitation and modernization of the North Main Channel to increase its water carrying capacity. The possession of site was handed over to the claimant on 30.03.1999 on which date flow of water through the North Main Channel for irrigation/industrial purposes was on. The date of intended completion was 12.07.2000. The use of the North Main Channel for irrigation/industrial purposes normally was not made between 1st of April and 31st of May of a year. The contract between parties stipulated that appellants would provide two closure periods of two months each during which period the main items of work were to be carried out. First respondent claimed that on being informed of acceptance of his bid, he made all requisite arrangements towards commencement and completion of work within the stipulated period. Despite his best efforts, he could not complete the work within the stipulated time owing to non-closure of water channel during the assured closure period of four months. Accepting fault, first appellant extended the period for completion, initially upto 30.06.2001 and thereafter, till 31.05.2002. As appellants defaulted in payment and reference to adjudication was made on 26.02.2001 towards determining amounts payable to first respondent. The Adjudicator filed his report on 27.07.2001. Disputes arose and upon the first respondent raising a claim, the Chief Engineer, PWD/WRO, Madurai Region, Madurai, has appointed the second respondent as a sole arbitrator on 03.10.2001. In support of his claim, first respondent has submitted Exs.C1to C23 along with a statement of facts and the services rendered on record. First respondent has also submitted an Additional Statement dated 11.02.2002 with rate analysis with reference to 2000-2001 schedule of rates. Appellants submitted a



reply to the statement of facts and claims along with a letter dated 06.02.2002 for which a counter has been filed by first respondent on 09.03.2002. As a rejoinder, appellants submitted additional reply statement on 04.04.2002 and an additional counter has been filed by first respondent on 19.04.2002. As required by the Arbitral Tribunal, appellants have produced bid documents with agreement, quarry map, contract data, lead statement, site investigation report and other particulars on 22.11.2002. Preliminary and pre-final hearing were held on 23.01.2002 and 22.02.2002 respectively and the site of work and the quarry were inspected on 19.04.2002 in the presence of higher officials. After affording due opportunity of personal hearing and to adduce evidence, the matter was taken up for final hearing on 19.04.2002.

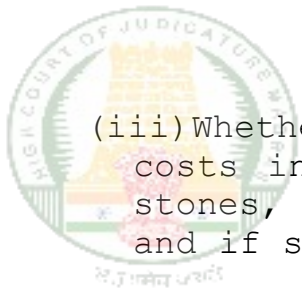
3.1. The Arbitral Tribunal found as follows:

- (i) As between the claimant and the respondents, who committed breach of the contract and prevented performance and completion of the works within the intended completion date?

Respondents committed fundamental breach of contract by not providing two successive closure periods of two months each by stopping water supply through North Main Channel and thereby, completion of the works with the intended completion date expired on 12.07.2000 was rendered impossible. Respondents, who prevented performance and completion of work within intended completion period which expired on 12.07.2000 and protracted the work are bound to bear the increased costs incurred in such delayed work as stipulated in the contract.

- (ii) Is the claimant entitled to increase in contract price for works carried out beyond the intended completion date of 12.07.2000 due to compensation events and if so, what is the amount payable ?

The evasive reply of Engineer in Ext.C8 is not in accordance with the contract, beyond authority conferred on him. The failure of the Engineer to increase the contract price as required in condition 44.2 of the contract in the context of admission of compensation events in Ext.C 12 itself, is totally unjustified. The Engineer acted erroneously and beyond authority conferred on him by the contract. The work was not completed within the intended completion date exclusively due to fundamental breaches committed by respondents in performing the contractual obligations on their part and compensation events. Hence, the claimant is entitled to increase in contract price by 39.9% over and above the rates reckoned by respondents for value of works carried out between 12.07.2000 and 30.06.2001 at the rates in 2000-2001 schedule of rates. The respondents shall pay Rs.18,87,542/- to the claimant towards unpaid increased contract price for works valued Rs.47,30,682/- carried out between 30.06.2001 and 21.05.2002 at 39.9% over and above the contract rates at 2000-2001 schedule of rates applicable on adjusting the contract price.



(iii) Whether or not the claimant is entitled to payment of extra costs incurred in additional leads involved for procurement of stones, metal, sand, or selected soil for compacted embankment and if so, what are the amounts payable ?

The materials are required to be procured from the approved quarries specified in the lead chart appended in accordance with the contract. The fact of transporting these materials along Tirunelveli - Thoothukudi main road lying in front of the office of the employer is not disputed. The Engineer did not dispute the source of collection of metal and stones on 28.05.1999 in Ext.C 25 or any later date. Respondents are obliged to measure and pay for the cost in additional leads of 15 kms. involved in procuring stones and metal procured by the claimant from Thaliath stone quarry and metal cursher unit near Sankar Nagar, Tirunelveli. Likewise, for procurement of sand and soil. Respondents shall pay Rs.1,14,320/- to the claimant towards unpaid cost in additional leads of 15 kms. Respondents shall pay Rs.58,480/- to the claimant towards unpaid extra cost payable to him in additional leads involved in procurement of sand from changed quarries due to acts of public authorities being a compensation event within the contract, on adjusting the contract price. Respondents shall pay Rs.12,64,086/- to the claimant towards unpaid cost in extra leads involved for procurement of 15300 m3 of selected soil for compacted embankment from patta lands in survey No.353 of Parakramapandy Village on adjusting the contract price.

(iv) Is the claimant entitled to costs incurred in partial idling of key personnel and essential and critical machinery items due to compensation events and if so what are the amounts payable ?

The demand of the claimant to close the agreement and to relieve him from the contractual obligations repeatedly made, were not conceded by respondents. Under such circumstances, he had to employ the key personnel as stipulated in the contract date. Out of 678 days intervened between 12.07.2000 and 21.05.2002, the usual holidays or non-working days are excluded. Respondents cannot be exonerated from the burden of extra cost incurred by the claimant due to their defaults to ensure closure periods for carrying out the works and consequential idling of the machinery items. Therefore, the claimant is entitled to be paid extra cost. Respondents shall pay Rs.4,35,000/- to the claimant towards unpaid extra and infructuous expenditure incurred towards pay and allowance of key personnel on account of their partial idling upto 12.07.2000 and their employment between 12.07.2000 and 21.05.2002 for 23 months due to compensation events, on adjusting the contract price. Respondents shall pay Rs.3,03,750/- to the claimant towards unpaid cost in partial idling of 3 mechanical mixers included in the schedule of critical and essential equipments retained at site between 12.07.2000 and 21.05.2002, on adjusting the



contract price.

(v) Interest if any payable and costs in arbitral proceedings ?

Interest is stipulated as payable in the contract upon delayed payment from the date on which the amount should have been paid, in the absence of dispute. Unless interest is also directed to be paid on the unpaid amount, the claimant would be deprived of value of works carried out by him. Hence, respondents are liable to pay interest at 18% p.a. on the awarded amounts to the claimant from 01.11.2001 which is the date of the claim statement till date on the whole of the awarded amount with interest till date and future interest at 16% p.a. till date of payment or realization.

3.2. Appellants filed a petition u/s.34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') in Ar.O.P.No.65 of 2007 on the file of learned Principal District Judge, Thoothukudi, challenging the award of the Arbitral Tribunal dated 16.06.2003 on several grounds, seeking setting aside thereof. First respondent filed his objections *inter alia* contending that the said petition hopelessly was barred by limitation.

4. C.M.A. (MD) No.1301 of 2014:

Third appellant/petitioner issued a National Competitive Bidding Notice dated 12.10.1998 for performance of work relating to 'T.N.W.R.C.P. - Rehabilitation and Modernization of Kadamba Bye-pass Channel - Spill Over works of Thambaraparani System in Thoothukudi District.' First respondent being the successful bidder an agreement dated 31.03.1999 was executed between the third appellant and first respondent for carrying out the work. The agreement provided for arbitration. First respondent took possession of the site on 31.03.1999, but he failed to complete the work within the contract period viz., 24 months. Seeking extension of further period of six months with proportionate raise in the contract period, first respondent addressed a letter to the Superintending Engineer. While extending time as sought for by first respondent, third appellant refused to accept the increase in cost. Within the extended period, first respondent completed the work and received the entire contract amount. Disputes arose and hence, the matter was referred to adjudication. The Adjudicator had addressed a letter dated 12.06.2000 to claimant/first respondent requiring him to delete the names of respondents 1 and 2 therein from adjudication proceedings stating it was premature to include them. First respondent/ claimant addressed a letter to the third appellant alleging that the Adjudicator was exceeding his jurisdiction. Informing retirement of the earlier Adjudicator, the third appellant required the first respondent to appear before another adjudicator. The said Adjudicator, after hearing the parties and on consideration of



materials, passed an award on 11.12.2000. Thereafter, upon the request of first respondent, the second respondent has been appointed as Sole Arbitrator on 04.04.2001. In support of his claim, first respondent has submitted Exs.C1 to C54 along with statement of facts and the same were taken on record. A pre-final hearing was held on 12.12.2001. After affording due opportunity of personal hearing and to adduce evidence, the matter was taken up for final hearing on 19.03.2002.

4.1. The Arbitral Tribunal found as follows:

- (i) **Land Acquisition:** Though the entire site has been handed over to the claimant on 31.03.1999, the claimant was obstructed from entering the same since cultivation work was under progress. Similarly, execution of work could not be taken up by the claimant due to non-removal of electric/telephone post/lines along the Kadamba Bye-pass channel by respondents. It was only after the same was brought to the knowledge of the respondents, the hindrances were removed. Therefore, it is clear that the department has handed over the site and removed the electric posts etc. belatedly, which leads to compensation events.
- (ii) **Idling:** On account of water percolation, the execution of the work was impossible. This situation could have been avoided if the work site had been handed over fully by the respondents. Therefore, the idling of machineries has been occasioned owing to failure of the respondents in handing over the site at an earlier stage. Hence, for idling machinery items, compensation was fixed at Rs.13,36,390/- and for idling project personnel - Rs.63,900/-.
- (iii) **Metal/Rubble:** Neither the department has approved the rates for conveyance of metal/rubble from Thalayuthu quarry nor the claimant has stopped the work and hence, the fault in this aspect has to be borne by both parties equally at 50% each. Accordingly, it has been held that the claimant has not obtained prior permission to convey metal from Thalayuthu quarry near Sankarnagar. Hence, 50% of the total amount was awarded i.e., Rs.5,86,014/-.
- (iv) **River Sand:** Neither the department has approved the rates for conveyance of sand from Alagiamanavalapuram and Sriparangusanallur nor the claimant has stopped the work. Hence, the fault in this aspect has to be borne by both parties equally and hence, the amount of Rs.2,74,445/- was awarded as extra cost.
- (v) **Dewatering:** Since the claimant has not programmed properly to tackle the pump leading channels and has not arranged dewatering in the channel at his cost, no compensation amount was awarded.
- (vi) **Desilting:** As per Ex.R12, the accumulated silt and water in the canal and structures for the works partly done by claimant in this or previous seasons should be removed and no extra payment will be made for such removal of such silt and water. Since the cause of incident has been due to man-made breach, the

aforesaid agreement could not be applied. Compensation in a sum of Rs.49,320/- was awarded.

(vii) **Loss of Materials:** Compensation claimed was inadmissible as cost of materials stated to have been lost from the site were imaginary and not proved beyond doubt.

(viii) **Delayed Works:** It was impossible for the claimant to complete the work within the contract period due to factors like partial handing over of the work site, storage of water and other hindrances. Hence a sum of Rs.20,95,468/- has been awarded as compensation.

(ix) **Price Adjustment:** As the respondents have not imposed any liquidated damages for not keeping up the milestone, it has to be construed that the delay is due to the fault on the part of the respondents. As the price index was not readily available, the price adjustment amount payable for the works from 01.04.2001 to 30.09.2001 may be worked out quarter-wise as per the agreement.

(x) **Quantity executed beyond ceiling limit:** No objection has been raised by the claimant to the contention of respondents that there were no stacks of blasted materials and **laced** for reusing the same after taking detailed measurement and hence, no compensation has been awarded.

(xi) **Interest:** No interest has been awarded.

4.2. Appellants filed a petition u/s.34 of the Act in Ar.O.P.No.221 of 2004 on the file of learned Principal District Judge, Thoothukudi, challenging the award of the Arbitral Tribunal dated 12.07.2002 on several grounds and seeking setting aside thereof. First respondent filed his objections *inter alia* contending that the said petition hopelessly was barred by limitation.

5. Under orders dated 31.01.2011, learned Principal District Judge, Thoothukudi, taking into consideration the provisions of Sections 34, 35 and 36 of the Act, found that both petitions hopelessly were time barred reasoning that sub-section 3 of Section 34 of the Act made clear that any application filed u/s.34 of the Act towards setting aside of an order of Arbitrator should be made within three months from the date on which the party received the arbitral award or of a request made u/s.33 of the Act. The period for preference of application could be extended, for very valid reasons by thirty days but not thereafter. Learned Judge has also took note of the position that with the advent of the Act, the role of Court when called upon to decide objections raised by parties against the arbitral award, was limited and observed that it had no jurisdiction to sit over and examine the correctness of the award on merits with reference to the materials produced before the arbitral tribunal.



6. Appellants, in both appeals, preferred C.M.A.(MD) Nos.889 of 2013 and 888 of 2013 against the orders of learned Principal District Judge, Thoothukudi, passed in Ar.O.P.Nos.65 of 2007 and 221 of 2004 on 31.01.2011. The Division Bench of this Court, under common judgment dated 29.08.2013, has observed thus:

23. Thus, it is very clear that the provisions of Section 14 of Limitation Act, 1963, applies to the period of limitation prescribed in Section 34(3) of A & C Act. So the period, during which bonafidely the applications were prosecuted by a party in a wrong Forum is required to be excluded in calculating the period of limitation period prescribed in Section 34(3) of A & C Act, namely, three months plus 30 days grace period from the date of receiving the copy of the arbitral award or from the date as extended under Section 33 of the Act.

24. Now, cleared of the legal position relating to limitation aspects in dealing with an application to set aside the arbitral award filed under Section 34 of A & C Act, we shall deal with the Appeals before us.

25. With respect to the two items of work as between the contractor and the P.W.D., two separate agreements containing arbitration clauses were executed.

26. As per Section 2(e) of A & C Act, 1996, in the Districts, "Court", means the Principal District Court, when there is no Principal District Court, then it is District Court of the District. So, in the Districts, applications under Section 34 of A & C Act have to be filed before the said Court.

27. However, in the case before us, originally, with respect to the award dated 12.07.2002, the application under Section 34 of A & C Act was wrongly filed before the Sub-Court, Tuticorin. On 8.6.2004, the Court having found that it has no jurisdiction, transferred the Ar.O.p. To the Principal District Court, Tuticorin. Subsequently, it was numbered in the Principal District Court as Ar.O.P.No.221 of 2004. With respect to the award dated 16.6.2003, originally, Ar.O.P. under Section 34 of A & C Act was wrongly filed before the Sub-Court, Tuticorin. On 9.7.2004, it was directed to be presented before the Principal District Court, Tuticorin and subsequently, the learned Principal District Judge, Tuticorin, numbered it as Ar.O.P.No.65 of 2007.

28. Since Section 14 of Limitation Act, 1963, applies to Section 34(3) of A & C Act, in calculating the limitation period prescribed in Section 34(3), the period during which the said setting aside applications under Section 34 of A & C Act were bonafidely prosecuted in a wrong Forum, namely, Sub-Court, Tuticorin, have to be

However, in his impugned Judgments, dated 31.01.2011, in dealing with the limitation question, the learned Principal District Judge, Tuticorin, had not



adverted to this aspect. The learned Judge decided the limitation issue mainly with reference to applicability of Section 5 of Limitation Act to Section 34(3) of A & C Act and concluded that the applications are barred by time. Such view of the learned Principal District Judge, Tuticorin, is erroneous. Only after considering the entitlement to deduct the period as mentioned in Section 14 of Limitation Act, 1963, the limitation issue has to be decided. After such consideration, in case the setting aside applications are in time, then the learned Principal District Judge, Tuticorin, has to consider the applications on merit. But, the learned Principal District Judge, Tuticorin, having not followed this, the impugned Judgments passed by him in both the Ar.O.Ps. are vitiated.

29. In view of the foregoing, the two Civil Miscellaneous Appeals are allowed. The Judgments and Decrees of the learned Principal District Judge, Tuticorin, dated 31.01.2011, passed in Ar.O.P.No.221 of 2004 and Ar.O.P.No.65 of 2007, are set aside. Both the Ar.O.Ps. are remanded back to the learned Principal District Judge, Tuticorin. The learned Judge will consider the limitation question in the light of the provisions of Section 14 of Limitation Act, 1963 and in case if he finds the Arbitration Applications are in time, decide both the Ar.O.Ps. on merits in accordance with law at an early date. No costs. Consequently, the connected Miscellaneous Petitions are closed."

7. Pursuant to the judgment of this Court in C.M.A.(MD) Nos.889 of 2013 and 888 of 2013, the parties were heard afresh and under judgments dated 11.08.2014, the Court below found applicable the provision of Section 14 of the Limitation Act and held in favour of appellants on the question of limitation. On the question of whether awards passed by Arbitrators were to be set aside, it found against appellants. In Ar.O.P.No.65 of 2007, the Court below, taking note of the reason adduced by the Arbitrator in passing the award, viz., that the appellants committed fundamental breach of contract by not providing two successive closure period of two months each by stopping water supply through North Main Channel and thereby, completion of work within the intended period expired and hence, the appellants are bound to pay increased rate and the first respondents/claimants are entitled to be compensated, held that the scope of interference by the Court with the award was very limited. In Ar.O.P.No.221 of 2014, the learned Judge negated the contention of appellants that the award was passed in a hurried manner on the reasoning that the Arbitrator is a high level Government official working as Senior Project Engineer, Paramabikulam, Azhiyaru Basin Circle, having technical knowledge and the Arbitrator rightly has stated that delay in partial handing over of site resulted in



compensation events. In both petitions, it has further reasoned that no steps had been taken by the learned Government Pleader to adduce evidence during the earlier disposal or also after remand. Reasoning as above, the learned Judge has dismissed the petitions. There against, the present appeals have been preferred.

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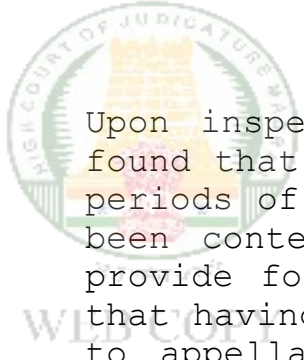
8. Heard learned Special Government Pleader for appellants and learned counsel for first respondent.

9. Learned Special Government Pleader submitted that the Court below as well as the Arbitrator has failed to consider the evidence in proper perspective, simply accepted the claim of first respondents/claimants and awarded additional compensation for belated work. The site was handed over to first respondents/claimants on the date of contract itself and hence, the finding of the Court below as well as the Arbitrator that the site belatedly was handed over to first respondents/claimant was erroneous. The Court below has failed to consider the aspect that while extending the contract period, the appellants specifically have mentioned that no cost escalation would be given. The Court below dismissed the application of appellants filed for reception of additional documents; it erred in holding that appellants had not produced any additional document to substantiate their claim. Learned Special Government Pleader contended that as the contract period included monsoon and non-monsoon periods, it is for first respondents/claimants to plan and accordingly complete the work with the time stipulated and therefore, their claim for compensation for the extended period and the award of compensation for such period are unsustainable. In the absence of any escalation clause in the agreements and having received the entire contract amount without protest, it was not open to first respondents/claimants to claim escalation price. It also was contended that the Arbitrator erred in holding that appellants had failed to arrest water flow in the channel when clause 16 of the special condition of the Contract stipulates that the surplus flow of water should be diverted from the work spot by forming temporary bunds at the cost of contractor. Submitting as above, learned Special Government Pleader prays that the appeals be allowed.

10. Learned counsel for first respondents/claimants submitted that the Arbitral Tribunal has passed the awards in accordance with the terms of the contract and usages of the trade and with reference to the relevant clauses and conditions in the contract. First respondents/claimants have requested the appellants to close the agreement in the event of non-acceptance of payment of escalation cost and in the absence of accepting such request, it is not open to appellants to deny payment of increase in cost.

<https://hccases.mca.gov.in/cases/>

Learned counsel for appellants submitted that the Court below as well as the Arbitrator rightly has held that when there is breach of contract, appellants are bound to compensate first respondents/claimants.



Upon inspection, the Adjudicator as well as the Arbitrator have found that there was delay in handing over of site and two closure periods of stoppage of water supply have not been provided. It has been contended that clauses 44.2, 44.3 and 47 of the agreement provide for increase in contract price. Learned counsel contended that having failed to provide two closure periods, it was not open to appellants to contend that as per clause 16 of the special condition of the Contract stipulates that the surplus flow of water should be diverted from the work spot by forming temporary bunds at the cost of contractor. Submitting that the present appeals have been filed only to postpone payment, learned counsel sought dismissal of these appeals.

11. We have considered the rival submissions and perused the materials on record.

12. Section 34(2) of the Act informs the restricted grounds on which a Court may interfere with an arbitral award. Without much ado, we straight away would state that none of the grounds raised by appellants give room for interference with the arbitral award and the Court below rightly has dismissed the appeals there against. Section 34 of the Act reads as follows:

"34. Application for setting aside arbitral award. -

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to

<https://hcservices.ecourts.gov.in/hcservices/> may be set aside; or

(v) the composition of the arbitral tribunal or the



arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

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(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.- Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

13. We have recorded herein above the gist of findings of fact arrived at by the Arbitrator. It easily could be seen that they are findings of fact which do not permit of Court's interference under Section 34(2) of the Act. The law on the subject stands extracted in the judgment of a Division Bench of this Court in **M/s.Kotak Mahindra Bank Ltd. vs. Mr.Mahaveer Chand Dhoka [O.S.A.No.140 of 2012 dated 24.08.2012]**. We do no more than to reproduce the same.

"23. In **J.G.ENGINEERS (P) LTD. Vs. UNION OF INDIA [2011 (5) SCC 758]**, explaining the scope and power of a Court under Section 34 of the Arbitration and Conciliation Act, 1996, in setting aside an arbitral award, the Hon'ble Apex Court held as under:-



"10. A civil court examining the validity of an arbitral award under Section 34 of the Act exercises supervisory and not appellate jurisdiction over the awards of an Arbitral Tribunal. A court can set aside an arbitral award, only if any of the grounds mentioned in Sections 34(2)(a)(i) to (v) or Sections 34(2)(b)(i) and (ii), or Section 28(1)(a) or 28(3) read with Section 34(2)(b)(ii) of the Act, are made out. An award adjudicating claims which are "excepted matters" excluded from the scope of arbitration, would violate Sections 34(2)(a)(iv) and 34(2)(b) of the Act. Making an award allowing or granting a claim, contrary to any provision of the contract, would violate Section 34(2)(b)(ii) read with Section 28(3) of the Act."

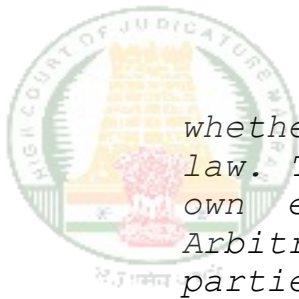
24. In **McDERMOT INTERNATIONAL INC. Vs. BURN STANDARD CO. LTD. [2006 (11) SCC 181]**, explaining the role of the Court, the Hon'ble Apex Court held as under:-

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

25. In **M.P. HOUSING BOARD Vs. PROGRESSIVE WRITERS AND PUBLISHERS [2009 (5) MLJ 145]**, the Hon'ble Apex Court held as under:-

"18. It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the courts hearing applications under Section 30 of the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the court is impermissible."

26. In **UNION OF INDIA Vs. BUNGO STEEL FURNITURE (P) LTD. [1967 (1) SCR 324]**, the Hon'ble Apex Court held that the Court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out



whether or not the arbitrator has committed an error of law. The Court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties.

27. In **U.P. STATE ELECTRICITY BOARD Vs. SEARSOLE CHEMICALS LTD. [2001 (3) SCC 397]**, the Hon'ble Apex Court held as under:-

"4. When the arbitrators have applied their mind to the pleadings, the evidence adduced before them and the terms of the contract, we do not think, it is within our scope to reappraise the matter as if this were an appeal, and it is clear that where two views are possible -- in this case there is no such scope -- the view taken by the arbitrators would prevail."

28. In **SUDHARSAN TRADING CO. Vs. GOVT. OF KERALA AND ANOTHER [1989 (2) SCC 38]**, the Hon'ble Apex Court held that reasonableness of the reasons given by the Arbitrator, cannot be challenged and held as under:-

"29. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator."

29. In **MUNICIPAL CORPORATION OF DELHI Vs. JAGAN NATH ASHOK KUMAR AND ANOTHER [1987 (4) SCC 497]**, the Hon'ble Apex Court held that the Court cannot substitute its view for the view of the Arbitrator and set aside the award and held as under:-

"It may be possible that on the same evidence the court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator."

30. In **TRUSTEES OF THE PORT OF MADRAS Vs. ENGG. CONSTRUCTION CORPN. LTD. [1995 (5) SCC 531]**, it was held that the award can be set aside when there is an error of law apparent on the face of the award and not an error of fact. The Court also held that an error of law on the face of the award means an error of law which can be discovered from the award itself or from a document actually incorporated therein.



31. In **BOC INDIA LTD. Vs. BHAGWATI OXYGEN LTD. [2007 (9) SCC 503]**, the Hon'ble Apex Court held that when the Arbitrator taken a plausible view on interpretation of the contract, a Court cannot set aside an award under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground of misconduct of arbitral proceedings.

32. In **G.RAMACHANDRA REDDY AND Co. Vs. UNION OF INDIA AND ANOTHER [2009 (6) SCC 414]**, it was held that merely because the Court could take a different view, the award cannot be set aside.

33. In **RAVINDRA AND ASSOCIATES Vs. UNION OF INDIA [2010 (1) SCC 80]**, the Hon'ble Apex Court held that when the finding of the fact is recorded by the Arbitrator with regard to a disputed fact, the Court cannot interfere into such factual findings.

34. In **ONGC LTD. Vs. SAW PIPES LTD. [2003 (5) SCC 705]**, it was held that a Court can set aside an award under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. The Court also held that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality and an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court, as then it would be opposed to public policy.

35. In **CHAIRMAN, GUINDY INDUSTRIAL ESTATE INFRASTRUCTURE UPGRADATION Co., CHENNAI Vs. GURUMURTHY ENGINEERING ENTERPRISES, CIVIL ENGINEERING CONTRACTORS, CHENNAI [2012 (2) MLJ 702]**, one of us (P.JYOTHIMANI, J.,) had elaborately gone into the ambit and power of Court in setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, also referred to Section 30 of the previous Act of 1940, analysed the various grounds incorporated in Section 34 of the present Act made available to set aside an arbitral award, referred to the various decisions rendered on the point and summarised the position of law as under:-

"11.it is relevant to note that the jurisdiction of this Court while exercising its power under Section 34 of the Act is limited and it cannot be exercised for the purpose of re-appreciation of evidence or factual matrix, for, the Arbitrator is the sole Judge chosen by the parties in respect of the appreciation of evidence, either regarding quantity or quality. Simply because on appreciation of evidence two views are possible, the



Court cannot substitute its view for the view of the Arbitrators. This celebrated concept is uniformly followed by the Apex Court and all other Courts in this country on the conception that the arbitration is the creation of the parties by mutual consent to settle their dispute outside the Court, but at the same time the law confers a legal status to such award passed by the Arbitrators. Under Section 34 of the Act, the power of the Court to set aside the award is limited.

17. Therefore, it is well settled that the power of this Court in entering into the factual matrix, especially in cases of appreciation of evidence by the Arbitrator, is not well within the realm of this Court under Section 34 of the Act.”

14. We have extracted herein above all the grounds raised by appellants and the purpose of reproduction of Section 34 of the Act is only to reiterate that none of the grounds raised by appellants are tenable. We would also record that learned counsel for respondents is right in his submission that no application for receipt of additional evidence can be made to the Court before which the findings of the Arbitrator are challenged and therefore, it is idle to contend that such Court had not permitted production of further documents/evidence.

In the result, the Civil Miscellaneous Appeals are dismissed.
No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

gm

To

THE PRINCIPAL DISTRICT JUDGE, THOOTHUKUDI

+1 cc TO MR.P.SUBBARAJ, ADVOCATE, SR NO.49463

+1cc to M/S Special Government Pleader, Sr No.49407,49408

JAM/SKS-RR/26.09.16 17P-4C

Pre-delivery Judgment
in

C.M.A. (MD) Nos.1285 and 1301 of 2014

01.09.2016