

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

O.P.No.676 of 2014

M/s Oil & Natural Gas Corporation Limited,
Represented by its Deputy General Manager,
Mr.Rakesh Kumar, CMDA Building,
8th floor, Tower-1, MM Department,
Gandhi Irwin Road, Egmore,
Chennai-600009. ..Petitioner

Vs.

1.M/s Sree Balaji Transports,
No.173, Ground Floor, AE-Block,
11th Main Road, Anna Nagar,
Chennai-600 040.

2.Hon'ble Mr.Justice N.V.Balasubramanian (Retd.)
Sole Arbitrator,
No.40, Sankarapuram,
Alamelumangapam,
Mylapore, Chennai-600 004.

.. Respondents

Original Petition filed under Section 34 (2)(A)(IV) & (V) read with Section 16(6) of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 28.05.2014 passed by the 2nd respondent which had arisen out of the dispute between the petitioner and the first respondent in Contract No.9030002823 and direct the first respondent to pay the costs of the petition.

For Petitioner : Mr.A.Abdul Hameed for
M/s AAV Partners

For Respondents : Mr.A.Prasanna Venkat for
APR Associates for R1

ORDER

The petitioner floated the tender for providing integrated Shot Hole Drilling (SHD Manual) & Seismic Job Services (SJS) for Kaikalur-Vinnakota Area of KG-PG Basin during Field Season 2008-09. After having discussion with the first respondent, the petitioner has placed the Notification of Award (NOA), vide its letter, dated 16.10.2008. It is followed by work order dated 26.12.2008. Accordingly, contract was entered into between the parties on 31.12.2008. As per the contract, the requisite equipments were provided by the petitioner to the first respondent.

2. The explosive licence required for undertaking the work was not obtained by the petitioner from 15.01.2009 to 31.01.2009. This halted the work at the hands of the first respondent. Needless to state that the first respondent has mobilised its men and machinery. For the aforesaid, the first respondent has incurred huge expenditure.

3. The equipments provided by the petitioner to the first respondent were not working properly. Therefore, they have been sent for repair work as instructed by the petitioner. Alleging that the equipments have been given in a working condition and not maintained properly by the first respondent, a substantial sum was withheld and deducted, which would be otherwise payable to the first respondent.

4. The first respondent raised a claim by invoking the arbitration clause. A sum of Rs.85 lakhs has been claimed, which was spent for repairing the equipments sent for repair. A further sum of Rs.32,25,000/- was claimed for the expenditure incurred due to the delay caused by the petitioner in obtaining the licence to store the explosives, which prevented the first respondent from commencing the work.

5. After exchange of pleadings, substantial evidence was let in by the parties. The learned Arbitrator, on facts, rendered a finding that the equipments have been handed over to the first respondent in a workable condition has not been established to the satisfaction. In fact, in the course of examination, the petitioner's side witness has deposed that these equipments have been handed over to the first respondent after completion of the earlier work. They were also found to be not in a good

condition and accordingly, the amount unilaterally been deducted in the invoices raised was found to be wrong.

6. Insofar as the claim made towards the expenditure incurred for not obtaining the explosive licence at the earliest, the learned Arbitrator awarded a sum of Rs.15 lakhs treating the claim as a profit though in the preceding paragraph upheld the application of Clause 20, which speaks about consequential damages.

7. The learned counsel appearing for the petitioner would submit that the learned Arbitrator wrongly put the onus on the petitioner. It has to be presumed that the equipments have been handed over in good condition. It is further submitted that as per Clause 10, which speaks about standby charges, a sum of Rs.5000/- has been paid for the men and machineries. As Clause 20, which speaks about consequential damages, prohibits any such claim towards damages, the awarding of Rs.15 lakhs will have to be set aside.

8. The learned counsel appearing for the first respondent would submit that the award has been passed after considering the materials both documentary and oral. Therefore, there is no scope available under

Section 34 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator not only considered the evidence of first respondent but also that of the petitioner in coming to the factual conclusion that equipments were not handed over in a proper condition. Based upon the same, the award was passed. Therefore, no interference is required.

9. It is submitted that what is sought for is payment of expenditure incurred due to the failure of the petitioner. Therefore, neither Clause 10 nor Clause 20 would be applicable. Clause 10 merely speaks about the contingency which requires the petitioner to inform the respondent to suspend the job/operation. The first respondent did not ask for damages, but only for the expenditure suffered. Though the learned Arbitrator treated it as a profit, the claim having been made, it has been construed as such, as the facts are not in dispute. The invoices raised were for a different purpose and has got audited with the expenses that are incurred.

10. Considering the submissions made, this Court does not find any reason to interfere with the award passed. As rightly submitted by the learned counsel for the first respondent, on the main issue, it was categorically held that the very same equipments were put into use at an earlier contract. Thereafter, they were handed over to the first respondent.

There was no verification on the working condition of the equipments. No such objection was raised, when the first respondent sought to send it for repairing. The repair was also done at a place directed by the petitioner. The evidence adduced on the petitioner's side itself would show that the petitioner has not proved the working condition of the equipments. To put it differently, there is also no material to hold that the first respondent did not take care of the equipments and the damages were occurred due to its fault. The finding rendered being factual, this Court cannot substantiate its views.

11. Coming to the second issue, though the learned Arbitrator has termed as a profit, the discussion as a whole has to be seen. The claim was made on the ground of incurring unnecessary expenditure due to the delay caused at the hands of the petitioner. The delay having been caused by the petitioner is not in dispute. The fact that the respondent has made ready the men and machinery is also not in dispute. Clause 10, which speaks about stand by charges has got no relevancy. It merely states about the requirement at the hands of the petitioner in a case of sudden break down of seismic instrument or any other such unforeseen reason. We do not have any unforeseen reason beyond the capacity of the petitioner or the first respondent, as the case may be before us. It is a case of delay caused in getting the requisite licence. For the aforesaid

reason, Clause 20 also does not have any application as we are not dealing with the case of damages. This Court also finds that the invoices, which had been relied upon get relatable to Clause 1.2 alone and therefore, there is no application to the factual situation, which we are dealing with. Thus, even on the second contention, this court does not find any merits and accordingly the original petition stands dismissed. No costs.

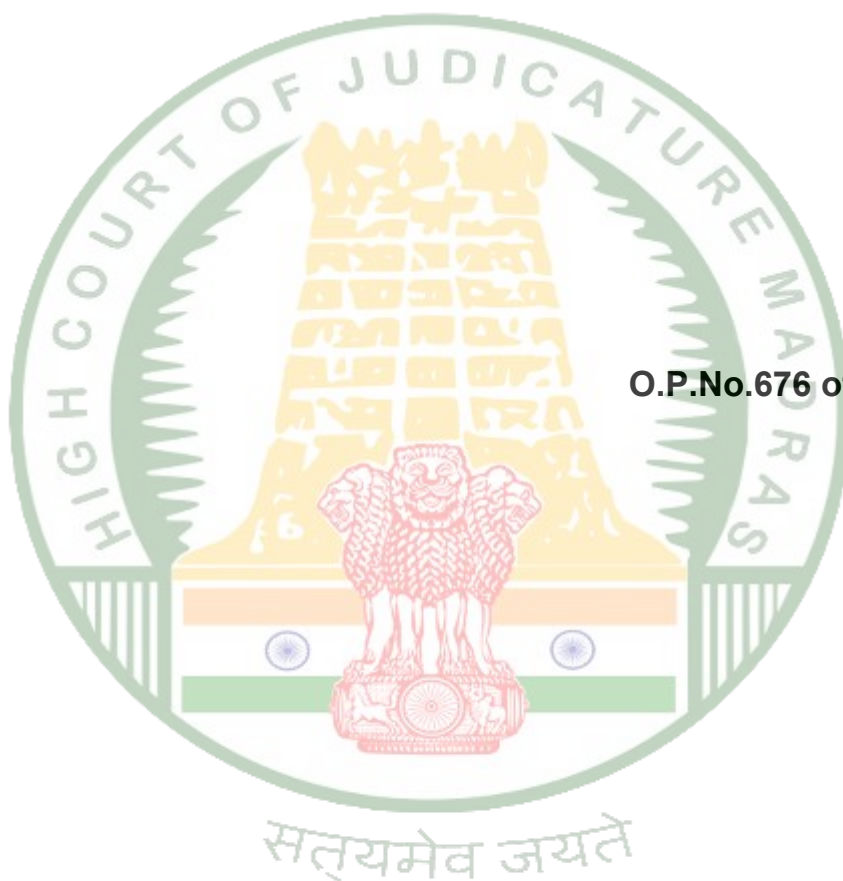
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M.M.SUNDRESH,J.



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