

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

O.P.Nos.783 to 785 of 2013

The RITES Ltd,
(A Government of India Enterprise-
Ministry of Railway)
Presently represented by its
Senior Deputy General Manager,
No.209, Swapnalok Complex,
SD Road, Secunderabad - 500 003. ... Petitioner
in all O.Ps

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) West,
Bharat Sanchar Nigam Limited, 'Chennai Telephones'
Presently at No.1, Ganga Nagar,
Kodambakkam Telephone Exchange,
Kodambakkam, Chennai - 600 024.
- 3.Mr.V.Prabhakar (Sole Arbitrator)
Presently employed as the General Manager,
Telecommunications, Bharat Sanchar Nigam Limited,
Trivandrum Telecom District, Kerala Circle,
Thiruvananthapuram - 695 001. .. Respondents in O.Ps

Prayer in all O.Ps: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the awards dated 13.03.2013 passed by the Sole Arbitrator, namely, the third respondent herein and to pass a fresh

award allowing all the claims of the petitioner.

For Petitioner
in all O.Ps : Mr.Amalaraj S.Penkilapatti

For Respondents
in all O.Ps : Mr.S.Gopinath

COMMON ORDER

Heard Mr.Amalaraj S.Penkilapatti, learned counsel for the petitioner and Mr.S.Gopinath, learned Standing Counsel appearing for the respondents.

2.These petitions have been filed under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as "the Act") to set aside the awards passed by the learned Arbitrator dated 13.03.2013. The awards pertain to contracts dated 20.03.2001, 09.01.2002 and 15.10.2002 respectively entered into between the petitioner which is a Government of India undertaking with the respondents. Essentially the dispute pertain to the quantum/value of the executed 'items of work' i.e. 'Excess Earth Removal' and 'Sea Sand Filling'. It appears that there is a consensus for the work so executed. But the dispute arose only with regard to the quantum of work which was executed. The bills which were presented by the petitioner before the

BSNL have been partly allowed and partly disallowed which resulted in the petitioner approaching the learned Arbitrator claiming differential amounts. In the light of the above, this Court proposes to assign reasons in the following paragraphs as it may not be necessary for the Court to make thorough factual examination of the controversy apart from the fact that is not required to be done while examining the correctness of the award under Section 34 of the Act.

3.The dispute relates to measurements. According to the petitioner, the measurements are as per the details noted in the M-Book maintained by BSNL. However, the learned Arbitrator in all these impugned awards has thrown out the claim of the petitioner assigning various reasons. In fact an identical issue arose for consideration in a dispute arising between **Telecommunications Consultants vs. BSNL**. In the said case also, identical contracts were entered into between the parties and the dispute also pertaining to the measurement. However, the learned Arbitrator partly allowed the claim and disallowed the remaining part. With regard to the disallowed portion, **Telecommunications Consultants** filed O.P.Nos.778 of 2013 and 779 of 2013, whereas against the claim which was allowed by the learned Arbitrator, the **BSNL** filed

O.P.Nos.369 of 2014 and 729 of 2015. All the petitions were heard and disposed of by a common order dated 06.10.2016. Though, on a perusal of the said order, it indicates as if it is a consent order but the Court has recorded its finding that without assigning the quantum of work carried out, the learned Arbitrator could not have proceeded to pass the impugned award. Therefore, the Court recorded the finding that the matter requires reconsideration.

4.In the light of the said decision which is equally applicable to the cases on hand, this Court is of the opinion that before proceeding to pass an award, the quantum of work has to be assigned. Therefore, the impugned awards require interference. Hence, these Original Petitions are allowed and the impugned awards are set aside.

सत्यमेव जयते

sd/.T.S.S.J

25.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/12.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.