

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

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

**Original Petition Nos.414 of 2010 and
780 to 781 of 2013**

The RITES Ltd.,
(A Government of India Enterprise-
Ministry of Railway) rep. by its
Chief Project Manager
now designated as General Manager,
Project Office: No.209, Swapnalok Complex,
SD Road, Secunderabad - 500 003.

.. Petitioner in
O.P.No.414 of 2010

M/s.Ganesh Constructions rep. by its
Sole Proprietor S.Chandrasekaran

.. Petitioner in
O.P.Nos.780 to
782 of 2013

Vs.

1.The Bharat Sanchar Nigam Limited
rep. by the Chief General Manager of
Chennai Telephones,
No.78, Purasawalkam High Road,
Chennai - 10.

2.The Deputy General Manager
(O & M)/STM,
Bharat Sanchar Nigam Limited,
Chennai Telephones, No.16, GST Road,
Chromepet, Chennai - 44.

- 3.C.Periasamy (Sole Arbitrator),
General Manager (TX & P&I),
Chennai Telephones, 4th Floor,
Flower Bazaar Exchange,
1, NSC Bose Road, Chennai - 1.

.. Respondents in
O.P.No.414 of 2010

- 1.The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Statesman house, No.148,
Barakhamba Road, New Delhi - 110 001.

- 2.The Chief General Manager,
Bharat Sanchar Nigam Limited,
Chennai Telephones,
No.78, Purasawalkam High Road,
Chennai - 10.

- 3.The Deputy General Manager,
Bharat Sanchar Nigam Limited,
Chennai Telephones,
Presently at E5, III Avenue,
Anna Nagar East, Chennai - 102.

- 4.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.P.No.780 of 2013

- 1.The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Statesman house, No.148,
Barakhamba Road, New Delhi - 110 001.

2.The Chief General Manager,
Bharat Sanchar Nigam Limited,
Chennai Telephones,
No.78, Purasawalkam High Road,
Chennai - 10.

3.The Deputy General Manager
(C & A) West,
Bharat Sanchar Nigam Limited,
Chennai Telephones,
Presently at No.1, Ganga Nagar,
Kodambakkam Exchange Building,
Chennai - 24.

4.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.P.Nos.781 and
782 of 2013

Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Awards dated 30.01.2010 and 20.03.2013 passed in the disputes arising out of the Agreement No.DGM (O & M)/STM/Turnkey Proj./2000-2001 dated 30.03.2001, Arbitration Case Nos.10, 11 and 12 of 2007.

For Petitioner : Mr.Amalraj S.Penkilapatti
in all the O.Ps

For Respondents : Mr.P.Sidharthan for R1 to R3
in all the O.Ps

COMMON ORDER

As all these original petitions involve the very same issue, they have been taken up together and disposed of by a common order.

2.All these cases pertain to the claim/value of the work executed in terms of work - removal of excess earth and sea sand filling. It is not in dispute that these two items of works were actually executed.

3.Insofar as O.P.No.414 of 2010, an additional issue was raised on behalf of respondents 1 to 3/BSNL with reference to the period of limitation. This was on the footing that part payment was made on 16.08.2004 but the petitioner, being the claimant made a request for arbitration through the petition dated 17.08.2007 by invoking Clause 18 of the agreement. Therefore, the claim was barred by limitation by two days.

4.It is submitted by both the counsels that the issues raised are no longer *res integra* especially on merit as similar petitions have been allowed in favour of the petitioner. The last of the order was passed by

this Court in O.P.Nos.783 to 785 of 2013 dated 25.01.2017 by taking note of the earlier orders passed.

5.In the aforesaid petitions, considering the very same issue, as fairly submitted by the learned counsel appearing for respondents 1 to 3, this Court was pleased to pass the following order:

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.

6. Thus, the only other issue remains to be considered by this Court is the one pertaining to limitation. Learned counsel appearing for the petitioners would submit that there was an error apparent on the face of the record committed by the Tribunal. The Tribunal has taken note of the last of the payment made pursuant to the request made by the petitioner. It was occasioned due to the reasoning of the earlier Arbitrator appointed on 05.04.2007. Therefore, the date reckoned for considering the period of limitation on the face of it is not correct. Learned counsel appearing for respondents 1 to 3 has not refuted the same.

7. A perusal of the records would show that the first respondent initially appointed Mr. E. S. Chandrasekaran as Arbitrator on 05.04.2007. Therefore, as rightly submitted by the learned counsel for the petitioner, that date should have been reckoned. In fact, even that

date need not be reckoned as what was important was the claim made by the petitioner. Be that as it may. If one goes by the appointment of Arbitrator made on 05.04.2007, there is no difficulty in holding that the claim was within the period of limitation. Therefore, the petitioner in O.P.No.414 of 2010 is entitled for the benefit against the other petitioner. There is no dispute on facts with respect to all the cases and so is the case decided already.

8.In such view of the matter, the impugned awards are set aside. These Original Petitions are ordered in terms of the order in O.P.Nos.369 of 2014 and 729 of 2015 dated 06.10.2016 as confirmed in the order passed in O.P.Nos.783 to 785 of 2013 dated 25.01.2017. No costs.

08.12.2017

Index:Yes/No
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To

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Bharat Sanchar Nigam Limited,
Chennai Telephones,
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Chennai - 10.

2.The Deputy General Manager

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M.M.SUNDRESH,J.



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