

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2851 of 2015

S.Sankar

... Appellant

Vs

1.Union of India

Rep by the Chief Secretary
Government of Puducherry
Puducherry.

2.The Chief Engineer

Public Works Department
Puducherry.

3.The Superintending Engineer

Circle-II
Public Works Department
Puducherry.

4.The Executive Engineer

Public Health Division
Public Works Department
Puducherry.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 37(1) of the Arbitration and Conciliation Act, 1996, against the judgment and decree of the Court of the Principal District Judge at Puducherry dated 19.03.2015, made in Arbitration O.P.No.59 of 2011.

For Appellant : Mr.N.Thiagarajan

For Respondents : Mr.J.Kumaran,
Government Advocate (Pondy)

JUDGMENT

The appellant herein has entered into a Works Contract with Government of Puducherry for construction of collection wells, pumping station with protection wall for clearing the sewerage at Lawspet Main Road, Pethuchettipet, Puducherry. The work was to commence on 22.3.2007 and was to complete on 21.09.2007. However, till June '2007, the site itself was not handed over to the appellant/contractor due to some local resistance and obstructions. According to the appellant, the site was handed over to him only on 27.06.2007. Due to continued obstructions, he could not carry out the work and requested the respondent

concerned to foreclose and terminate the contract. Accordingly, the contract was closed on 18.12.2007, approximately three months after the date stipulated for the completion of the Works Contract. Thereafter, the appellant herein invoked the Arbitration clause under the Agreement on 23.01.2008. Before the Arbitrator, the appellant made his claim under three heads and the arbitrator passed an award in favour of the appellant under two heads. The details are :

Heads of Claim		Amount Claimed	Amount Awarded
(a)	Loss of expected profit	Rs.8,99,602/-	Rs.7,19,681/-
(b)	Loss incurred due to unnecessary expenditure on overhead	Rs.1,12,500/-	Rs. 9,000/-
(c)	Loss incurred due to retention of EMD unnecessarily	Rs. 23,526/-	0

2. The award was challenged by the Government in Arbitration O.P.No.59 of 2011 before the learned Principal District Judge, Puducherry. Vide his order dated 19.03.2011, the learned District Judge allowed the petition, set aside the award in toto. This is under challenge here.

3. The learned counsel for the appellant submitted that the learned District Judge has gone into the meticulous details of the reasoning of the Arbitrator and substituted his reasoning for the reasoning of the Arbitrator on question of facts. He placed reliance on the decisions of the Hon'ble Supreme Court in Navodaya Mass Entertainment Ltd., Vs. J.M.Combines [2015 (1) CTC 797] and Associate Builders Vs. Delhi Development Authority [2015 (1) CTC 191].

4. Interjecting the same, Mr. J.Kumaran, learned Government Advocate for the respondents submitted that the Arbitrator, in granting the award in favour of the appellant has exceeded the terms of the Agreement and has been in palpable error in passing the award. He has also placed reliance on the authorities of the Hon'ble Supreme Court in Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation [(2006) 4 SCC 445], and in Delhi Development Authority Vs. R.S.Sharma and Company, New Delhi [(2008) 13 SCC 80], he in particular relied on paragraph No.21 thereof, which reads as under :

"21. From the above decisions, the following principles emerge:

- (a) An award, which is
 - (i) contrary to substantive provisions of law; or
 - (ii) the provisions of the Arbitration and Conciliation Act, 1996; or
 - (iii) against the terms of the respective contract; or

(iv) patently illegal; or
(v) prejudicial to the rights of the parties;
is open to interference by the Court under Section 34(2) of the Act.

- (b) The award could be set aside if it is contrary to:
(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.
(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that is patently illegal and opposed to the public policy of India."

This is the fact which can be gone into under Section 34 of the Arbitration Act. While a finding on fact, even if the same is a plausible one, is generally not interfered by the Court under Section 34 of the Act yet, but whether the Arbitrator had gone beyond the express terms of the contract in passing an award cannot be equated to a question of fact merely.

5. On perusing the judgement of the learned District Judge, this Court comes to a similar conclusion. Inasmuch as this Court has taken a view that some of the reasoning of the Arbitrator has been substituted by the learned District Judge with his reasoning to set aside the award, this Court deems it appropriate to set aside the order of the learned District Judge in Arbitration O.P.No.59/2011 and remand the same back to the District Court for a fresh consideration and to dispose it in accordance with law. The issues raised by the Government are left open for consideration by the learned District Judge, Puducherry. Both the parties are directed to appear before the District Court, Puducherry on 25.07.2018.

6. In conclusion, this Civil Miscellaneous Appeal is allowed and the order of the learned District Judge in Arbitration O.P.No.59/2011 is set aside and the same is remanded to the District Court, Puducherry for a fresh consideration. Any observation made in this order may not fetter the learned District Judge to arrive at a conclusion independently. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To :

1. The Principal District Judge
Puducherry.
- 2.The Chief Secretary
Union of India
Government of Puducherry
Puducherry.
- 3.The Chief Engineer
Public Works Department
Puducherry.
- 4.The Superintending Engineer
Circle-II
Public Works Department
Puducherry.
- 5.The Executive Engineer
Public Health Division
Public Works Department
Puducherry.

Copy to:The Section Officer
VR Section
High Court, Madras.

+1cc to Government Pleader SR.No.41021
+1cc to M/s.N.Thiagarajan, Advocate Sr.No.40699

AK(CO)
sM:11.7.2018

CMA.No.2851 of 2015

सत्यमेव जयते

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