

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Original Petition No.780 of 2003

1. The Superintending Engineer,
(Highways and Rural Works),
76/2, Sardar Patel Road,
Guindy, Chennai – 600 025.
 2. The Superintending Engineer,
(Highways and Rural Works),
Villupuram Circle,
Villupuram – 605 602.
- .. Petitioners

Vs.

1. Mr.D.G.Deivasigamani
 2. Mr.Justice G.Ramanujam,
(Retd., Judge of High Court, Madras)
- .. Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitration Award dated 09.04.2003 passed by the second respondent made in A.C.No.3/2001.

Petitioner : Mr.Sricharan Rangarajan

Respondents : No appearance

ORDER

Challenging the Award of the Sole Arbitrator dated 09.04.2003 on various grounds, the present petition has been filed.

2. The following claims have been made by the claimant before the Arbitrator :

(i) Idle charges for plant, machinery and labour due to inadequate supply of Bitumen – Rs.36,40,000/-

(ii) Illegal recovery of storage charges @ 5% on the cost of Bitumen – Rs.9,54,375/- supplied by the Department

(iii) Bringing metal with longer lead from Salem and Namakkal Districts – Rs.3 crores

(iv) Idle charges for machineries, labourers for non-delivery of site from 15.10.97 to 25.04.1998 due to delay in taking decision for conversion of WBM to BUSG – Rs.36,06,000/-

(v) Loss incurred due to rectification of the flood damaged stretches by the claimant – Rs.36,00,000/-

(vi) Revision of rates for items executed beyond 20.5.1998 the original date fixed for completion – Rs.56,08,548/-

(vii) Interest on overheads @ 15% due by the Respondents –

Rs.25,07,498/-

(viii) Payment of interest on the amount due in the final bill and also other amounts due by the Respondents to the claimant Rs.61,48,474/-.

(ix) For costs of arbitration

3. The claim of the petitioner has been denied and contested by the respondent. A Writ Petition has filed against the Order of appointment of the Arbitrator in W.P.No.36569 of 2002. It is not in dispute that the Writ Court has passed an interim Order and stayed the Arbitral proceedings till 05.12.2002. Thereafter, it appears that the stay was extended till 22.01.2003. At this stage, despite the memo filed before the petitioner, the Arbitrator has interpreted in his own way that the stay has been granted only till 22.01.2003 and had passed the Award. The learned Arbitrator heard the Claimant alone and passed the Award.

4. The entire claim made by the Claimant is a notional claim, namely towards idle charges for plant, machinery and recovery of storage charges and interest and other charges. It is also not in dispute that the above charges have been claimed even during the subsistence of the contract.

5. The respondent, despite, names have printed in the cause list, none appeared for the respondent.

6. Heard the learned counsel appearing for the petitioner and perused the Award.

7. The learned counsel appearing for the State mainly contend that the Arbitrator has not followed the principles of natural justice and opportunity has not been given to the Government to contest the matter on merits. Admittedly, the Writ Court has granted interim injunction as against the proceedings of the Arbitrator. Despite the above fact, the Arbitrator has proceeded to pass the Award, by interpreting that the stay of the High Court is only till the particular date. Thereafter, no notice, whatsoever, was given to the respondent and the proceedings have been completed exparte. Hence, submitted that such an Award has to be set aside on the ground of 'no opportunity given'. In support of his contentions, he has relied on the judgment of the Division Bench of this Court in **State Industries Promotion Corporation of Tamil Nadu Ltd., Vs. M/s.Iron International** reported in **2009(5) Law Weekly 378**. In the said judgment, this Court relying on the judgment of the Apex Court in **Sohan Lal Gupta Vs. Asha Devi Gupta** reported in **2003 (7) Supreme Court Cases 498** has held that once an opportunity is not given, the Award has to be set aside.

8. The Award of the Arbitrator indicate that voluminous documents have been filed by the respondent supporting their claim and there was also interim

Order passed by the Writ Court, restraining the Arbitrator from proceeding the matter. These facts are not in dispute. Whereas, the Arbitrator has interpreted the Orders of the High Court holding that the interim injunction was extended only till a particular date and suddenly proceeded to decide the issue, that too, without even giving an opportunity to the parties. That itself clearly indicate that there is a violation of natural justice.

9. The Honourable Apex Court in the judgment in **Sohan Lal Gupta Vs. Asha Devi Gupta** reported in **2003 (7) Supreme Court Cases 498** dealt with the freedom which an arbitrator has to manage the procedure and by holding that no doubt that the arbitrator has the freedom to formulate and lay down his own procedure for the conduct of the arbitration proceedings before him according to law, had laid down certain conditions for constituting reasonable opportunity, which are reproduced hereunder :-

"23. For constituting a reasonable opportunity, the following conditions are required to be observed :

1. Each party must have notice that the hearing is to take place.
2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.
3. Each party must have the opportunity to be present

throughout the hearing.

4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.

5. Each party must have a reasonable opportunity to test his opponents case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.

6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument."

10. When the Arbitrator is aware of the fact that claim has been denied and voluminous documents have been filed, even assuming that there was no interim Order on the particular date by the High Court, taking note of the fact that voluminous documents have been filed by the respondent, the Arbitrator ought to have issued notice to the respondent to place their case and put forth their arguments, which has not been done so in this case. That itself clearly indicate that an opportunity has not been properly given to the respondent, which is a clear case of violation of natural justice. Hence, the Award is certainly liable to be set aside.

11. Accordingly, this Original Petition is allowed. No cost.

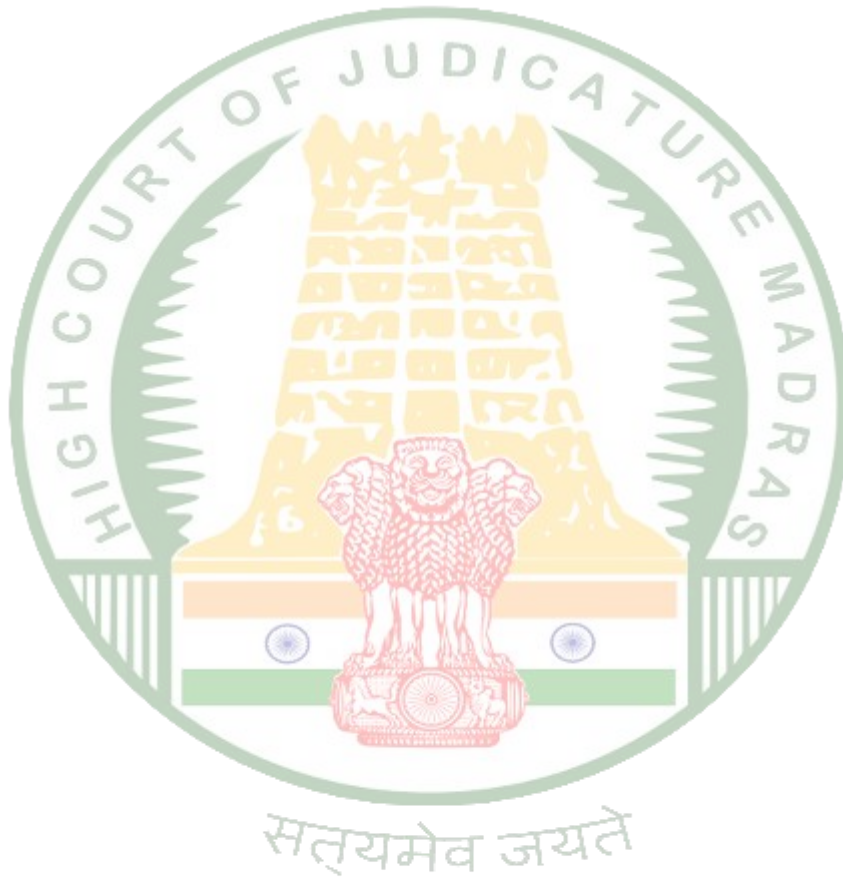
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Index : Yes/ No

Internet : Yes

Speaking/Non-speaking Order

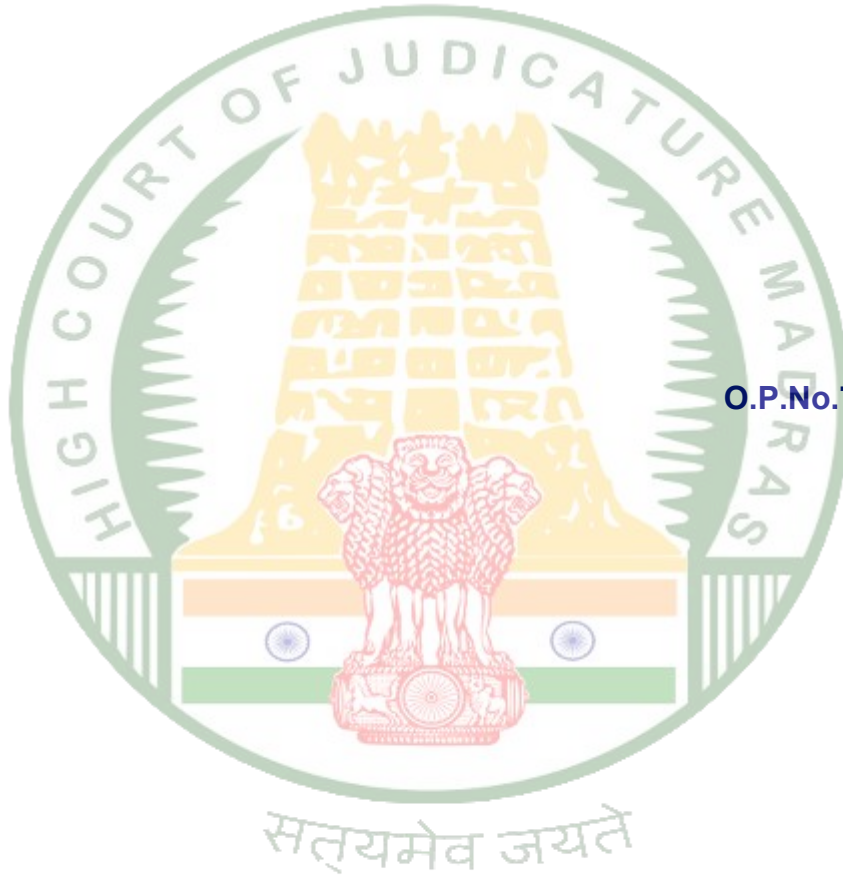
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N.SATHISH KUMAR, J.

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