

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.06.2019

CORAM

The Honourable Mr.Justice N.SATHISHKUMAR

O.P.Nos. 117 and 118 of 2011

V.M.R. Constructions,
Rep. by its Managing Partner
Mr.V.M.R.Raghu,
No.20, 18th Main Padmanabha Nagar,
Chikkandana Main Road,
Bangalore 560 001.

...Petitioner in both O.Ps.

Vs.

1.The Chief Engineer (Highways),
Nabard and Rural Roads,
3rd Floor, Survey of India Building,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai 32.

2.The Superintending Engineer (Highways),
Nabard and Rural Roads,
Azhagesan Nagar,
Chengalpattu Post and Taluk,
Kanchipuram District.

3.The Divisional Engineer (Highways)
Nabard and Rural Roads,
Azhagesan Nagar,
Chengalpattu Post and Taluk,
Kanchipuram District.

4.Mr.V.Vivekanandan (Sole Arbitrator),
Superintending Engineer (Highways)
Nabard & Rural Roads,
Circle, Trichy – 20.

...Respondents in both O.Ps.

PRAYER IN both OPs: These Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the awards dated 26.11.2010 passed by the Sole Arbitrator namely the fourth respondent.

For Petitioner : M/s.Amalaraj S.Panikilapatti
J.Chandrasekaran

For Respondents : Mr.Sricharan Rangarajan
Special Government Pleader (CS)

COMMON ORDER

These Original Applications have been filed challenging the award passed by the Arbitrator in respect of the claim of the claimant seeking a declaration that the contract is frustrated and the termination of the contract of the expiry period of the contracts is illegal.

2. The brief facts leading to the filing of the Original Petitions are as follows:

O.P.No.117 of 2011:

2.1.The contract was entrusted to the petitioner on 27.06.2003 for construction of Bridge at two different places. The agreement and date of handing over was on 01.08.2003 and the period for completion of the work was 18 months. Accordingly, the work had to be completed before 31.01.2005. Further, within the agreed time, the

work could not be completed. Several extensions of time were granted till 30.09.2005 and thereafter till 27.11.2005. As the work had not been completed even after the extension period, the contract was terminated on 18.12.2006. Challenging the above termination, the claimant has preferred the claim petition seeking termination of contract as illegal.

O.P.No.118 of 2011:

2.2. In this case, the contract was entrusted to the petitioner on 18.02.2005, on the same condition, as stated above i.e., to complete the work within 18 months. The work was to be completed before 17.09.2006. However, as the work was not completed, the contract was terminated on 03.01.2007.

3. Challenging the termination of both the contracts, the claimant has preferred the claim petitions and in fact, the relief of declaration was sought to declare the contract has frustrated and also a declaration of termination of the contract, after the expiry of agreement period is bad in the eye of law.

4. The learned Arbitrator, assessing the entire facts, has come to the conclusion that the delay was on the part of the contractor and even after the extension of time, the contract could not be completed.

Only 67.98% of the work was completed at the time of termination, as far as O.P.No.117 of 2011 is concerned. Similarly, in O.P.No.118 of 2011, the Arbitrator found that 12.23% of the work was only completed at the time of termination. The learned Arbitrator upheld the termination of the contracts.

5.The learned counsel appearing for the petitioner mainly focused on the fact that the termination of the contract after the expiry of the contract period, is not valid, in the light of the judgment of the Hon'ble Supreme Court in ***M/s.Hind Constructon Contractors by its sole proprietor Bhikamchand Mulchand Jain Vs. State of Maharashtra***, reported in ***AIR 1979 SC 720***. According to him, the extension sought had not been considered and he is entitled to get such extension. The termination of contract, particularly after the expiry of the contract period is not valid and is bad in the eye of law. The contention raised by the learned counsel for the petitioner is that the learned Arbitrator has not followed the Judgment of Hon'ble Supreme Court in ***M/s.Hind Constructon Contractors*** (cited supra). The awards are in violation of the public policy and the same are liable to be set aside.

6.The learned Special Government Pleader (CS) appearing for

the respondents vehemently contended that the Judgment of the Hon'ble Supreme Court is distinguishable on facts. The learned Arbitrator has analysed the facts and found that the contractor was solely liable for the delay. The learned Arbitrator further held that such declaration that the termination of contract is valid is not illegal. Hence, he submitted that the award cannot be interfered with as there was no ground made out to interfere.

7. The award was passed put to challenge Section 34 of the Arbitration and Conciliation Act. On a perusal of the award, it is seen that the learned Arbitrator had considered the fact of limitation and found that despite several opportunities and extension of the time limit given by the Department in respect the contract dated 27.06.2003, only 67.98% of the work was done and also found that in other contract, dated 18.02.2005, 12.23% of the work was only completed. Considering the facts and circumstances of the case, the learned Arbitrator has found that the Judgment of the Hon'ble Supreme Court in **M/s.Hind Constructon Contractors** (cited supra) is not applicable to the facts of the present case.

8.No doubt, in the said Judgment of the Hon'ble Supreme Court in ***M/s.Hind Constructon Contractors*** (cited supra) it was held that though time was not the essence of contract, the respondents did not fix any further period making time the essence, directing the plaintiff to complete the work within such period, instead, it rescinded the contract straight away by letter dated August 27, 1956 and held that such rescission on the part of the respondent/defendant was clearly illegal and wrongful and thereby, the respondent/defendant committed a breach of contract, with the result, there could be no forfeiture of the security deposit. In the above case, extension and completion of work were not granted by the respondent therein. Therefore, considering the above facts, the Hon'ble Supreme Court had held that such recession is not valid. But, in the case on hand, though 18 months has been fixed in the agreement, it has not been completed by the contractor. Thereafter, several extensions of time were granted, even then, the work had not been completed. The further extension was also sought by the petitioner. However, the respondents have terminated the contract taking note of the fact that despite several opportunities and extensions of time, the work could not be completed.

9. I am of the view that the award passed by the Arbitrator cannot be interfered with under Section 34 of the Act unless there is patent illegality on the face of the award or the same is in conflict with the public policy of India. If the Arbitrator arrives at a plausible view based on evidence, this Court under Section 34 of the Act cannot interfere on the basis that a different interpretation is possible.

10. Hence, I do not find any illegality or violation of public policy. It is now well settled that the award cannot be interfered and the scope of interference by this Court under Section 34 of the said Act is very narrow. Therefore, I am of the view that the award passed by the Arbitrator need not be interfered with at this juncture. Accordingly, these Original Petitions are dismissed.

19.06.2019

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Speaking Order/Non Speaking Order

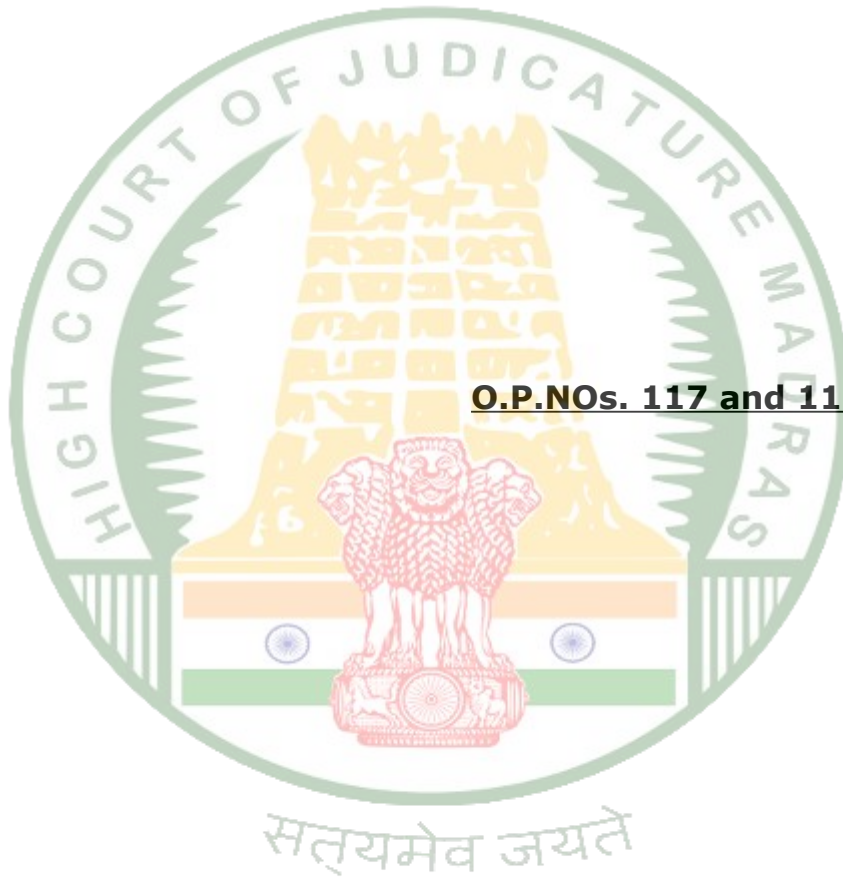
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N.SATHISHKUMAR , J.,

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O.P.NOs. 117 and 118 of 2011

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