

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	4.1.2019
Orders pronounced on	01.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE **D.KRISHNAKUMAR****O.P.No.512 of 2016**

1. K.S.Baburaj ... Petitioner

Vs.

1. The Union of India
Rep. by the General Manager,
Southern Railway, Park Town,
Chennai 600 003.
2. The Deputy Chief Engineer (CN-1),
Construction, Southern Railway,
Tambaram, Chennai - 59.
3. G.V.Somasekhar (Arbitrator),
Deputy F.A. & C.A.O. (Cash and Pay),
Southern Railway Head Quarters,
Chennai 600 003. ... Respondents

Prayer:- Original Petition is filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the award, dated 30.5.2016 passed by the third respondent.

For Petitioner : Mr.Amalraj S.Penikilapatti
For Respondents 1 & 2 : Mr.Ramachandramoorthy

O R D E R

The brief facts of the case runs as follows:

The respondents/railways called for open tenders vide item No.4 of its tender notice No.14/CE/CN/MS/2009 (OT) dated 12.10.2009 for executing, "GC work between Villupuram-Katpadi: Collection & Supply of 50 mm size machine crushed hard granite stone Ballast at various depots". The petitioner and the respondents executed the "Form of Agreement" in No.277/Dy.CE/CN/I/TBM/2010, dated 15.2.2010. As per Clause 45 of the additional instructions and special conditions, the price escalation will be paid to the Contractor as per the agreement. Further, it is also accepted that other terms and conditions in the tender documents and the agreement are also binding on the parties. As per the tender document, letter of acceptance, dated 21.1.2010, the petitioner and the respondents executed "Form of agreement on 15.2.2010 to complete the schedule work within the time specified in the agreement. The petitioner had completed the work on 14.12.2010 and requested the respondents to release the amounts viz., final bill, security deposit & EMD Rs.17,07,184/- and the performance guarantee (BG) Rs.16,84,800/-. The petitioner also submitted "No claim certificate" on 21.12.2010 to

the respondent. On the basis of the aforesaid claim made by the petitioner and the no claim certificate, the respondent has released final bill on 12.1.2011 and security deposit on 4.12.2011 and also released the BG/ Performance guarantee. The General Manager of the respondent/ Railways have issued the clarification circular vide Dy.CE/Works/CN dated 29.5.2012 communicating the orders of the first respondent to pay 'Price variation' for Ballast, Track and other works as per clause No.45.3(ii) under the provisions for "Buildings, Bridges, etc. The petitioner made a representation on 25.7.2012 to the respondent stating that the first respondent cannot discriminate between the contracts, wherein works are under execution and the contracts wherein the works were already completed. Further, in the aforesaid letter, it is submitted that the respondent/Railway already paid previous bills under similar contracts wherein works were completed. In response to the aforesaid letter, the petitioner received communication, dated 11.3.2013 by stating that request for the escalation payment has not been considered on the ground that there is no point for reopening of the contract after the final bill has been passed with no claim certificate submitted to the respondent. Hence, the

petitioner approached this Court for appointment of Arbitrator and the third respondent herein was appointed as Arbitrator by the first respondent, in the light of the order passed by this Court on 19.6.2015. The petitioner has made a claim before the Arbitrator.

2 The sole Arbitrator has considered the claim of the petitioner in terms of the agreement and the circular relied upon by the petitioner and came to the conclusion that the petitioner cannot claim PVC amount of Rs.9,85,306.82 since agreement No.277/ Dy.CE/CN/1/TBM/2010, dated 15.2.2010 does not provide PVC clause in Construction department Agreement. Subsequently, based on the departmental note, the General Manager, Southern Railway has approved the inclusion of PVC clause in Construction department agreement with prospective effect i.e. with effect from 29.5.2012. The Contractor/petitioner herein has given No Claim Certificate without any protest on 21.12.2010 and based on the No Claim certificate, the department has released the Bank Guarantee for encashment. Challenging the negative award passed by the Arbitrator, the petitioner has preferred the present original petition before this Court for setting aside the same.

3 The following facts are not disputed by both the parties.

The petitioner is a successful tender in tender notice No.14/CE /cn/ms/2009 (OT), dated 12.10.2009 for executing, "GC work between Villupuram-Katpadi: Collection & Supply of 50 MM size machine crushed hard granite stone Ballast at various depots" collection viz., Venkatesapuram mambalapatty, Tandarai, Velanandhal, Agaramsibbandi, Arani road and Kanniyambadi etc. stations. As per the agreement, dated 15.2.2010, the Contractor furnished bank guarantee No.10150BG000003, dated 25.1.2010 for Rs.16,84,800/- towards performance guarantee for 5% value of contract value of the contract. It is also agreed by both the parties in the aforesaid agreement, under Clause 6, all the provisions of the said specifications, conditions of contract and the printed schedule of Rates including the general instructions contained in pages 8 and 9 thereof, shall be binding upon the Contractor and upon the Railway Administration and the letter of acceptance issued on 21.1.2010. Clause 45 of Additional Instructions & Special Conditions of Contract contains the Price Escalation/Variation Clause. The petitioner had duly completed the works on 14.12.2010 as per the contract. The

respondents had released the amounts to the petitioner on the basis of the bills submitted by the petitioner. The petitioner had issued, 'No Claim Certificate on 21.12.2010 to the respondents and based on the same, final bill was paid on 12.1.2011, the security deposit amount was paid on 4.12.2011 and also discharged the Bank Guarantee/Performance Guarantee.

4. The learned counsel for the petitioner would submit that the award passed by the Arbitrator is unsustainable in law. According to the petitioner, petitioner submitted a letter to the Deputy Chief Engineer to approve the payment for price variation for ballast under Clause 45.3(ii) in proceedings No.W/496/Policy/CN/Vol./XXXV, dated 29.5.2012. Again on 25.7.2012, the petitioner made a request to the second respondent to pay the long pending price escalation as per Clause 45 of the contract. It is stated in the said letter that by relying upon the proceedings No.W.496/Policy/CN/Vol.XXXV, dated 29.5.2012 seeking clarification as to whether the said communication is applicable only for the 'ongoing contracts' or is applicable even for the contracts wherein works are completed. The petitioner in his letter, dated

28.1.2014 requested payment of 'Price escalation/PVC bills amounting to Rs.9,85,306.82, otherwise, appoint an Arbitrator to adjudicate the dispute among the parties. On receipt of the said notice, the respondents rejected the request of the petitioner by stating that the Contractor shall not be entitled to make any claim whatsoever against the Railway, once the Contractor had signed, 'No Claim Certificate' in favour of the Railway as required by the department and after the works are finally measured up. Hence, the Contractor shall be debarred from the dispute of correctness of items covered by "No Claim Certificate" or demanding a clearance to arbitration in respect thereof. It is also pointed out that it is a discrimination between the contracts wherein works are still under execution and the contracts wherein the works are completed. The learned Arbitrator has failed to consider Clause 45 of the agreement and special conditions therein. The learned Arbitrator has failed to appreciate the case of the petitioner that Ex.C17 series contains the relevant document/proceedings/forms which proves that price escalation of the final bill will be paid only long after the issuance of a no claim certificate by the contractor. Further, it is submitted that the final bill and security

deposit/E.M.D. performance guarantee will be settled only if the contractor issues an unconditional and unqualified 'No Claims Certificate'. If there is any objection or any protest, the respondents would not settle the final bill, security deposit and performance guarantee. It is also submitted that similarly placed contractors were already paid price escalation by the respondent/railways. The petitioner also furnished the details of the contractors who were paid price escalation by the respondent/railways and the same has not been considered by the Arbitrator. Further, it is submitted that the decision reported in **M/s.Ambica Constructions vs. Union of India [2006(4) Arb.LR 288 (SC) or (2006)13 SCC 475]** has not been duly taken into consideration by the Arbitrator and rejection of the claim of the petitioner is perverse and erroneous. He also relied upon the judgment of the Delhi High Court reported in **MANU/DE/5592/ 2012 [M/s.LALL CONSTRUCTIONS CO. VS. THE GENERAL MANAGER, NORTHERN RAILWAY]** to contend that PVC is an arbitral issue inspite of No Objection Certificate and the supplementary agreement for full and final discharge. Without taking into consideration of the aforesaid decisions, the Arbitrator has erroneously rejected the claim petition filed by the petitioner. Therefore, the

award passed by the Arbitrator is liable to be set aside under Section 34 of the Arbitration and Conciliation Act.

5 The learned counsel for the respondent would submit that it is not disputed by the petitioner that the final bill was settled as per the proceedings, dated 12.1.2011 for the claim made by the petitioner along with "No Claim Certificate furnished to the respondent. On the basis of the clarification circular, dated 29.5.2012 issued by the General Manager of the respondent/ Railways, the respondent has received the representation of the petitioner on 25.7.2012 claiming Rs.9,85,306.82 towards price escalation/variation. According to the learned counsel for the respondent, the petitioner is not entitled to claim price escalation since the contract__was completed on 14.12.2010 and the entire final bill was settled without any protest in the year 2010. Therefore, there is no existence of contract between the petitioner and the respondent for claiming escalation amount. The petitioner has not even claimed PVC or escalation till 2012. The clarification circular has been issued by the General Manager, Railway on 29.5.2012 prospectively, not retrospective effect and the same is applicable only for

the existing contract. Therefore, the clarification circular shows that price escalation is applicable only for existing contract. The petitioner is not come under the purview of the existing contractor as on the date of claim made by the petitioner for price escalation on the basis of the circular issued by the General Manager, Railways.

6. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents and perused the materials available on record and the decisions cited.

7. The dispute between the parties in the arbitration proceedings are set forth hereunder:

According to the learned counsel for the respondent, the clarification circular shows that payment of price escalation/variation is applicable only for existing contracts. It is submitted that the petitioner is not entitled to claim price escalation since the contract was completed prior to 2010 and the entire final bill was settled as claimed by the petitioner without any protest in the year 2010. The petitioner is not come under the purview of the existing contractor as on the date of claim

made by the petitioner for price escalation on the basis of the circular issued by the General Manager, Railways. According to the learned counsel for the respondents 1 and 2, the respondent/Railway rejected the request of the petitioner for payment of price escalation/variation, by stating that the Contractor shall not be entitled to make any claim whatsoever against the Railway, once the Contractor had signed, "No Claim Certificate" in favour of the Railway as required by the department and after the works are finally measured up. Hence, the Contractor shall be debarred from the dispute of correctness of items covered by "No Claim Certificate" or demanding a clearance to arbitration in respect thereof. According to the learned counsel for the petitioner, no Claim Certificate was signed by the petitioner at the time of submitting final bill for the settlement of final bill, security deposit and performance guarantee, unless the no claim certificate is furnished, the final bill, security deposit and performance guarantee would not be settled by the respondent.

8. To substantiate the claim made by the petitioner, the petitioner raised the following grounds:

That the agreement specifically contains a specific Price Escalation Clause (i.e. Clause 45 of Arbitrational Instructions & Special conditions at page 49 to 53 of agreement. Whereas the Arbitrator deliberately and erroneously held that there was no PVC/Escalation clause in the contract. The Arbitrator failed to consider the fact that it is the usual practice that the payment of Price Variation/Escalation will be made long after the payment of final bill, security deposit and performance guarantee by receiving unconditional No Claim Certificate from the Contractor and the petitioner also furnished the details of such contract in Agreement No.31/West/ MAS/10 dated 28.5.2010. The learned counsel for the petitioner strongly emphasized that no claim certificate issued by the petitioner, not binding on the petitioner, as it was issued, only to receive the final bill amount. Therefore, the arbitrator has failed to consider that the petitioner is entitled for price escalation on the basis of the clarification circular issued by the General Manager, Southern Railway, dated 29.5.2012. The petitioner also raised a bias against the Arbitrator for non furnishing copy of the award due to alleged misconduct.

9. In support of the grounds raised by him, the learned counsel for the petitioner would submit that No Claim Certificate was signed by the petitioner at the time of submitting final bill for the reason that if any objection or protest made, the respondents would not settle the final bill, security deposit and performance guarantee. It is contended by the learned counsel for the petitioner that it is the practice of the Railway department to release the payment of Price Escalation long after the payment of final bill, Security deposit by receiving unconditional No Claim Certificate from the Contractor. In support of his contention, he also referred to the agreement No.SA/213, dated 21.7.2010 between G.Saravanan and Railway; According to the learned counsel for the petitioner, the General Manager, vide proceedings, dated 29.5.2012, rejected the price escalation bills by stating that price variation for ballast and other works are applicable only to the ongoing contracts. The learned counsel for the petitioner strongly urged this Court that similarly placed contractors, i.e. the contractors who have completed their contractual work were paid price escalation. Therefore, there is discriminatory among the contractors for payment of escalation price. Therefore,

the first respondent cannot discriminate between the Contracts wherein the works were already completed and the works are under execution. According to the learned counsel for the petitioner, no claim certificate is valid only for the measurement of the execution of the contract work and the said clause would not be applicable for the pending escalation amount. In support of his submission, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **AMBICA CONSTRUCTION VS. UNION OF INDIA [(2006) 13 SCC 475]** to contend that "No Claim Certificates" of the contractors are not binding, if they were issued to receive the final bill, Security Deposit, etc. Therefore, the award passed by the Arbitrator is liable to be set aside.

10. On the contrary, the learned counsel appearing for the respondents 1 and 2 would submit that the contractual work, viz., "GC work between Villupuram-Katpadi: Collection & Supply of 50 mm size machine crushed hard granite stone Ballast at various depots" undertaken by the petitioner had been completed on 14.12.2010 and final bill was paid on 17.1.2011. The letter No.W.496/Policy/CN/Vol.XXXV dated 29.5.2012 issued by the

General Manager, Southern Railway approved the payment of price variation for ballast, track and other works contracts under Clause No.45.3(ii) under the provision for "For Buildings, Bridges, etc. is applicable only for the existing contracts. Therefore, the Arbitrator rightly rejected the claim of the petitioner. Further, the learned counsel for the respondents 1 and 2 would submit that to claim escalation of prices/Price variation during the execution of the contract, the petitioner has to prove that there was a delay on the part of the respondent in executing the contract. Further, no material has been placed before the Arbitrator to show that there was price variation during 10 months period of the contract. The sole ground raised by the petitioner is that similarly placed contractors were paid price escalation on the basis of the internal circular issued by the General Manager, Southern Railway. Such contention is totally untenable for the reason that the contractual works undertaken by the similarly placed contractors are different from the contractual work undertaken by the petitioner. Further, the payment of price escalation granted only to those contractors in the existing contracts.

11 In the judgment of the Hon'ble Supreme Court in **ONGC MANGALORE PETRO CHEMICALS LTD. VS. ANS CONSTRUCTIONS LTD. AND ANOTHER [(2018) 3 SCC 373]**, relied on by the learned counsel for the respondent, it has been held as follows:

31. Admittedly, no-dues certificate was submitted by the contractee company on 21-9-2012 and on their request completion certificate was issued by the appellant contractor. The contractee, after a gap of one month, that is, on 24-10-2012, withdrew the no-dues certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the contract site was made vide letter dated 12-1-2013 i.e. after a gap of 3½ (three-and-a-half) months whereas the final bill was settled on 10-10-2012. When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting final bills that too in the absence of exercising duress or coercion on the

contractee by the appellant contractor. In our considered view, the plea raised by the contractee company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not, therefore, justified in exercising power under Section 11 of the Act."

12 In the case of **Ambica Construction (supra)**, relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court held as under:

"16. Since we are called upon to consider the efficacy of Clause 43(2) of the General Conditions of Contract with reference to the subject-matter of the present appeals, the same is set out hereinbelow:

"43. (2) Signing of 'no-claim' certificate.—The contractor shall not be entitled to make any claim whatsoever against the Railways under or by virtue of or arising out of this contract, nor shall the Railways entertain or consider

any such claim, if made by the contractor, after he shall have signed a 'no-claim' certificate in favour of the Railways, in such form as shall be required by the Railways, after the works are finally measured up. The contractor shall be debarred from disputing the correctness of the items covered by 'no-claim certificate' or demanding a reference to arbitration in respect thereof."

17. A glance at the said clause will immediately indicate that a no-claim certificate is required to be submitted by a contractor once the works are finally measured up. In the instant case the work was yet to be completed and there is nothing to indicate that the works, as undertaken by the contractor, had been finally measured and on the basis of the same a no-claim certificate had been issued by the appellant. On the other hand, even the first arbitrator, who had been appointed, had come to a finding that no-claim certificate had been given under coercion and duress. It is the Division Bench of the Calcutta High Court which, for the first time, came to a conclusion that such no-claim certificate had not been submitted under

coercion and duress.

18. From the submissions made on behalf of the respective parties and in particular from the submissions made on behalf of the appellant, it is apparent that unless a discharge certificate is given in advance, payment of bills are generally delayed. Although, Clause 43 (2) has been included in the General Conditions of Contract, the same is meant to be a safeguard as against frivolous claims after final measurement. Having regard to the decision in *Reshmi Constructions* [(2004) 2 SCC 663] it can no longer be said that such a clause in the contract would be an absolute bar to a contractor raising claims which are genuine, even after the submission of such no-claim certificate."

13. In the aforesaid case, the work was not completed, whereas in the case in hand, the work was already completed on 14.12.2010 and the final bill was also settled on 12.1.2011 and security deposit on 4.12.2011. The final measurement had already been taken for the work undertaken by the petitioner. The circular issued by the first respondent do apply from 29.5.2012 onwards, not

retrospectively. Therefore, the aforesaid judgment of the Hon'ble Supreme Court would not be helpful to the petitioner.

14. In **M/S Lall Constructions Co. vs The General Manager Northern Railway [MANU/DE/5592/2012]** relied on by the learned counsel for the petitioner, the Delhi High Court held as under:

"20. After carefully considering the rival contentions of the parties and going through the precedents cited at the bar, I am of the opinion that on the facts of the instant case it cannot be said that there was a full and final settlement of the claims of the Petitioner on 14.02.2010 the date on which the Petitioner signed the purported "Supplementary Agreement". I say so for the reason that it is not in dispute that by its letter dated 20th February, 2010 the Final Bill prepared by the Respondent on 12.02.2010 and the aforementioned Supplementary Agreement were forwarded by the Respondent to the Petitioner. The said letter contains mention of the fact that "the PVC Bill is under process of preparation and will take some more time due to non-availability of final price index of RBI Bulletin." It is also not in dispute

that the final PVC Bill, i.e., the Price Variation Bill was prepared on 24.02.2010 by the Respondent and sent to the Accounts Department on 25.02.2010. Subsequent thereto, balance payments of Running Bills were made on 03.03.2010 and security deposit and performance guarantee released post 14.02.2010, on 03.03.2010 and 04.03.2010. Thus, the signing of the Supplementary Agreement to show that the Petitioner had accepted the sums mentioned in the Supplementary Agreement in full and final satisfaction of all its dues and claims was mere eye-wash, as not even all the Bills had been prepared by the Railways on the said date. The refusal of the Respondent to appoint an Arbitrator in view of the Supplementary Agreement, therefore, in my view, is wholly untenable. At the risk of repetition, it is stated that when it is the admitted case of the parties that even the Bills had not been finalized on the date when the Supplementary Agreement was signed by the Petitioner, the said Supplementary Agreement cannot be treated as a bar to the raising of disputes by the Petitioner, who received balance payments subsequent to the date of the

Supplementary Agreement and even raised protest to the PVC Bill prepared subsequent to the execution of the Supplementary Agreement. Even security deposits and performance guarantee were released post signing of the alleged Supplementary Agreement in the month of March, 2010."

15. In the aforesaid case, it is admitted case of the parties therein that even the bills had not been finalised on the date when the supplementary agreement was signed by the petitioner therein. The supplementary agreement cannot be treated as a bar to the raising the disputes by the petitioner therein, who received balance payments subsequent to the date of the supplementary agreement and even raised protest to the PVC bill prepared subsequent to the execution of the supplementary agreement. Even security deposits, performance guarantee were released post signing of the alleged supplementary agreement. Therefore, the facts of the aforesaid case are entirely different from the facts of the case in hand. Therefore, the said judgment is also not helpful to the petitioner.

16. In **UNION OF INDIA AND OTHERS VS. ONKAR NATH BHALLA AND SONS [(2009) 7 SCC 350]** relied upon by the

learned counsel for the respondent, the Hon'ble Supreme Court held as under:

"8. In the present case, the appellants made the full and final payment of the final bill and to which the respondent certified by signing the bill without any protest or reservation. The respondent with the intention of receiving further payments, after two years, raised yet another claim and tried to bring up a dispute. And when the claim was denied by the appellants, the respondent requested to appoint an arbitrator.

9. Condition 65 of the General Conditions of Contract (IAFW 2249) states that no further claim shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Also Condition 70 states that, all disputes between the parties to the contract shall after written notice by either party to the contract, be referred to the sole arbitration of a serving officer having degree in Engineering or equivalent.

10. While appointing an arbitrator under Section 11 of the

Arbitration and Conciliation Act, 1996, two things must be kept in mind:

(i) That there exists a dispute between the parties to the agreement and that the dispute is alive.

(ii) Secondly, an arbitrator must be appointed as per the terms and conditions of the agreement and as per the need of the dispute.

11. It is the specific case of the appellants that the respondent could not have raised yet another claim, as the respondent after signing on the final bill without any protest or reservation has waived its right as per the conditions of the contract. The Court without considering that whether any dispute exists between the parties, could not have appointed an arbitrator."

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17. Therefore, in the facts of the case in hand, the petitioner has completed the work on 14.12.2010 as per the terms and conditions of the agreement, dated 15.2.2010. By proceedings dated 4.2.2011, the second respondent passed an order directing to release the final bill, Security deposit, bank guarantee, etc. on the request made by the claimant by letter, dated 3.2.2011. The petitioner

made request on 25.7.2012 to settle the outstanding price escalation by relying upon the proceedings issued by the General Manager of the respondent Railway, dated 29.5.2012. On the allegation made by the petitioner that the contractors were discriminated in payment of price escalation whereas similarly placed contractors were paid escalation price, the learned Arbitrator has given a reason that the agreement made between the petitioner and the respondent Railway is different from the other contractor who have paid price escalation. Further, the Arbitrator has rightly given a finding that the proceedings extending PVC to the contract with prospective effect i.e. with effect from 29.5.2012, whereas based on the "No claim certificate", final bill, security deposit and bank guarantee were released in the year 2011 itself. In so far as the allegation of misconduct made against the Arbitrator cannot be accepted since there is no material has been placed before this Court to substantiate the said allegation and therefore, the same is liable to be rejected.

18. The scope of interference by this Court under Section 34 of the Arbitration and Conciliation Act, in the award passed by the Arbitrator is very limited. The

Division Bench of this Court in the case of **"Project Director, Tamil Nadu Road Sector Project II Vs. M/s.RNS Infrastructure Ltd- GPL (JC) and Others (O.S.A No.301 of 2017 and C.M.P. No.18730 of 2017)** held as follows:

"20. The scope for interference to an Arbitration award is very limited. Unless and until the applicant satisfies the requirements of Section 34 of the Act, the Arbitration Award cannot be set aside by this Court.

21. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, to an Arbitral Award is covered by the decision of Hon'ble Supreme Court in

(a) Oil & Natural Gas Corporation Ltd., Vs. Saw Pipes Limited reported in (2003) 5 SCC 705, wherein it was held that the Court can set aside the award, if -

1) It is contrary to:-

(a) fundamental policy of Indian Law; (or)

(b) Interest of India; (or)

(c) Justice and morality.

2) It is patently illegal

3) *It is so unfair and unreasonable that it shocks the conscience of the Court.*

19. The Division Bench of the Delhi High Court in its recent decision dated 25.09.2017 in the case of **OGENE SYSTEMS INDIA PVT., LTD., VS. TECHNOLOGY DEVELOPMENT BOARD REPORTED IN 2017 SCC ON-LINE DL 11136** delineated the following propositions after considering all the decisions of the Hon'ble Supreme Court relating to the scope of Section 34 of Arbitration and Conciliation Act right from **RENUSAGAR POWER COMPANY 1994 SUPP(1) SCC 644 TO THE RECENT ASSOCIATED BUILDERS VS. DDA (2015) 3 SCC 49.**

(i) *The four reasons motivating the legislation of the Act, in 1996 were:-*

(a) *to provide for a fair and efficient arbitral procedure,*

(b) *to provide for the passing of reasoned awards*

(c) *to ensure that the arbitrator does not transgress his jurisdiction, and*

(d) *to minimize supervision, by Courts, in the arbitral process.*

(ii) *The merits of the award are required to be examined only in certain*

specified circumstances, for examining whether the award is in conflict with the public policy of India.

(iii) An award would be regarded as conflicting with the public policy of India if:-

(a) It is contrary to the fundamental policy of Indian Law

(b) It is contrary to the interest of India

(c) It is contrary to justice or illegal, or

(d) It is patently illegal, or

(e) It is so perverse, irrational, unfair, or unreasonable that it shocks the conscience of the Court.

On the facts of the case in hand, following the judgment in **ONGC MANGALORE PETROCHEMICALS LTD. VS. ANS CONSTRUCTIONS LTD. AND ANOTHER [(2018) 3 SCC 373]** no satisfactory grounds raised by the petitioner to interfere with the award passed by the Arbitrator. The award passed by the Arbitrator cannot be termed as perverse nor there is any error or illegality in the award passed by the Arbitrator. Therefore, this Court is not inclined to interfere with the award passed by the Arbitrator.

20. For the reasons stated above and in the light of the decisions cited supra, original petition is dismissed. No costs.

Sd/-D.K.K.J

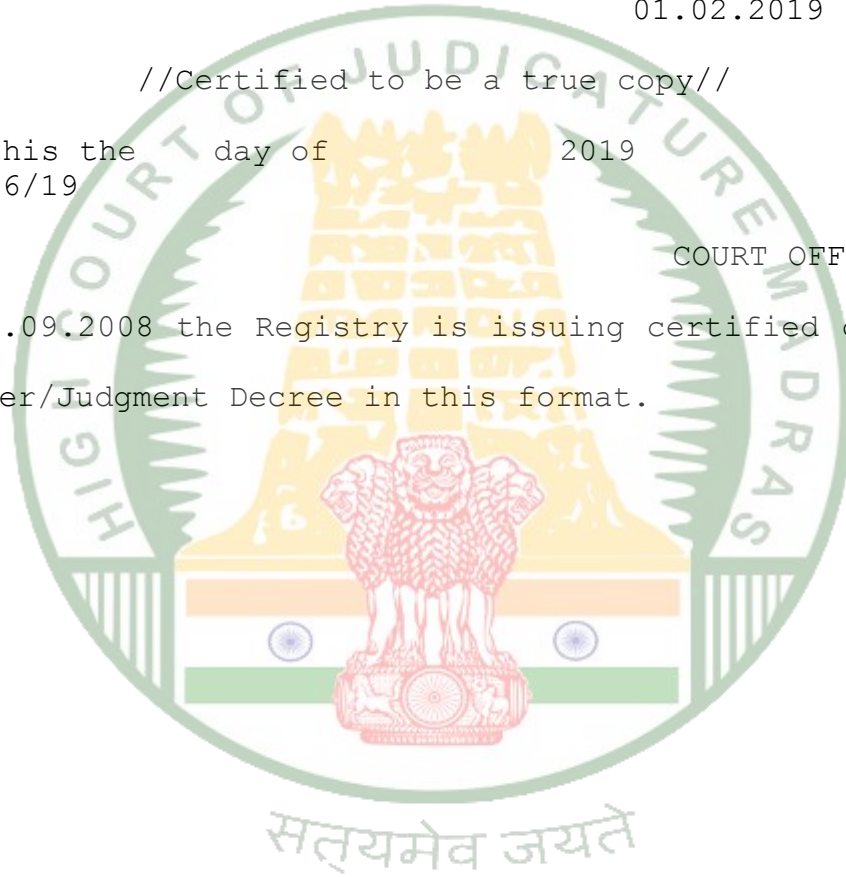
01.02.2019

//Certified to be a true copy//

Dated this the day of 2019
JJ 26/06/19

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