

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM :**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR**

**Original Petition No.654 of 2016 &
Application No.4783 of 2016**

Union of India,
rep. By Chief Engineer,
Chennai Zone, Island Grounds,
Chennai – 600 009.

.. Petitioner

Vs.

M/s.Saravana Constructions Pvt Ltd.,
No.155-B, Skanda Nivas,
4th Main Defence Colony,
Bangalore – 560 038.

.. Respondent

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitration Award dated 31.03.2016 passed by the sole Arbitrator.

Petitioner : Mr.A.Kumaraguru, SPC

Respondent : Mr.Sriram

ORDER

Challenge has been made in this petition as against the award passed by the Sole Arbitrator dated 31.03.2016.

2. The brief facts leading to the filing of this Original Petition is as follows :

A Contract for provision of Ancillary Accommodation for Military Hospital (Phase III) at Chennai was executed between the petitioner and the respondent on 13.12.2002 and the value of the Contract is Rs.6,96,48,539.86. The period for completion of the Contract is 24 months, i.e., from 09.01.2003 to 08.01.2005. Since there is some delay in completion of the Contract, extension of time was sought by the respondent by letters dated 24.06.2004 and 22.11.2004. But, extension was not granted by the petitioners. However, the petitioner permitted the respondent to complete the work beyond the Contract period by their letter dated 16.12.2005, before termination of the contract. The contract was terminated with effect from 16.01.2006.

3. The matter was referred to Arbitration proceedings and a claim has been raised for a sum of Rs.3,58,15,161/-. The petitioner has also raised a counter claim on various heads for a sum of Rs.5,05,08,533.50 and the Sole Arbitrator, Mr.N.D.Bhagtkar, Chief Engineer was appointed and the claim statement and defence statement have been filed before the Arbitrator. The learned Arbitrator assessed the entire evidence and ultimately passed an award for a sum of Rs.54,67,606/-. However, rejected the counter claim. As against which, the present Original Petition has been filed.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the Award.

5. The contention of the learned counsel for the petitioner is that the Award passed by the Arbitrator is beyond the scope of the contract and the Arbitrator ought to have rejected the claim of the petitioner without any reason and the Arbitrator has failed to consider the time fixed in the agreement for completion of the work. The Arbitrator exceeded the jurisdiction and the reasons given for rejecting the petitioner's counter claim is baseless. Hence, submitted that the Award is liable to be set aside.

6. The learned counsel for the respondent submitted that the Chief Engineer has considered the documents and the evidence and nature of the work and held that the termination of the Contract by the petitioner is not correct and awarded compensation based on the work carried out by the respondent. The Award is well reasoned and merely because the Arbitrator has interpreted the contract reasonably, that itself is not a ground to interfere with the Award. The scope under section 34 for interfering with the Award is very limited in view of the various settled provisions of the judgments of the Honourable Apex Court and this Court and prayed for dismissal of this petition.

7. On a careful perusal of the entire Award and the counter claim raised by the petitioner, I am of the view that the Arbitrator, being a technical person, assessed the evidence reasonably and interpreted the contract in a reasonable manner and the parties are bound by the decision of the Arbitrator. Merely because, the Arbitrator has interpreted the contract, it cannot be said that it is beyond the scope of the Contract.

8. It is now well settled that the award can be interfered only when the grounds set out under Section 34 of the Arbitration Act is made out. A perusal of the entire award, there is no patent illegality which goes into the root of the matter. Similarly, to contend that there is violation of public policy, I find no materials available on record. Scope of interference under Section 34 of the Arbitration and Conciliation Act 1996 is discussed in ***Oil and Natural Gas Corporation Ltd., v. Saw Pipes Ltd., [2003] (5) SCC 705***, wherein the Honourable Apex Court has held that an Award can be set aside if it is contrary to:

- a) fundamental policy of Indian law; or
- b) the interest of India; or
- c) justice or morality; or
- d) if it is patently illegal

Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

9. In a subsequent judgment in **McDermott International Tnc., v. Burn Standard Co.,Ltd., [2006 (11) SCC 181]** when the Apex Court explained the term patent illegality and held that patent illegality must go to the root of the matter. Public Policy violation should be so unfair and unreasonable as to shock the conscience of the Court. The supervisory role of the Court under Section 34 is to be kept at a minimum level and interference is envisaged only in case of fraud or bias, violation of natural justice, etc., If the Arbitrator has gone contrary to or beyond the express of law of the contract or granted relief in the matter not in dispute that would come within the purview of Section-34 of the Arbitration and Conciliation Act 1996.

10 A Division Bench of this Court in **Puravankara Projects Limited v. Mrs.Ranjani Venkatraman Ganesh and Another [2018 (6) MLJ 588]** also followed the above judgment of the Apex court and held that only in the circumstances envisaged under the decision of the Apex Court the Award can be interfered.

10. In **Swan Gold Mining Ltd., v. Hindustan Copper Ltd reported in 2015(5) SCC 739** the Honourable Apex Court has held as follows:

"12. [Section 34](#) of the Arbitration and [Conciliation Act](#), 1996 corresponds to [Section 30](#) of the Arbitration Act, 1940 making a provision for setting aside the arbitral award.

In terms of sub-section (2) of [Section 34](#) of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.

13. It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.

21. Mr. Sharan, learned senior counsel appearing for the appellant, also challenged the arbitral award on the ground that the same is in conflict with the public policy of India. We do not find any substance in the said submission. This Court, in the case of Oil and Natural Gas Corporation Ltd. (supra), observed that the term 'public policy of India' is required to be interpreted in the context of jurisdiction of the Court where the validity of award is challenged before it

becomes final and executable. The Court held that an award can be set aside if it is contrary to fundamental policy of Indian law or the interest of India, or if there is patent illegality. In our view, the said decision will not in any way come into rescue of the appellant. As noticed above, the parties have entered into concluded contract, agreeing terms and conditions of the said contract, which was finally acted upon. In such a case, the parties to the said contract cannot back out and challenge the award on the ground that the same is against the public policy. Even assuming the ground available to the appellant, the award cannot be set aside as because it is not contrary to fundamental policy of Indian law or against the interest of India or on the ground of patent illegality.

22. The words "public policy" or "opposed to public policy", find reference in [Section 23](#) of the Contract Act and also [Section 34 \(2\)\(b\)\(ii\)](#) of the Arbitration and Conciliation Act, 1996. As stated above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

11. Admittedly, the Arbitrator is bound to take decision on proper appreciation of evidence and also appreciation of the Contract reasonably. The Arbitrator being a technical person, assessed the entire evidence, particularly the

nature of the work assigned, permission accorded to the respondent for completion of work and completion of work. When the petitioner themselves have permitted the petitioner to complete the work, at this stage, sudden termination of the Contract will certainly have a serious impact over the work done by the contractor. Therefore, this Court does not find any perversity or patent illegality in the well reasoned Order of the Arbitrator to interfere the same.

12. Accordingly, this Original Petition is dismissed. Consequently, the connection application is closed. No cost.

18.06.2019

Index : Yes/ No

Internet : Yes

Speaking/Non-speaking Order

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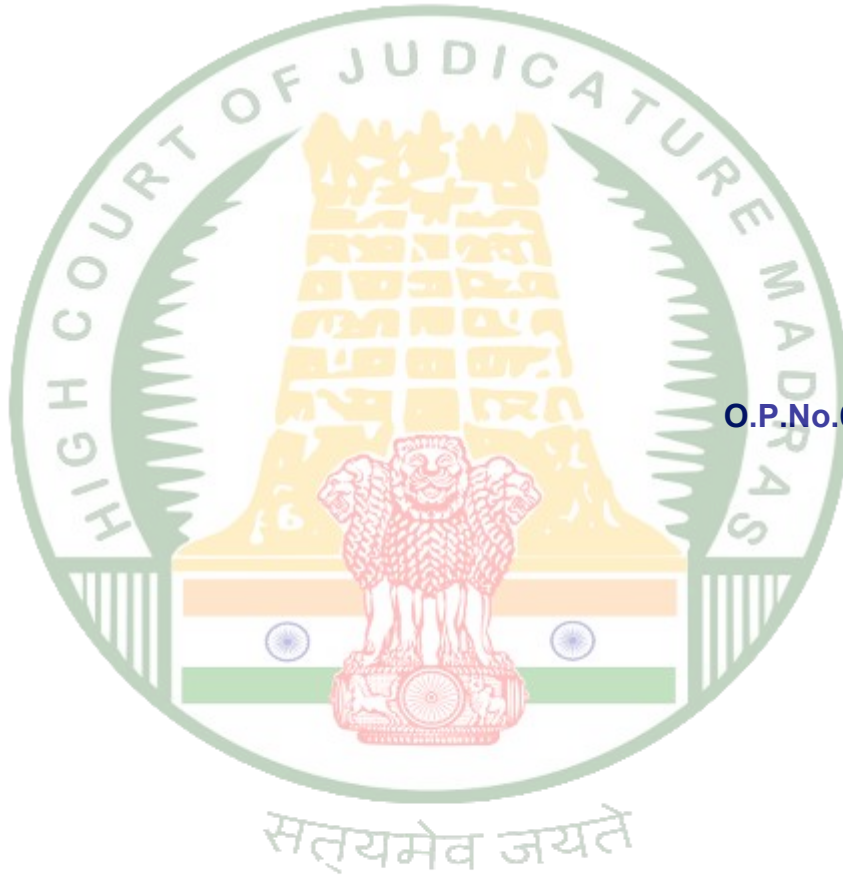
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N.SATHISH KUMAR, J.

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