

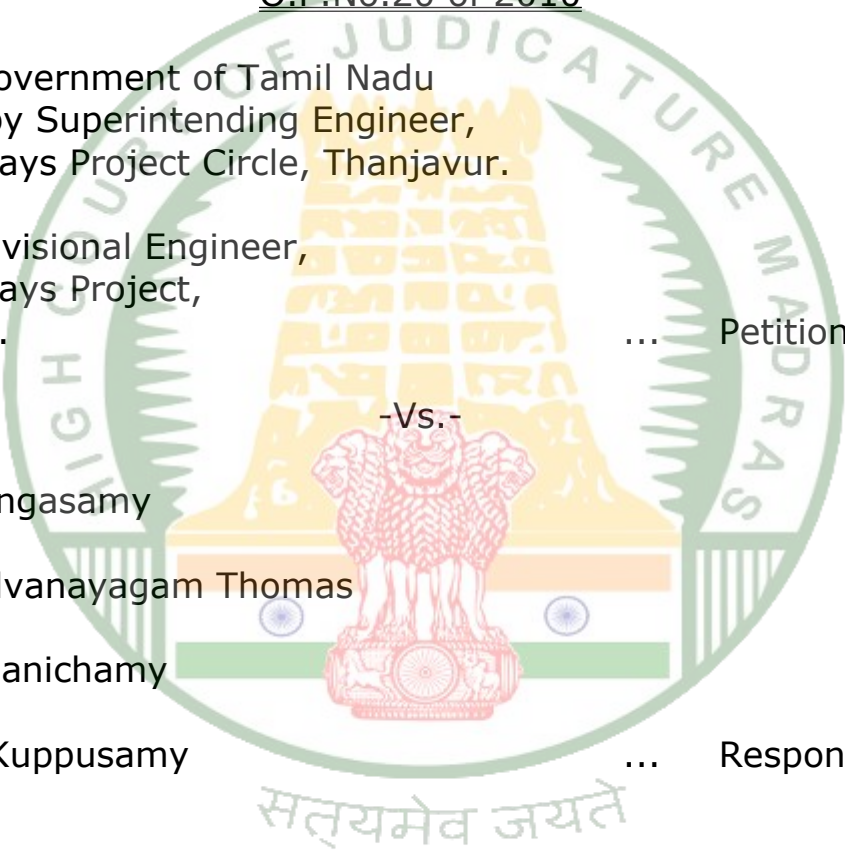
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.20 of 2010

- 
- 1.The Government of Tamil Nadu
Rep. by Superintending Engineer,
Highways Project Circle, Thanjavur.
- 2.The Divisional Engineer,
Highways Project,
Trichy. ... Petitioners
- Vs.-
1. A. Rangasamy
2. S. Selvanayagam Thomas
3. K. Palanichamy
4. S.S. Kuppusamy ... Respondents
- सत्यमेव जयते

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the impugned award passed by the Arbitrator, dated 23.04.2009.

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

For Respondent 1 : Mr.Y.Prakash

For Respondents 2-4 : No Appearance

ORDER

The respondents before the arbitral tribunal has challenged the award passed against them in and by which they have been directed to pay interest on delayed payments to the 1st respondent herein as well as compensation for loss of overhead charges and erosion of profits together with interest to the 1st respondent. The facts in brief necessary for considering the challenge to the award are herein below narrated.

2. The 1st respondent herein had invoked arbitral proceedings for recovery of sum of Rs.11,30,591/- towards interest on account of the delay in making the final payment. As against the bill raised on 30.01.2000, the final payment was made only on 04.03.2003. A sum of Rs.47,57,000/- was

claimed towards compensation for loss of overhead charges and profit on account of the contract being delayed. The 1st respondent had also claimed interest at 18% per annum on the above two claims from 04.03.2003 till date of actual payment.

Claim and Counter Statement:

3. The 1st respondent herein had contended that on 30.03.1996, pursuant to their being awarded a contract for the work of forming a link road connecting Salai Road and Karur Bypass road Trichy city, an agreement was entered into between them and the Superintending Engineer (H) TNUDP Circle, Madurai. The total contract price for the project was arrived at a sum of Rs.3,46,02,500/- and the contract was agreed to be completed within a period of fifteen months from the date of the signing of the agreement. The site was also handed over on the said date and the 1st respondent would contend that they had commenced work in April 1996.

4. However, they would contend that they were unable to proceed with the work since there was a delay in handing over the entire site as there were land acquisition proceedings pending and the land owners were seeking higher compensation. The proceedings were pending before the Courts at Trichy as well as the High Court of Madras. The 1st respondent would further contend that in addition to the entire site not being handed over to them, there were changes in the design for the embankment on Karur side formation and they were also asked to undertake cross drainage work. These were works not originally contemplated. As a result the 1st respondent had to undertake additional works not originally contemplated. The 1st respondent would submit that all this contributed to the delay of over 22 months and the delay was solely attributable to the petitioners herein.

5. Ultimately, the work entrusted was completed to the satisfaction of the Competent Authority, namely, the Special Chief Engineer (H) Project I Circle, Coimbatore on 30.01.2000.

On 24.02.2000, the 1st respondent was also issued with the completion certificate. The 1st respondent would further contend that the final bill was submitted on 30.01.2000. The final bill was inclusive of the new items of works, increase in quantity and deletion as directed by the Department. Ultimately payments were received by the 1st respondent on the following dates.

a) Rs.31,02,427/- on 12.03.2001.

b) Rs.13,15,358/- on 04.03.2003.

c) Rs.19,71,170/- on 04.03.2003.

6. The 1st respondent would contend that these payments were received by them under protest since there was enormous delay in making payments contrary to the terms of the agreement. The agreement had clearly stipulated that bills had to be cleared within a period of 45 days of their submissions. The 1st respondent would submit that the delay in executing the contract was only on account of the fact that the petitioners had not handed over the site on time. The 1st respondent would also

contend that by reason of this delay the 1st respondent was forced to remain on site retaining his workmen. The 1st respondent would submit that he sustained enormous burden of overheads, loss of money circulation and erosion of eligible profit solely due to the prolongation of the contract period for 22 months. The 1st respondent was forced to remain at site and maintain his entire establishment for this period of 22 months. The 1st respondent would submit that despite several letters and reminders the petitioners have not come forward to settle the dues of the 1st respondent. The 1st respondent had raised a claim of Rs.47.57 lakhs vide his letter dated 06.05.2003 where the 1st respondent had informed his intent to invoke the arbitration clause if his claim was not settled. In this letter for the first time demand under the head of overheads and loss of profits was asked for. There was no response from the petitioners thereby constraining him to invoke the arbitration clause to seek resolution of the disputes. The 1st respondent had raised claims under two heads:

a) For the loss of profits and overhead charges

b) For interest on the belated payments.

7. The petitioners filed their counter statement inter alia contending that there is a delay in the invocation of the arbitral proceedings since the contract even according to the 1st respondent had been completed on 30.01.2000. The petitioners would further contend that despite frequent reminders the 1st respondent had not come forward to furnish the programme of work. It is the further contention of the petitioners that the 1st respondent despite being in possession of free and unencumbered land had not commenced the work on these lands also. They further contended that the 1st respondent was very much aware about the acquisition proceedings and that apart the acquisition proceedings related only to compensation and did not in any manner fetter the respondent's work on site. In fact even in the letter seeking extension the 1st respondent had not cited the pendency of the land acquisition proceedings as a ground for extension. Therefore the petitioners would contend that the pendency of the acquisition proceedings was

only an after thought.

8. The petitioners would contend that it was the 1st respondent who had committed a delay and having done so he cannot seek compensation and interest from the petitioners. As regards the overhead charge and loss of money, it is the case of the petitioners, that the 1st respondent had been paid with a sum of Rs.25,54,922/- towards over labor and a sum of Rs.9,25,735/- towards escalation in the price of materials. Therefore as per the terms of the contract the 1st respondent had been paid compensation for his workers and for escalation in price. That apart the petitioners have also contended that the contract itself had come to an end on 30.01.2000. The claim with reference to overhead charges and profits has been made for the first time by the 1st respondent vide their letter dated 06.05.2003 much beyond the period of limitation and nearly five years after the cause of action. Therefore, the petitioners would contend that no amounts were payable to the 1st respondent under these heads.

9. The petitioners would further contend that there were defects in the laying of the pavement and a notice had been issued to the 1st respondent for its rectification invoking the terms of the agreement. These defects were left unattended till March, 2003. On account of this failure to rectify the defects the Chief Engineer in his discretion had withheld the payments. Thereafter, since the 1st respondent had rectified the defects, the payment had been made. Therefore, there was no question of there being a delay on the part of the petitioners in clearing the bills and therefore they were not liable to pay interest.

10. The petitioners would submit that it is only during the arbitral proceedings that the delay in handing over the site on account of the land acquisition proceedings had been raised for the first time. If the 1st respondent was aggrieved by the same, it was well open to him to withdraw from the contract citing non-availability of the lands at the inception of the contract. However, without withdrawing from the contract the

1st respondent has proceeded with the contract and having done so, he cannot be permitted to raise the plea that there was a delay in handing over the site. The petitioners therefore sought for the dismissal of the claim.

11. In response to this counter the 1st respondent had come forward with a further statement in which he had contended that although in the month of April 1996, work has commenced, however the 1st respondent has been periodically informing the petitioners about the non-availability of the land for them to proceed with work. It was only on account of the petitioners' inability to make available the land that the work had been pushed back. The delay therefore cannot be attributed to the 1st respondent. The 1st respondent has further contended that land acquisition proceedings were pending till March, 1998. Further, though the land acquisition proceedings concluded in March 1998, it was only on 19.11.1998 that the 1st respondent was informed about the conclusion of acquisition proceedings and directed to proceed

with the work.

12. The 1st respondent would further contend that the petitioners have been time and again corresponding with the 1st respondent about non-availability of the site for him to proceed with the work. The 1st respondent would further contend that he had to therefore apply for extension in December 1998 and November 1999. Therefore, the petitioners cannot contend that the 1st respondent is not entitled to interest or compensation. The 1st respondent would further contend that the petitioners cannot withhold the legitimate payment once completion certificate is issued. On 30.01.2000, a total of Rs.64,00,000/- was due.

13. On 07.10.2000 a legal notice was issued by the 1st respondent calling upon the petitioners to make payment. However, there was no response. The 1st respondent would once again reiterate that he is entitled to be compensated as detailed in the claim statement. A counter was filed to the

above further statement by the petitioners herein reiterating the contentions raised in their counter.

Arbitral Tribunal:

14. The arbitral Tribunal passed an award dated 23.04.2009 and allowed a sum of Rs.38,00,245/- towards loss of overhead charges and erosion of profits with effect from 04.03.2003. This constituted 15% of the outstanding value of contract during the extended period of 31 months. The arbitral Tribunal consisting of three members had also come to the conclusion that the 1st respondent is entitled to interest for the delay in payment of the bills as on 04.03.2003 at the rate of 12% per annum. In all an award for a sum of Rs.47,57,000/- was granted together with interest. It is this award that is the subject matter of the challenge before this Court.

Submissions:

15. Mr.Sricharan Rangarajan, learned Special Government Pleader (CS), has submitted his oral arguments and reduced

the arguments into written submissions. The petitioners have broadly submitted their arguments under the following heads:

a) The claim of loss of overhead and profits barred by limitation:

Under this head it is the case of the petitioners that the said claim is clearly barred by limitation. The cause of action for the claim, as pleaded by the 1st respondent, arose on account of the fact that the 1st respondent was constrained to retain his work force at the site since the petitioners were not able to hand over the site to them. The next relevant date is 30.01.2000 when the final bill was submitted and 24.02.2000 when the petitioners have issued the completion certificate. The Special Government Pleader would further contend that even if payments were made in relation to other claims in a staggered manner on various dates till March, 2003 the same will not help to save limitation under this head as the cause of action for this claim arose between the date of the agreement and the handing over of the entire site.

He would further argue that Section 18 or Section 19 of the Limitation Act will not come to the rescue of the 1st respondent in the instant case. He would further contend that despite the claim for damages being beyond the period of limitation, which is evident from the records, the Tribunal has not framed an issue in this regard. The Tribunal has totally brushed aside this contention which is a legal plea that has been taken by the petitioners. He would therefore contend that the claim under the head of overhead charges and profits is clearly barred by limitation and the award therefore suffers from a patent illegality.

b) Calculation of loss of overhead and profits by the Tribunal is erroneous:

The learned Special Government Pleader would contend that the amounts claimed under this head appears to be totally misdirected. The compensation was claimed from the period 04.03.2003 till 01.06.2007 with interest thereon. Even according to the 1st respondent, the final payment had been

made by 04.03.2003. The Special Government Pleader would submit that it is only on 06.05.2003 for the first time, the 1st respondent had made a claim under this head. The project had been completed even as early as on 30.01.2000. While so, it is inconceivable as to how the tribunal had awarded damages under this head for the period 2003 – 2007. That apart, the Tribunal had exceed its Jurisdiction by awarding interest on the above sum.

He would also point out that though claim under this head was made for a period of twenty two months the tribunal has calculated damages for a period of thirty one months. He would therefore contend that the 1st respondent is not entitled to any compensation under this head.

Therefore the learned counsel would submit that the award under this head suffers from a patent illegality since there has been a total non application of mind on the part of the Tribunal in not considering the fact that the entire delay cannot be attributed to the petitioners. Infact the Tribunal had observed that the 1st respondent had also contributed to the delay by

adopting a lethargic attitude in not proceeding to conclude the work entrusted to him. This had also been a cause for the escalation of cost of material, labour and fuel for the extended period. The arbitral tribunal has not apportioned this delay and further the entire claim under head of loss of profit and overhead charges is misconceived particularly when the 1st respondent has been paid escalation of costs and labour charges.

16. The learned Special Government Pleader would rely upon the Judgement reported in **2004 (5) SCC 109 - Bharat Coking Coal Ltd Vs. L.K.Ahuja**, to contend that where price escalation has been granted for the extended period then the contractor cannot claim for loss of profit and overhead charges especially when prices escalation has been granted for the extended period.

Interest on delayed Payment:

The final ground of challenge was on the interest which

has been awarded pendente lite as well as future interest on the delayed payment. It is the argument of the learned Special Government Pleader that the 1st respondent has claimed interest on the footing that the defect liability period was for one year. The learned Special Government Pleader would contend that the defect liability period was four years from the date of taking over as is evident from the Appendix to the general conditions of the Tender. Since the retention money was returned on 04.03.2003 the 1st respondent cannot claim any interest either pendente lite or future interest. He would also contend that once the final bill has been cleared on 04.03.2003, the 1st respondent is not entitled to future interest. He would therefore seek to have the award set aside.

17. The learned counsel for the 1st respondent / claimant had also submitted oral arguments and written arguments. The defence to the plea of limitation is that the same had not been raised before the arbitration Tribunal and therefore cannot be raised in the Section 34 application. The counsel for the 1st

respondent would further contend that no documents have been placed before the Tribunal to prove the issue of limitation. He would further contend that, had the plea been raised by the 1st respondent / claimant before the Arbitral Tribunal the 1st respondent would have submitted his objections to the same at the first instance.

18. He would rely on the Judgment reported in **2010 (6) MLJ 124 - Tamil Nadu Water Supply and Drainage Board Vs. N. Abdul Kareem and others** and the Judgment of the Honorable Delhi High Court in **M/s.Raj Kishan & Company Vs. National Thermal Power Corporation Limited** to contend that the plea of limitation cannot be taken for the first time in the Court and that necessary pleadings should have been made before the arbitral Tribunal. He would further contend that having failed to raise this plea before the tribunal the Courts can presume that the petitioners have waived the plea.

19. With reference to the calculation under the head loss of overhead charges and profits, the arguments put forward by the 1st respondent is that the compensation is estimated only as on 04.03.2003 and the interest on the said sum has been awarded thereafter. It is not a case that damages had been calculated thereafter.

20. As regards the arguments that price escalation cannot be granted for the extended period in view of the decision reported in **2004 (5) SCC 109** the learned counsel would contend that the 1st respondent has been deprived of the opportunity of earning profits on account of the delay. It is his contention that payment of escalation charges will not preclude the 1st respondent from claiming under this head in view of Section 73 of the Contract Act. The learned counsel for the 1st respondent once again reiterated that the defect liability period was one year and not four years from the date of issue of completion certificate or taking over by the Engineer. In the light of the above, the interest awarded on the belated

payments on the retention money was clearly in order. The 1st respondent would contend that the petitioners have not made out any case for interference under Section 34 and would rely on the following Judgments:

- a) **2006 (11) SCC 181** - McDermott International Inc. Vs. Burn Standard Co. Ltd and others
- b) **2009 (10) SCC 63** - Steel Authority of India Limited Vs. Gupta Brother Steel Tubes Limited.
- c) **2011 (5) SCC 758** - J.G. Engineer (P) Ltd. Vs. Union of India
- d) **2011 (10) SCC 573** - M/s.MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan.
- e) **2015 (3) SCC 49** - Associate Builders Vs. Delhi Development Authority.

21. These Judgments have been cited in support of the arguments that the case on hand does not contain any grounds contemplated under Section 34 of the Act and therefore deserves to be sustained. The counsel for the 1st respondent

would also rely upon the Judgment reported in **2012 (1) SCC 594 - P.R.Shah, Shares and Stock Brockers Private Limited Vs. B.H.H. Securities Private Limited and others** to contend that this Court sitting under section 34 cannot re-assess or re-appreciate the evidence on record. He would therefore contend that the award is in order and cannot be interfered with.

Discussion:

22. Heard the counsel and perused the papers. The arbitral award broadly consists of two headings.

a) Compensation of loss of overhead charges and erosion of profit due to prolongation of contract period.

The arbitral tribunal in order to analyse the above contention has divided the delay into two parts:

i) Delay on account of the pendency of the land acquisition proceedings.

ii) Delay on account of construction of ROA (Railway Over Bridge).

23. From the discussion in the award as well as a perusal of the documents particularly Ex.R.31 and Ex.R.8 would clearly show that although the contract had been entrusted to the 1st respondent on 30.03.1996 the land over which the work had to be executed was handed over to its entire length only in the month of March 1998. The following dates and events would indicate the commencement of the contract and its completion:

S.No.	Date	Description
1	28.12.1994	Tender documents issued by the petitioners
2	02.03.1996	Letter of acceptance of tender issued by petitioners to 1 st respondent
3	13.03.1996	Agreement between the Superintending Engineer (H), TNUDP Circle, Madurai and A.Rangasamy, 1 st respondent.
4	30.03.1996	Concluded Agreement between Superintending Engineer (H), TNUDP Circle, Madurai and A.Rangasamy, 1 st respondent, registered as CR No.21/95-96
5	30.03.1996	Handing over and taking over of the site between the parties
6	29.10.1999 30.11.1999	By 1 st respondent to petitioners – Letter seeking extension of time from 30.11.1999 to 31.01.2000.
7	12.03.1999 15.03.1999	EoT granted imposing penalty
8	30.01.2000	Work was completed and Final bill submitted by the 1 st respondent to the petitioners.

S.No.	Date	Description
9	24.02.2000	Completion Certificate issued by the petitioners to the 1 st respondent.
10	06.05.2003	Claim of loss of profit made by the respondent for the first time along with interest.

24. The 1st respondent has based his claim on the premise that although the letter of acceptance of tender was issued on 02.03.1996 and the agreement entered into on 13.03.1996, the entire extent of land in question, over which the formation of the link road was contemplated was given to them only in the year 1998 on the conclusion of the land acquisition proceedings. The 1st respondent would therefore contend that during the period between 1996 – 1998 though he could not commence the work and thereby utilize the service of his workmen, the 1st respondent was constrained to retain them in the place by paying them salary. Further the 1st respondent was unable to divert them for any other project and the 1st respondent himself could not take up other project as a result of which he had sustained loss.

25. From the above submissions it is clear that the loss of overhead charges and profits was only made for the period between 1996 – 1998 when according to the 1st respondent they were without work. Therefore, the cause of action for making a claim arose even at the inception, namely, from the year 1996 till March 1998. The contract was ultimately completed on 30.01.2000 and the final bill was submitted on the said date. The 1st respondent has failed to raise a claim under this head even when the final bill was raised. Therefore, the claim made in 06.05.2003 is definitely barred by limitation. The cause of action, if any, under this head arose on the date when the 1st respondent was forced to keep his work force idle and not from the year 2003 when the final payment was made by the petitioners to the 1st respondent. The learned arbitrator has not even deemed it fit to frame an issue with reference to limitation which is evident from a mere perusal of the pleadings. Further though the 1st respondent had claimed that for a period of 22 months he was kept idle, the learned Arbitrator would hold that

this was for a period of 31 months.

26. The patent illegality in the award of the learned Arbitrator under this head stems from the fact that he has considered the date of raising of the final bill and the invocation of the arbitral proceedings as the basis for reckoning limitation. The learned Arbitrator has overlooked the fact that the genesis for claiming loss of profits and overhead charges is the period during which the 1st respondent had remained idle without utilizing his work force as the lands had not been made available by the petitioner. This period is between the date of the agreement i.e.30.03.1996 and the handing over of the entire extent i.e. by March 1998. Therefore the time for making a claim commenced in the year 1996 itself. The 1st respondent has first made a claim under this head only on 06.05.2003. The arbitrator has lost sight of the fact that the claim under this head has been raised only when invoking the arbitral clause in the year 2004. The staggered payment of the amounts due under the final bill dated 30.01.2000, by no stretch of

imagination would extend the period of limitation for the claim of damages under the head of overhead charges and loss of profits. An acknowledgment of liability under Section 18 in respect of amounts due under the bills would only extend the period of limitation in respect of amounts due under those bills. The same will not enure to other claims and damages arising out of a breach or violation of the terms of a contract. Any claim for damages or liquidated damages must be made within the period of limitation commencing from the cause of action which gives rise to the claim for damages.

27. Section 21 of the Arbitration and Conciliation Act, 1996 which reads as follows specifies the date of commencement of arbitral proceedings:

*"Commencement of arbitral proceedings.
-Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

This provision clearly provides that Arbitral proceedings are deemed to commence on the date when the respondent receives a request from the petitioners to refer their disputes to Arbitration (**2012 (12) SCC 58 – State of Goa Vs. Praveen Enterprises**). Section 43 (1) clearly provides that the Limitation Act would apply to arbitrations as it applies to proceedings in Court.

28. Though limitation is a mixed question of fact and law, a mere perusal of the dates and events culled out from the records read with the claim statement would clearly show that the claim under this head is barred by limitation. The Arbitrator has committed a patent illegality in presuming that since the request for reference to Arbitration was made in time in so far as it is within a year of the disbursal of the final payment, the claim under the head of overhead charges and loss of profits was also in time. The Arbitrator has totally overlooked the fact that the claim under this head was time barred even on the date of the 1st respondent requesting the petitioner to refer the

dispute to Arbitration.

29. In the Judgment reported in **2008 (2) SCC 444 - J.C.Budhraja Vs. Chairman Orissa Mining Corporation Ltd and another**, where the issue for consideration was similar to the instant case though under 1940 Act. The Honorable Supreme Court has observed as follows:

"29. The arbitrator committed an error apparent on the face of the record and a legal misconduct in holding that the entire claim was within time. His assumption that if the application filed by the contractor in 1980 under [section 8\(2\)](#) of Arbitration Act for appointment of an Arbitrator was in time, all claims made in the claim statement filed before the Arbitrator appointed in such proceeding under [section 8\(2\)](#) are also in time, is patently erroneous and is an error apparent on the face of the record. The reasoning of the arbitrator that on account of the formation of the Committee by OMC

to scrutinize the pending claims in pursuance of the OMC's letter dated 28.10.1978, and the payment of Rs.3,50,000/- on 4.3.1980 in pursuance of the Committee giving its final report on 7.12.1979, every claim of the contract including new claims which were made for the first time in the claim statement filed in 1986 (as contrasted with 'pending claims' considered by OMC), are not barred by limitation, is also an error apparent in the face of the award. Under [section 18](#) an acknowledgement in writing extends the limitation. Under [section 19](#) a payment made on account of a debt, enables a fresh period of limitation being computed. Therefore, the letter of OMC dated 28.10.1978 and the payment of Rs.3,50,000/- by OMC, would result in a fresh period of limitation being computed only in regard to the 'existing debt' in respect of which acknowledgment and payment was made. Admittedly, as at that time, the claim of the contractor was only for a sum of

Rs.50,15,820. Therefore, the letter dated 28.10.1978 and payment on 4.3.1980 extended the limitation only in respect of the claims which were part of the said claim of Rs.50,15,820. Therefore, the fresh claims of Rs.67,64,488/- (out of the total claim of Rs.95,96,616) is barred by limitation and the award made in that behalf is liable to be set aside. Consequently, we hold that only that part of the claim before the Arbitrator which was part of the claim of Rs.50,15,820/- made by the contractor, that was existing or pending as on 28.10.1978 and 4.3.1980, namely Rs.28,32,128 (out of Rs.95,96,616) could have been considered by the Arbitrator."

30. It is not necessary to traverse into other grounds raised by the counsel for the petitioners and the Judgements related there to, in the light of this Court coming to the conclusion that the claim under this head is barred by limitation.

I therefore hold that the award of the arbitrator under this head to the tune of Rs.38,00,245/- is erroneous and liable to be set aside. The award is a patent illegality in as much as the Arbitrator has not considered the issue of limitation which is evident on the face of the record. A question may arise as to whether the award can be set aside in part. The Judgments herein below quoted lays down the principle that if a claim is severable the same principle would apply in the case of awards as well. In the Judgment in **J.C.Budhraj** supra the Honorable Supreme Court has held as follows:

"34.Does it mean that the entire award should be set aside? The answer is no. That part of the award which is valid and separable can be upheld. That part relates to the claims which were validly before the Arbitrator, which were part of the existing or pending claims of Rs.50,15,820 and which were not barred by limitation. As stated above they were the claims which were existing or pending in 1978, 1979 and 1980 (considered by the committee and payment made by OMC) which were carried before the Arbitrator to an extent of

Rs.28,32,128. Only the amounts awarded by the Arbitrator against those claims can be considered as award validly made in Arbitration, falling within jurisdiction. They are clearly severable from the other portions of the award."

31. A full Bench of the Bombay High Court in its Judgment reported in **2010 (1) Mh.L.J. 547 - R.S.Jiwani Vs. Ircon International Ltd, Mumbai**, has held that the principles of severability can also be applied to an award. They have observed so in paragraph no.30 which would read as follows:

"30. If the principles of severability can be applied to a contract on one hand and even to a statute on the other hand, we fail to see any reason why it cannot be applied to a judgment or an award containing resolution of the disputes of the parties providing them such relief as they may be entitled to in the facts of the case. It will be more so, when there is no statutory prohibition to apply principle of severability. We are unable to contribute to the view

that the power vested in the Court under [Section 34\(1\)](#) and (2) should be construed rigidly and restrictedly so that the Court would have no power to set aside an award partially. The word "set aside" cannot be construed as to 'only to set aside an award wholly', as it will neither be permissible nor proper for the Court to add these words to the language of Section which had vested discretion in the Court. Absence of a specific language further supported by the fact that the very purpose and object of the Act is expeditious disposal of the arbitration cases by not delaying the proceedings before the Court would support our view otherwise the object of [Arbitration Act](#) would stand defeated and frustrated."

b) Interest on delayed payment:

32. The next head under which the award has been granted is the interest on delayed payment to the contractor /

1st respondent herein. It is an admitted fact that the final bill had been submitted by the 1st respondent on 30.01.2000 and the same has been paid in a staggered manner and the last payment was only on 04.03.2003. It is also evident from the terms of the tender with reference to clause 2.27.4 which stipulates that the retention money should be refunded within a period of one year after the taking over certificate by the Engineer for other structures like Bridges the observation period would be longer. In the instant case the work involved was the formation of link road. It is also seen that though the general conditions contemplated the issuance of taking over certificate such system has not been followed in the instant contract and the certificate of the Engineer was the basis on which the bills were being cleared. Admittedly there has been a delay in the payment and it is also an admitted case that the defects have been attended to. This is evident from the fact that the petitioner had ultimately paid the final bill on 04.03.2003. The Arbitral Tribunal has arrived at the conclusion after considering and analyzing the evidence on record and this Court exercising

Jurisdiction under Section 34 of the Act cannot re-appreciate the award.

33. In these circumstances, there is no infirmity or perversity in the finding of the learned arbitrator. Therefore, I do not find any ground for interfering with the award in so far it related to the second heading, namely, Claim for the payment of penal interest for the delay in payment of final bill.

34. In fine, the award is set aside with reference to compensation granted under the head of loss of overhead charges and erosion of profit. However it is confirmed with reference to the interest granted on the delayed payment of money to the contract. The Original Petition is therefore partly allowed. Consequently, connected Application is also closed.

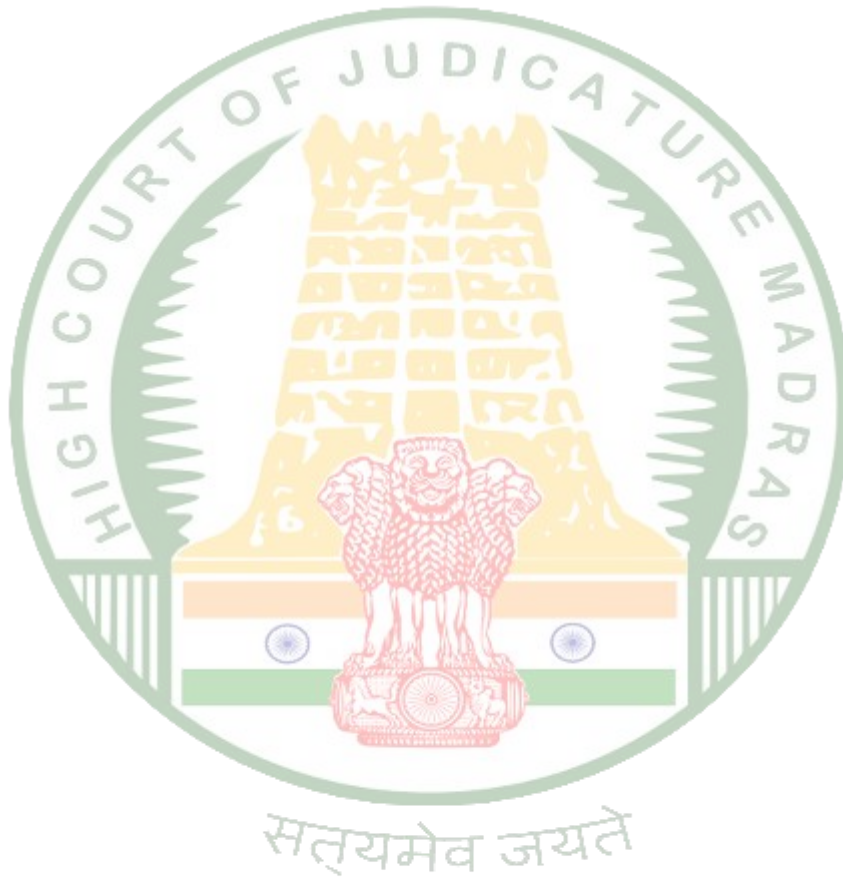
No costs.

WEB COPY

06.02.2020

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking

kan

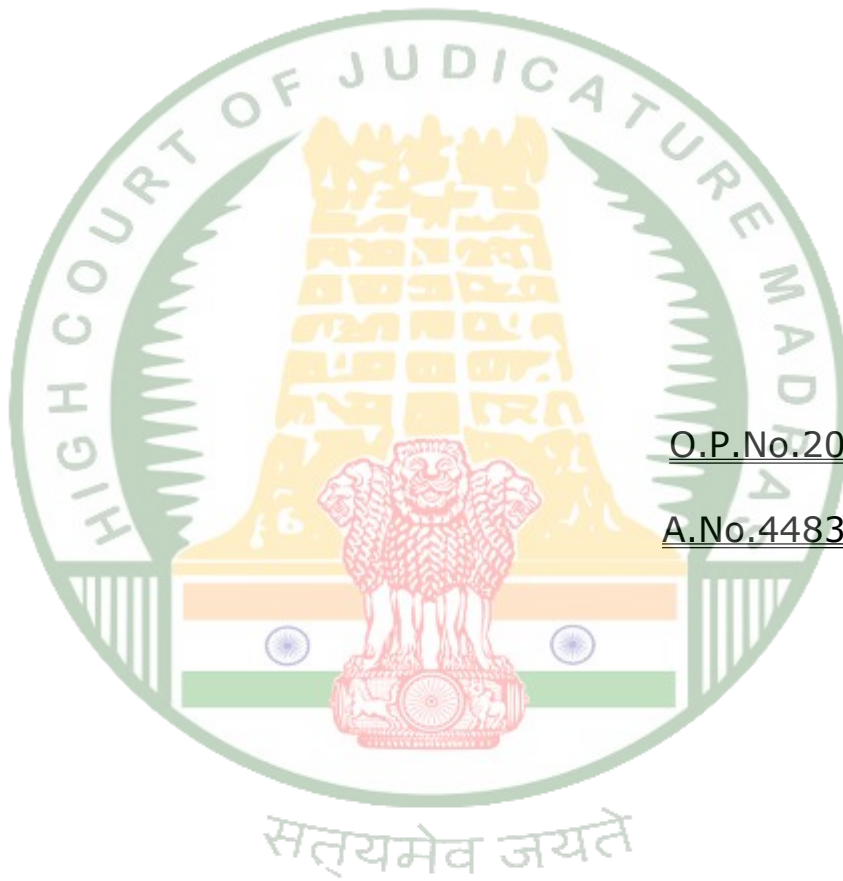


WEB COPY

O.P.No.20 of 2010

P.T. ASHA. J,

kan



O.P.No.20 of 2010
&
A.No.4483 of 2011

WEB COPY

06.02.2020