

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 26TH DAY OF MAY 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

O.A. No.194 of 2019

and

A.No. 56 of 2021

In the matter of Arbitration And
Conciliation Act, 1996

and

In the matter of The Pioneer
Engineering Syndicate and TWAD
Board.

Tamil Nadu Water Supply and Drainage Board,
Rep. by its Managing Director,
31, Kamarajar Salai,
Chepauk,
Chennai - 600 005.

... Applicant in both the
Applications

vs

1. The Pioneer Engineering Syndicate,
Engineers and Contractors,
6th Floor, Pioneer House,
Samajiguda, Hyderabad.

2. N. Pushpalatha,
W/o. Mr. N. Manishankar,
House No. 6-9-2,
Ground Floor, Sugar Colony, Ward,
No. 28, Palakollu, West Godavari District,
Andra Pradesh – 534 260.

3. N. Nagarjun,
W/o. Mr. N. Manishankar,

House No. 6-9-2,
Ground Floor, Sugar Colony, Ward,
No. 28, Palakollu, West Godavari District,
Andra Pradesh – 534 260.

4. Mr. N. Maniprakash,
S/o. late Mr. N. Subramanyom,
Managing Partner Mr. The Pioneer
Engineering Syndicate,
Residing Partner, The Pioneer
Engineering Syndicate, Road No. 2 Castle
Hills, Masab Tank,
Hyderabad - 500 057.

5. Mrs. N. Rajeswari,
W/o, Mr. N. Manimohan,
Partner, The Pioneer Engineering
Syndicate,
Subhagya Convention Hall,
Opposite Cancer Hospital,
Elluru, West Godavari District,
Andra Pradesh -534 007.

6. Mr. N. Nagaraj,
S.o late Mr.N. Manibushan,
Partner, The Pioneer,
House No. 1-10-38,
Engineering Syndicate,
Ashok Nagar, Hyderabad - 500 020.

7. Mr. N. Nagabushan,
S/o. Mr. N. Maniprakash, Partner,
The Pioneer Engineering Syndicate,
Residing at House No.15,
Road No.2, Castle Hills,
Masab Tank Hyderabad - 500 057.

8. Mr. N. Nagender,
S/o. Mr. N. Manimohan, Partner,
The Pioneer Engineering Syndicate,
Subhagya Convention Hall,
Opposite Cancer Hospital,

Eluru West Godavari District,
Andhra Pradesh 534 007.

9. Mr. V.L. Narasimha Rao,
Managing Partner (Retired),
The Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagab Mahal Colony, Domalgudu,
Hyderabad - 500 029.

10. Ms. V. Padmini,
Partner Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad - 500 029.

11. Ms. V. Sathyavathy,
Partner (Retired),
The Pioneer Engineering Syndicate,
House No-1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad -500 029.

12. Ms. V. Shalini Prasanna Kumari,
Partner (Retired),
The Pioneer Engineering Syndicate,
House No 1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad - 500 029.

13. Ms. V.S.H. Praveena,
Partner, (Retired),
The Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagan Mahal Colony Domalgudu,
Hyderabad - 500 029.

14. Mr. G. Ranga Rao,
S/o. Mr. G.A. Narayana Rao,
(Deceased Partner of the Pioneer
Engineering Syndicate)
House NO.1.10.38,

Ashok Nagar, Hyderabad- 500 020.

15. Mr. J. Murali Krishna,
S/o. Mr. J. V. Srreeamamurthy,
(Deceased Partner of The Pioneer
Engineering Syndicate)
Plot No.302, Lakshmi Pride Apartment,
Srinivas Nagar, Madhura Nagar,
Nizampet, Outbulapur Mandal,
Hyderabad- 500 090.

16. Mr. J.K. Paradesi,
S/o. Mr. J.K.V. Sarma,
(Deceased Partner of The Pioneer
Engineering Syndicate),
Flat No.3A, Khandala Block,
Maytas Hill Country, Bachupally,
Hyderabad - 500 090.

17. The Pioneer Engineering Syndicate,
A firm of Partnership, Rep. by its
Managing Partner,
Mr. N. Maniprakash,
Residing at House No.15, Road No.2,
Castle Hills, Masab Tank,
Hyderabad - 500057.

...Respondents in both the
Applications

O.A. No.194 of 2019:-

Original Application praying that this Hon'ble Court be pleased

a) to pass an ad interim injunction restraining the Respondents from withdrawing the total amount of Rs.18,46,00,279/- (Rupees Eighteen Crores Forty Six Lakhs Two Hundred and Secenty Nine Only) which is available on the file of this Honble court as Rs.16,69,33,890/- (Rupees Sixteen Crores Sixty Nine Lakhs Thirty Three Thousand Eight Hundred and Ninety Only)

deposited on 01/11/2018 in A.No.4291/2018 and Rs.1,76,66,389/-(Rupees One Crore Seventy Six Lakhs Sixty Six Thousand Three Hundred and Eighty Nine Only) available as on dated 06/03/2018 in the account of O.S.A.NO.179 to 181 of 2009, until the disposal of the Arbitration Award between the Applicant and Respondents or order such other suitable interim measure for the preservation, interim custody etc., of the dispute in arbitration and which shall be in the interest of justice.

b) to pass an order of ad-interim injunction restraining the respondents from alienating or encumbering the land more fully described in the schedule give hereunder, until the disposal of Arbitration proceedings between the Applicant and Respondents.

A.No. 56 of 2021:-

Application praying that this Hon'ble Court be pleased to Set Aside the Order of Dismissal Dated 18/11/2020 in the above O.A.NO.194 of 2019 and restore the matter to file.

This Original application and Application along with these O.P.No. 523 and 524 of 2020 having been heard on 29/03/2021 in the presence of Mr.Vijay Narayan, Advocate General for M/S.S. Thamizharasi, Advocates for the Applicant in both applications and Mr. T.K. Bhaskar, Advocate for the respondents 1, 4 herein, and respondents 2, 3, 5, 7, 9 to 14, 17 herein not appearing in person or by advocate and the respondents 8, 15 and 16 herein

not ready in notice and upon reading the petition filed herein and this Court observing that since adequate reasons have been provided in the affidavit filed in support of A.No. 56 of 2021 the same is ordered and A.No. 194 of 2019 is restored to file and there is no subsisting agreement between the claimant and the respondent to refer disputes to arbitration as the contract has been terminated way back on 21.06.1993, it is ordered as follows:-

That the order of dismissal dated 18.11.2020 in O.A.No. 194 of 2019, be and is hereby set aside and restored to file.

2. That the O.A.No. 194 of 2019, be and is hereby dismissed.

3. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26th DAY OF MAY 2021.

Sd/-

ASSISTANT REGISTRAR(O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK

15/07/2021

O.A. No.194 of 2019
and
A.No. 56 of 2021

ORDER

DATED : 26.05.2021

THE HON'BLE MS.JUSTICE
P.T.ASHA

FOR APPROVAL: 19/07/2021

APPROVED ON: 19/07/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2021

Delivered on : 26.05.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.Nos. 523 and 524 of 2020

and

A.No.56 of 2021 and OA.No.194 of 2019

Tamil Nadu Water Supply and Drainage Board,
Represented by its Managing Director,
31, Kamarajar Salai,
Chepauk,
Chennai - 600 005.

... Petitioner in OP.Nos. 523 and 524 of 2020
vs

1. The Pioneer Engineering Syndicate,
Engineers and Contractors,
6th Floor, Pioneer House,
Samajiguda, Hyderabad.

2. N. Pushpalatha

3. N. Nagarjun

4. Mr. N. Maniprakash
S/o. late Mr. N. Subramanyom,
Managing Partner Mr. The Pioneer
Engineering Syndicate,
Hills, Masab Tank,
Hyderabad - 500 057.

5. Mrs. N. Rajeswari,
W/o, Mr. N. Manimohan,
Partner, The Pioneer Engineering

Syndicate,
Subhagya Convention Hall,
Opposite Cancer Hospital,
Elluru, West Godavari District,
Andhra Pradesh -534 007.

6. Mr. N. Nagaraj,
S/o late Mr. Manibushan,
Partner, The Pioneer,
House No. 1-10-38,
Engineering Syndicate,
Ashok Nagar, Hyderabad - 500 020.

7. Mr. N. Nagabushan,
S/o. Mr. N. Maniprakash, Partner,
The Pioneer Engineering Syndicate,
Residing at House No.15,
Road No.2, Castle Hills,
Masab Tank Hyderabad - 500 057.

8. Mr. N. Nagender,
S/o. Mr. N. Manimohan, Partner,
The Pioneer Engineering Syndicate,
Subhagya Convention Hall,
Opposite Cancer Hospital,
Eluru West Godavari District,
Andhra Pradesh 534 007

9. Mr. V.L. Narasimha Rao,
Managing Partner (Retired),
The Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad - 500 029.

10. Ms. V. Padmini,
Partner Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad - 500 029.

11. Ms. V. Sathyavathy,
Partner (Retired),

The Pioneer Engineering Syndicate,
House No-1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad -500 029.

12. Ms. V. Shalini Prasanna Kumari,
Partner (Retired),
The Pioneer Engineering Syndicate,
House No1-2-593/14,
Gagan Mahal Colony, Domalgudu,
Hyderabad - 500 029.

13. Ms. V.S.H. Praveena,
Partner, (Retired),
The Pioneer Engineering Syndicate,
House No.1-2-593/14,
Gagan Mahal Colony Domalgudu,
Hyderabad - 500 029.

14. Mr. G. Ranga Rao,
S/o. Mr. G.A. Narayana Rao,
(Deceased Partner of the Pioneer
Engineering Syndicate)
House NO.1.10.38,
Ashok Nagar, Hyderabad- 500 020.

15. Mr. J. Murali Krishna,
S/o. Mr. J. V. Sreeramamurthy,
(Deceased Partner of The Pioneer
Engineering Syndicate)
Plot No.302, Lakshmi Pride Apartment,
Srinivas Nagar, Madhura Nagar,
Nizampet, Outbulapur Mandal,
Hyderabad- 500 090.

16. Mr. J.K. Paradesi,
S/o. Mr. J.K.V. Sarma,
(Deceased Partner of The Pioneer
Engineering Syndicate),
Flat No.3A, Khandala Block,
Maytas Hill Country, Bachupally,
Hyderabad - 500 090.

17. The Pioneer Engineering Syndicate,
A firm of Partnership,
Represented by its
Managing Partner,
Mr. N. Maniprakash,
Residing at House No.15, Road No.2,
Hyderabad - 500057.

...Respondents in OP.Nos. 523 and 524 of 2020

Prayer: Petition filed under Section 11 (4) of the Arbitration and Conciliation Act, 1966 to appoint the sole Arbitrator for resolving the dispute between the parties, under Section 11(4) of the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr. Vijay Narayan, AG

For Respondents : Mr. T.K. Bhaskar for R1 and R4
R2, R3, R5, R6, R7, R9 to R14, R17 -
No appearance (Served)
R8, R15 and 16- Not ready in notice

ORDER

The pivotal issue involved in the applications and the original petitions is the right of the respondent to reopen the arbitral proceedings by once again invoking the arbitral clause in an agreement that had been terminated as early as in the year 1993 and which had been invoked by the claimant to settle the dispute between them and the respondent, this dispute having culminated in an Award passed in the year 1996 and confirmed right

up to the Hon'ble Supreme Court. In short after an arbitral proceedings had culminated in an Award whether the respondent could reopen the Arbitral proceedings based on a finding in the Award.

2. Parties are referred to as the claimant and the respondent, as arrayed in the Arbitral proceedings.

3. Facts:

3.1. The facts in brief which would be germane for disposing of these applications are that the claimant was awarded the work of manufacturing, supplying, laying, jointing and testing of pre-stressed concrete pipes for water transmission main on a turnkey basis in two areas of Coimbatore and one area of Madurai city. The Coimbatore projects were termed as Coimbatore Reach I and Coimbatore Reach II respectively. The terms of the contracts stipulated that the contracts should be concluded within a period of two years. However, since the claimant's performance was dismal on 02.09.1991 the contracts were terminated by the respondent.

3.2. Thereafter, on the intervention of the Government, the termination order was revoked and two supplementary agreements dated 31.10.1992 and 12.11.1992 were entered into between the parties. This also did not help in improving the performance of the claimant and therefore by

order dated 21.06.1993, the contracts were finally terminated.

3.3. The claimant moved three writ petitions before this Court in respect of all the three contracts to forbear the respondent from enforcing the penal conditions of the contract and collecting and invoking the bank guarantee. By order dated 07.12.1994, the Single Judge had directed the claimant to invoke the arbitral clause. This order was set aside by the Division Bench. Thereafter, in the proceedings in C.S.Nos.1916 to 1918 of 1994, this Court by order dated 19.07.1996 had appointed late Mr. Justice S. Sivasubramanian, a retired judge of this Court as the Arbitrator. The claimant had claimed a sum of Rs.20.48 crores under various heads and the respondent had also filed a counter claim for a sum of Rs. 21.88 crores. Ultimately, the learned Arbitrator allowed the claim filed by the claimant to the tune of Rs.7.50 crores with interest till the date of payment or till the date of decree.

3.4. The claimant had filed O.P.Nos.44 to 46 of 1998 directing the Arbitrator to file the Award into Court and requested the court to pass a decree in terms thereof. The respondent challenged the Award by filing O.P.Nos.77 to 79 of 1999. By order dated 16.06.2008, petitions filed by the respondent were dismissed and the petitions filed by the claimant in

O.P.Nos.44 to 46 of 1998 were allowed and a decree was passed in terms of the Award. The respondent had challenged the order passed in O.P.No.44 to 46 of 1998 by filing OSA Nos.179 to 181 of 2009. The Appeals were dismissed by order dated 26.07.2016 and the respondent had challenged the same by filing the SLP Nos. 22894 to 22896 of 2017 before the Hon'ble Supreme Court. The Apex Court modified the Award only to the extent of reducing the interest rate to 9 per cent and extending the time for payment to 31.05.2018. Meanwhile, since disputes had arisen between the partners of the claimant firm, the respondent had filed A.No.6765 of 2018 to deposit the money into court. The respondent had also filed A.No. 4291 of 2018 for a direction to the claimant to execute the sale deed in respect of the lands scheduled in the petition thereto. This court by order dated 28.09.2018 in both the above applications directed the respondent to deposit the amounts into court and permitted the claimant to file necessary applications for withdrawal. As regards the sale of the property, the learned Judge had very clearly stated that this was never the subject matter before any of the Fora so far, either before the Arbitral Tribunal or before the Courts where the Award was challenged. The respondent had not challenged this order in A.No.4291 of 2018 and this finding had attained finality.

3.5. After the order dated 28.09.2018 was passed, the respondent herein had invoked the arbitration clause viz; Clause No: 51 in the contracts in respect of the Coimbatore Reach I and II as well as Madurai and had suggested the name of I.David Christian (retired) as the Arbitrator. The respondent has very clearly stated that the claim was only the consequence of the Award dated 28.10.1997. The claimant had denied the claim by stating that there was no arbitral agreement in existence between the parties and that the respondent had never made this an issue before the Tribunal or before the Courts thereafter.

3.6. The respondent had filed O.A.No.194 of 2019 for an injunction restraining the claimant from withdrawing the amount lying in the deposit of this Court. Simultaneously, the respondent has also filed two petitions under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointing arbitrators in respect of the claim now raised with reference to Coimbatore Reach I and II and Madurai in O.P.Nos. 523 and 524 of 2020. In both the petitions the very same relief is sought for. The application in OA.No.194 of 2019 was dismissed for default on 18.11.2020 and the respondent has filed A.No.56 of 2021 to restore the same to file.

4. Submissions:

4.1. Common arguments were made by the learned Advocate General on behalf of the appellant and Mr. T.K. Baskar on behalf of the respondent.

4.2. The learned Advocate General would submit that the cause of action for the filing of the present applications had arisen only after orders were passed by the Hon'ble Supreme Court in SLP.Nos.22894 to 22896 of 2019. He would submit that one of the heads under which compensation has been ordered is under the heads of machinery, factories, etc., which had been described in greater detail in Annexure CAII of the claim.

4.3. A perusal of this annexure would clearly show that the claimant had raised a claim not only with reference to machinery, factory, building, etc., but also the lands in question. The compensation has been paid by the respondent under this head and therefore the property has to be made over to the respondent Board. The learned Advocate General would submit that the lands were originally purchased at a sum of Rs.58,000/- on 12.06.1988. However, its value in the year 1993 had increased to a sum of Rs.1,35,000/-.

4.4. He would further submit that during the arbitral proceedings, the learned Arbitrator had appointed a valuer for valuing the machinery, factory, lands, etc. and he had submitted his report valuing the property and

the learned Arbitrator considered the same while passing the Award under the above head. Therefore, since the amount has been paid for the land the claimant should transfer the same to them.

4.5. He would submit that by paying the cost of the land, the respondent had paid the sale consideration for the said property. Therefore, he would submit that a dispute has arisen as the claimant was not willing to comply with the respondent's demand. He would rely upon the judgment reported in *(2021) 2 SCC page 1, Vidya Drolia vs Durga Trading Corporation* to state that even a claim of this nature is arbitrable.

4.6. Per contra Mr. T.K. Baskar, learned counsel appearing on behalf of the respondent would contend that at no point of time had the respondent even given an inkling that they were interested in purchasing the property. In fact, he would submit that the notice under Section 21 is rather silent about the clause under which the respondent was making this claim.

4.7. The Arbitrator passed the Award as early as in the year 1997. However, these issues were not raised either in the original petition or in the appeals thereafter. He would submit that the earlier agreement which was

terminated in the year 1993 by the respondent and in respect of which disputes were raised had culminated in the award which was challenged right up to the Supreme Court. The arbitration agreement has therefore come to an end and in the absence of an arbitration agreement, the respondent has no right to invoke the arbitration proceedings under Section 21 on an Arbitral Clause which is no longer in existence. He would submit that even the petition filed under Section 11 of the Act does not contain any reference in the short cause title about the agreement under which the arbitration has been invoked by the respondent.

4.8. He would question the very maintainability of Section 11 application on the ground that there is no arbitration clause in existence which is the *sine qua non* for initiating the present proceedings.

4.9. He would also submit that the respondent has not challenged the order passed in A.No.4291 of 2019 rejecting the request of the respondent for a direction to the claimant to sell the property to them. This order not having been challenged by the respondent has attained finality. The present proceedings is therefore hit by res judicata.

4.10. The learned counsel would further submit that despite the

compensation being demanded by the claimant under the head of machinery, factory, building, land, etc., the respondent had not deemed it fit to seek the relief of having the land conveyed to them in their counter claim. Having failed to do so, the respondent cannot be permitted to raise a fresh claim nearly 23 years after the award is passed.

4.11. As regards A.No.56 of 2021, the learned counsel for the claimant would submit that the respondent had not appeared on three occasions and even after the matter was posted under the caption 'for dismissal', none appeared and there is no convincing reasons given in the affidavit for restoring the application.

4.12. As regards O.A.No.194 of 2019, the learned counsel would submit that when the claimant was questing the very existence of an arbitral agreement, any interim order that would be granted would cause great prejudice to the claimant. The claimant despite having an award in their favour as early as in the year 1997, are yet to receive the compensation on account of the pendency of O.A.No.194 of 2019.

4.13. He would rely upon the judgments reported in

1)2003 2 LW page 179 - Harita Finance Ltd Vs. ATV Projects India Ltd.

2) AIR 2004 SC page 1433 - Firm Ashok Traders and another Vs. Gurumukh Das Saluja and others.

The learned counsel would seek to have the applications dismissed.

5. Discussion:

5.1. The short question for which an answer is required and which forms the "cause of action" for the applications now before me is "whether a fresh arbitral proceedings can be initiated on the basis / as a consequence of an award"?

5.2. The claimant had originally in the year 1993 raised disputes with reference to the contracts relating to water supply projects at Coimbatore Reach I, Reach II and Madurai Reach I and by the orders of this Court in C.S.Nos.1916 to 1918 of 1994 dated 19.07.1996 Late Justice S. Sivasubramanian, a former Judge of this Court was appointed as the Arbitrator. The claimant had sought a relief of a sum of Rs.20.48 crores and the respondent had filed a counter claim for Rs.21.88 crores. One of the heads under which the claimant had claimed compensation was " cost of machinery, equipment, factories and shed, etc., at the time of take over".

The itemised details of this valuation under various heads was provided in Annexure CA-II. The first item in this annexure is Factory land valued at Rs. 4 lacs and buildings at Rs.15 lacs.

5.3. The learned Arbitrator has dealt with the above as claim No.3 (Claim No.2) in paragraph No.161 of the Award in respect of Coimbatore Reach I and the issue of cost of machinery, equipment, factories, shed etc. is itemised as S.No.4. The reasoning for awarding amounts under this head is explained in Para No. 162 as follows:

" Serial No.4 relates to cost of machinery, equipments, factory, shed, etc., at the time of taking over. The factum of taking over of the same is not in dispute. Though in the counter, it has been stated that as per the provisions of the Agreement in case, the entire contract is terminated, the amount of security deposit together with the value of the work done will be forfeited. The same was not raised in their arguments. It was not done because of the provision of Section 74 of the Contract Act. According to it, any stipulation of contract by way of penalty cannot be enforced and he would be

entitled only to reasonable compensation. The legal position is clear that such a penal clause cannot be enforced especially in a case where rights and liabilities were considered and the claimants are found to be entitled to certain amounts from the respondents Board. In fact, the valuer was appointed by the consent of both the parties and even at that time the question of forfeiture was not raised. The valuer has filed his Report for which both the parties have filed objections. I have perused the detailed valuation Report submitted by the valuer. I find that they have taken into account of material factors for valuing the machineries etc., including the land and building. Elaborate reasons were given for arriving at the valuation for each items. There is bound to be some marginal error especially in a case where they were asked to value the proportion as on 21.06.1993. The claimants and the respondents have filed objections, but they have not given any acceptable material to differ from the valuation method adopted by the valuers.

The objections appear to have been filed just to show that they are not admitting the valuation. In the absence of any other material, I propose to accept the valuation given by the valuers, who happened to be experienced valuers. It may be noted in this connection that both the parties suggested their name and there are no allegations against them. The proportionate value of it comes to Rs.93,00,000/- and that is shown in Serial No.4. "

Ultimately a sum of Rs.69,05,582/- is awarded under this head.

As regards a similar claim relating to Coimbatore Reach II, the learned Arbitrator had awarded a total sum of Rs.1,09,42,385/-.

5.4. In their statement of claim the claimant had stated that subsequent to the termination of the contract the respondents had taken possession of the premises including the machinery and equipment valued at Rs.160 lacs. The claimant would submit that they had taken a mobilisation advance of Rs.67,29,500/- which was invested into the erection of the factory and for the purchase of machinery and equipment. On the completion of the work in Reach I and II these would have become the

assets of the claimants free of any encumbrance. Therefore the respondents are duty bound to give credit to the value of the assets taken over at the time of such take over. The respondents should have at least stopped levying interest after the take over. In these circumstances, they are entitled to claim the value.

5.5. The response to this claim is that as per the terms of the agreement the claimant was to erect the factory for the manufacture of pipes and that the erection of factory and securing the land was not an extra activity as contended. Their specific response to claim under this head was that the value of machinery and equipment given by the claimant was incorrect. Nowhere in the statement of defense had the respondents contended that the land had to be made over to them in case the learned Arbitrator held them liable to compensate the claimant.

5.6. Neither in their challenge to the award of the learned Arbitrator nor in their counter claim had the respondent raised this issue. In fact their only submission before the Hon'ble Supreme Court in SLP.Nos.22894 to 22896 of 2017 was for the reduction of the interest rate and nothing more. Therefore, the cause of action for seeking sale of the lands to them / making over of the lands to them was available as early as in the year 1996 when

the claim was filed by the claimant. The Arbitral Proceedings which commenced in the year 1996 has concluded with the deposit of the award amount by the respondent pursuant to the orders of the Hon'ble Supreme Court. Now 23 years after the award was passed this claim is made for the first time.

5.7. Clause 50 of the General Conditions of Contract deals with the settlement of disputes in and by which a contractor could request in writing to the Executive Engineer of the respondent to consider the following objections:-

- i) that the work demanded is outside the requirement of the contract
- ii) that the drawings, record or ruling of the Board on any matter in connection with or arising out of the contract is unacceptable
- iii) that the carrying out of the work is unacceptable

5.8. The Executive Engineer is required to give his written instructions or decisions within 15 days. If a decision is given the contractor shall proceed further with the work without a delay but if the Executive Engineer does not give a decision or instructions in writing, an appeal shall be made to the Superintending Engineer. If his decision is also unacceptable then the contractor can refer the dispute to Arbitration.

5.9. Clause 51 deals with arbitration and it reads as follows:

" All the disputes or difference either during the progress or after completion or after termination of breach of contract in respect of which the decision has not been final and conclusive shall be referred to arbitration."

5.10. The earlier arbitral proceedings had been initiated after following the procedure contemplated in Clause 50 and 51 of the GCC and the same stands concluded. Therefore the argument of the claimant that the present proceedings is not maintainable has considerable force.

5.11. A reading of the petition filed under Section 11 would show that the claim is not one arising out of the contract between the parties but by reason of the award. In paragraph 10 of the Petition filed in O.P.No.523 of 2020 the respondent/petitioner has stated as follows:

" The Award sets out that factors that at the time of taken over valuation as per valuer report was taken into account for valuing the machinery etc. which also includes land and building and

hence it is evident that the amount payable to M/s Pioneer Engineering Syndicate would include the cost of land and building"

5.12. Further in Paragraph 11 they have stated as follows:

" The implications of this would be that when money is paid, the land and building would have to be transferred by M/s Pioneer Engineering Syndicate to TWAD Board. Though the factory, sheds and etc; are in a dilapidated condition the land and building (factory and shed) is under actual physical control of TWAD Board even from the inception of the project."

A similar plea is taken in O.P.No.524 of 2020.

5.13. Therefore, it is clearly evident that the present proceedings does not emanate from the agreement between the parties and the respondent is seeking to establish a right on the basis of the award that too when they have failed to seek this relief as a counter claim. Further the agreement between the parties has been terminated on 21.06.1993.

5.14. Therefore it is clearly evident that there is no arbitral agreement

in force and the respondent cannot commence an arbitral proceedings on the basis of an award. The Act clearly contemplates the initiation of arbitral proceedings on the basis of an Arbitration agreement as defined in Section 7 of the Act. The Arbitrator traces jurisdiction only to the arbitral agreement entered into between the parties to the arbitration and not to the Award passed by an Arbitral Tribunal.

5.15. Further a similar prayer was made by the respondent in A.No.4291 of 2018. The relief claimed would read as follows:

"To permit the applicant / TWAD Board to deposit Rs.16,69,33,890/- on the file of the Hon'ble High Court of Madras and consequently to direct the respondents M/s.Pioneer Engineering Syndicate to execute the sale deed in respect of the lands scheduled herein in the name of the TWAD Board and in the event of refusal, direct the Assistant Registrar, Hon'ble High Court, Madras to execute the sale deed on behalf of M/s.Pioneer Engineering Syndicate / Respondents".

5.16. In the common order dated 28.09.2018 in A.Nos.4291 and 6765 of 2018, this Court had observed as follows in paragraph nos. 68 and 69 of the order:

"68. As far as the relief in Application No.4291 of 2018 directing the first applicant to execute a sale deed in favour of the applicant and in event

of refusal to direct the Assistant Registrar, Madras High Court, Chennai to execute the sale deed in favour of the applicant/TWAD Board concerned, I am convinced that the same cannot be granted in absence of specific direction in the award.

69. Further, it appears that there was also no counter claim filed by the applicant to that effect also before the learned Arbitrator. Therefore, this issue cannot be agitated by invoking the jurisdiction of this Court under Section of the Act, If the applicant has any remedy under law for such relief it has to work out such remedy. However, such relief cannot be granted under Section 9 of the Act."

This order was not challenged by the respondent and the same has attained finality.

5.17. Since adequate reasons have been provided in the affidavit filed in support of A.No.56/2021 the same is ordered and A.No.194 of 2019 is restored to file. However considering the fact that there is no subsisting agreement between the claimant and the respondent to refer disputes to arbitration as the contract has been terminated way back on 21.06.1993 O.A.No.194 of 2019, OP.No.523 of 2020 and O.P.No.524 of 2020 stands dismissed.

5.18. In the result, A.No.56 of 2020 is allowed and O.A.No.194 of

2019 and O.P.Nos.523 and 524 of 2020 stands dismissed. However there shall be no order as to costs.

Sd./-P.T.A.J.

26/05/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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