



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26th DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.103 of 2018

and

A.No.2235 of 2018

In the matter of Arbitration and
Conciliation Act 1996

and

In the matter of disputes between The
Chief Engineer, Tamil Nadu Water
Supply and Drainage Board, Vellore
-Vs- M/s.Pure Enviro Engineering Pvt
Ltd. as per Award dated 18.02.2015.

The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Vellore – 6.

. . . Petitioner

Versus

M/s.Pure Enviro Engineering Pvt. Ltd.,
No.8, Second Main Road,
Shenoy Nagar West,
Chennai – 600 030.

. . . Respondent

O.P. No.103 of 2018:-

Original Petition praying that this Hon'ble Court be pleased to set



other orders.

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A.No.2235 of 2018:-

Application praying that this Hon'ble Court be pleased to interim stay of all further proceedings pursuant to the Award passed by the Sole Arbitrator dated 18.02.2015 unless unreparable loss occurred by the applicant.

This Original Petition along with Application coming on this day before this court for hearing in the presence of Mr.Silambannan, Additional Advocate General for Mr.S.Erakine Leo, Advocate for the petitioner in O.P.No.103 of 2018 and for the applicant in A.No.2235 of 2015 and Mr.A.Thiyagarajan, Advocate for the respondent in O.P.No.103 of 2018 and A.No.2235 of 2018 and upon reading the petition filed in O.P.No.103 of 2018 and the Judges Summons and the Affidavit of Mr.J.Thangajeya filed in A.No.2235 of 2018 and this Court having observed that the petitioner has not made out any case to claim damages on account of any loss said to have been suffered by them, and this Court is of the view that rejection of the counter claim by the learned arbitrator cannot be found fault, hence, this Court does not find any merits in this petition,



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it is ordered as follows:-

That the Original Petition in O.P.No.103 of 2018 be and is hereby dismissed.

2. That the A.No.2235 of 2018 do stand closed.

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

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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03.02.2022

O.P. No.103 of 2018
and
A.No.2235 of 2018

ORDER

DATED : 26.10.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 04.02.2022

APPROVED ON: 04.02.2022



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.103 of 2018 & A.No.2235 of 2018

The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Vellore – 6.

. . . Petitioner

Versus

M/s.Pure Enviro Engineering Pvt. Ltd.,
No.8, Second Main Road,
Shenoy Nagar West,
Chennai – 600 030.

. . . Respondent

PRAYER : Petition filed under Section 34 [2] [a] [iii] & b [ii] of Arbitration and Conciliation Act, 1996 to set aside the arbitral award passed by the sole arbitrator dated 18.02.2015.

For petitioner : Mr.Mr.Silambannan,
Additional Advocate General
for Mr.S.Erakine Leo

For respondent : Mr.A.Thiyagarajan



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ORDER

This petition has been filed challenging the arbitral award passed by the sole arbitrator dated 18.02.2015 in a dispute arose between the parties in respect of operation and maintenance agreement No.CE/NR/01 of 2010-2011 dated 15.04.2010 for Rs.3,79,41,470/-

2. The petitioner has called for tender for designing, providing construction, erection and commissioning, start up and performance trial run for 6 months followed by 5 years of Operation and Maintenance of 4.86 MLD capacity Sewage Treatment Plant [STP] . The respondent became the successful bidder. The period of completion of the work is 84 months and completion of whole work with about 1-6 milestone from 14.06.2010 to 14.04.2017. As the dispute arose between the parties, the matter was referred by the respondent to the adjudicator as per the contract, particularly with regard to the price variation. Originally a sum of Rs.9,79,926/- was paid to the contractor vide Bill No.LS 14 and part bill and 16th part bill by the then Executive Engineer. As the internal audit raised certain objections, the matter has been referred to the adjudicator by the respondent. The adjudicator has found that the bill paid to the respondent towards price adjustment was correct. As the dispute was not settled, the matter is referred to the sole arbitrator. Before the sole arbitrator, the claimant has



made the following claims :

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Claim No.1 : Price adjustment benefit of Rs.12,76,136.00

Claim No.2 : Price adjustment claim for Trial run and Operation and Maintenance period Rs.6,29,367/-.

Claim No.3 : Performance trial run for the 6 months – Rs.7,29,470/-

Claim No.4 : Payment of Extended period for trial run – Rs.4,53,892/-

Claim No.5 : Payment for O & M period from 05.07.2014 to 04.11.2014

Claim No.6 : Retention Amount Rs.17,12,262/-

3. The respondent has also raised following counter claims :

1. Liquidated Damages for Civil Electrical & Mechanical works

2. Liquidated Damages for Operation and & Maintenance period Rs.13,08,220/-

3. Damages due to loss of income – Rs.43,11,200/-

4. Damages due to payment of salary to TWAD



Board staff to be delayed period of contract Rs.42,25,666/-.

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The learned arbitrator after analysing the entire materials passed the following award :

The claimant is entitled to the following :

a. Price adjustment – Rs.9,79,926/-

b. Retention Amount – Rs.17,12,262/-

against which the present petition has been filed not only challenging the award but also against rejection of the counter claim.

4. The learned Additional Advocate General fairly submitted that as far as the retention amount is concerned they have no case since the amount has been retained by the Department. However, in respect of the price adjustment and the counter claim, the learned arbitrator has without going to the merits of the case has simply dismissed the counter claim on the basis that the matter has not been referred to the adjudicator. It is his submission that the contract does not provide for reference to adjudicator for claiming liquidated damages. Such being the position, the finding of the arbitrator rejecting liquidated damages claimed in the counter claim cannot be sustained in the eye of law and the same is beyond reference. In respect of price adjustment for a sum of Rs.9,79,926/-, the arbitrator without going

into the merits of the case, simply Ordered the claim. Hence, the above



claim as well as rejection of the counter claim falls within the ambit of perversity.

5. Whereas, the learned counsel appearing for the respondent submitted that the learned arbitrator has infact considered the entire camet of evidence and the contract and passed the award and the same does not require any interference.

6. I have perused the entire award.

7. The scope of interference of the arbitral award is limited, except the grounds contemplated under section 34 of the Arbitration and Conciliation Act is made out, the award cannot be interfered. The contention of the learned Additional Advocate General is that the tribunal has passed the award relating to the price adjustment without any materials.

8. It is to be noted that with regard to the price adjustment, bill has already been paid to the claimant. It has not been disputed. Only when the internal audit raised some objections, the same is said to be recovered and the matter has been referred to the adjudicator's opinion as per the contract. The learned adjudicator, has in fact found that the payment of the



bill towards price adjustment to the contractor is correct and the same has not been challenged by the respondent. The arbitrator took note of the fact that price adjustment already paid is made without proper opportunity to the claimant. Besides, the adjudicator has also found that the bill is valid and directed the department to pay the original bill amount which was recovered from the claimant. The reasoning is convincing and the learned arbitrator has infact considered all the materials, particularly the contractual clauses and passed the award. Therefore, this Court do not find any perversity in the Order of the learned arbitrator in passing the award for a sum of Rs.9,79,926 which is the admitted amount vide bill in LS 14 and 16 by the then Executive Engineer. Therefore, merely because, the internal audit has raised some objections, admitted amount cannot be denied. Hence, this Court do not find any perversity in the award of the learned arbitrator.

9. As far as the retention amount is concerned, the learned Additional Advocate General has fairly submitted that the amount has been withheld by them and the same has to be paid.

10. With regard to the rejection of the counter claim, the finding of the arbitrator that the department has not referred the matter to the adjudicator is perverse, though the contract does not provide for such



reference or leave before the adjudicator, it is to be noted that it is not the case of the Department that it suffered heavy damages or they have taken any steps to mitigate the liquidated damages. No materials whatsoever is available on record to prove that the Department has suffered heavy loss. In fact, in the absence of any evidence, the claim of liquidated damages, as matter of right, cannot be granted. The petitioner has not made out any case to claim damages on account of any loss said to have been suffered by them. In such view of the matter, rejection of the counter claim by the learned arbitrator cannot be found fault. Hence, this Court do not find any merits in this petition and this petition is liable to be dismissed.

11. Accordingly, this Original Petition is dismissed.

Consequently, connected application is closed.

Sd./-N.S.K.J
26.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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