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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

SATURDAY, THE 17TH DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.508 of 2014

In the matter of Section 34 of the
Arbitration and Conciliation Act, 1996
and

In the matter of the Arbitration Award
dated 15.5.2014 passed by the sole
arbitrator Shri K.D Arcot

1. M/s. Nataraja Consructions.
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638 011.

2. Mr.Rajendran,
Partner,
M/.Nataraja Constructions,
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638 011.

3. Mrs.Kavitha Rajendran,
Partner,
M/.Nataraja Constructions,
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638 011.

. . . Petitioner

Versus

1. (*) I.L. & FS Environmental
Infrastructure & Services Pvt.Ltd
217-A, Ground Floor,



Okhla Phase-3,
New Delhi 110 020
(*) Amalgamated with M/s. IWMUST
vide order dated 28.01.2015
passed by the High Court of
Delhi in C.P.No.598 of 2014)
amended as per order dated
08.10.2020 in A.No.2329 of 2020
and time extended as per order dt 29.10.2020.

2. Mr.K.D.Arcot, B.E
Sole Arbitrator
House No. U 46,
Plot No.4185,
Anna nagar,
Chennai 600 040.

... Respondent

Original Petition praying that this Hon'ble Court be pleased to set aside the award date 15.05.2014 passed by learned sole arbitrator, Shri K.d. Arcot, the Second respondent herein, in the matter of the arbitration between M/s. Integrated The Integrated Waste and Urban services Company (Tamil Nadu) Limited (IWMUST) vs 1) M/s. Nataraja Constructions 2) Mr. Rajendran and 3) Mrs.Kavitha Rajndran, as perverse, illegal and without jurisdiction.

2. To award the costs in the present proceedings.

This Original Petition coming on this day before this court for hearing in the presence of Mr.Sharath Chandran, for M/s.V.Raghavachari Advocates for the petitioner herein and Mr.Manoj Menon for M/s.Menon Karthi, Mukundan Neelankandan, Advocate for the 1st respondent herein and upon reading the petition filed herein and this Court having observed that merely



because some other interpretation also possible, the same cannot be ground to interfere the well reasoned award, it is ordered as follows:-

That the O.P.No.508 of 2014, be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 17th DAY OF APRIL 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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T-08.06.2021

O.P. Nos.508 of 2014

ORDER

DATED: 17.04.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 10/06/2021

APPROVED ON : 05/07/2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.508 of 2014

1.M/s.Nataraja Constructions,
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638011

2.Mr.Rajendran,
Partner,
M/s.Nataraja Constructions,
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638011

3.Mrs.Kavitha Rajendran,
Partner,
M/s.Nataraja Constructions,
No.34, Kasinna Street,
1st Cross, Sampath Nagar,
Ullavar Santhai Road,
Erode 638011

Petitioners

...

Versus

1.IL & FS Environmental Infrastructure
& Services Pvt.Ltd
217-A, Ground Floor,
Okhla Phase-3,



New Delhi-110 020.

(Amalgamated with M/s. IWMUST vide order dated 28.01.2015 passed by the High Court of Delhi in C.P.No.598 of 2014) amended as per order dated 08.10.2020 in A.No.2329 of 2020 and time extended as per order dt 29.10.2020.

2. Mr.K.D.Arcot, B.E
Sole Arbitrator
House No. U 46,
Plot No.4185,
Anna Nagar,
Chennai 600 040
Respondents

...

PRAYER : Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to set aside the award dated 15.05.2014 passed by the learned sole Arbitrator, Shri.K.D.Arcot, the second respondent herein, in the matter of arbitration between the first respondent and the petitioners, as perverse, illegal and without jurisdiction and to award the costs in the present proceedings.

For petitioners : Mr.Sharath Chandran
for M/s.V.Raghavachari

For respondents : Mr.Manoj Menon
for M/s.Menon Karthik
Mukundan Neelankandan for R1

ORDER

The challenge is to set aside the award dated 15.05.2014 passed by the learned Arbitrator.



contract for executing the civil work for compost plant. The tender was issued on 15.04.2009 for a value of Rs.6,85,40,323/-. Pursuant to the agreement came to be executed between the petitioners and the respondent on 12.05.2009, a sum of Rs.1,32,83,334/- (Rupees one crore thirty two lakhs eighty three thousand three hundred and thirty four only) was granted to the petitioner towards refundable advance, which has to be adjusted against the work done in various phases. The claimant has taken over the site and the petitioner have commenced their work from 23.05.2009.

3. It is the contention of the learned counsel for the 1st respondent that the petitioners herein had completed the work for Rs.47,95,775/- as per the Measurement Book. However, pending the above work, the entire site was occupied by NHAI. Therefore, the agreement between the petitioners and the

respondent was terminated on 10.08.2010. The claimant, namely the first 1st respondent herein has requested refund of advance amount after adjusting the amount spent for the work. As amount has not been paid, the matter was referred to the learned Sole Arbitrator claiming Rs.1,01,21,344/- (Rupees one crore and one lakh twenty one thousand three hundred and

forty four only), being the amount of Rs.84,87,559/- (Rupees eighty four



lakhs eighty seven thousand five hundred and fifty nine only) with interest at the rate of 18% per annum from 10.08.2010 till 05.09.2011.

4. The petitioners herein disputed the claim seeking refund of the advance amount. It is their contention that they have done works to the tune of Rs.1.6 crores. In fact, the 1st respondent has claimed such amount from the National Agency. Further, the claimant had included the sum of Rs.20,00,000/- paid in March 2010 and repaid on 04.04.2010 from the advance amount of 1.32 crores. The return of money had been deliberately suppressed. They also claimed counter claim for a sum of Rs.1,65,85,000/- due to termination of contract. The learned Arbitrator has concluded that the quantum of work done by the petitioners herein was to the tune of Rs.47,95,783/- and awarded a sum of Rs.64,04,217/- with interest at the rate of 15% per annum till realization.

5. Challenging the above, the present original petition is filed.

6. Mr.Sharath Chandran, learned counsel appearing for the petitioners makes his challenge on the ground of perversity of the award. It is the main contention that though the admitted documents were filed, the learned

Arbitrator ignored the vital evidence. On the other hand, he has considered



Ex.C-6, which has not been proved before the learned Arbitrator. Such decision ignoring the admitted documents, which are relevant and vital for entire dispute and relied upon Ex.C-6 which is not signed nor proved by the parties before the learned Arbitrator, is nothing but perverse. Hence, it is the contention that the evidence of the parties clearly indicates that Exs.R2 and R3 were sent by the respondents herein admitting the value of the work done by the petitioners herein. The above documents have been ignored and the learned Arbitrator has arrived at a conclusion as if the parties has admitted Ex.C-6 which is nothing but perverse. It is submitted that once the proving of evidence is not properly done and vital evidence has been ignored, the same is nothing but perverse. The award is liable to be interfered with on this score. He further contended that the learned Arbitrator has arrived at such a conclusion on his own opinion without any evidence to prove Ex.C-6. Therefore, his contention is that the award is liable to be set aside .

7. In support of his submission, he has relied upon judgements in (2015) 3 SCC 49 in the case of *Associate Builders vs. Delhi Development Authority*; (2004) 4 SCC 714 in the case of *State of U.P and another and Johri Mal*; (2014) 9 SCC 263 in the case of *Oil and Natural Gas Corporation Limited vs. Western Geco International Limited*.



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8. Learned counsel for the respondents submitted that the learned Arbitrator, being an Engineer/technical person, he has considered all the documents and relied upon Ex.C-6 mainly on the ground of mechanism found in Ex.C-6. Both side Engineers has a measurement, which has not been disputed. The amount has been collected as per the contract. Hence, it is the contention that when the learned Arbitrator has taken a plausible view upon evidence, the same cannot be re-appreciated under Section 34 of the Arbitration and Conciliation Act, 1996. There is no perversity in the findings of the learned Arbitrator. He further contends that after considering the entire documents and giving reasons for rejecting certain documents and accepting certain documents merely because some other view is plausible, the same cannot be a ground to interfere with the award under Section 34 of the Act.

9. In support of his submission, learned counsel for the respondents has relied upon judgements in (2012) 1 SCC 594 in the case of ***P.R.Shah, Shares and Stock Brokers Pvt. Ltd. vs. B.H.H. Securities Pvt. Ltd. & Ors;*** (2018) 3 SCC 133 in the case of ***Maharashtra State Electricity Distribution Company Ltd. vs. Datar Switchgear Ltd. & Ors;*** (2019) 4 SCC 163 in the case of ***MMTC Ltd. vs. Vedanta Ltd.;*** (2019) 7 SCC 236 in



the case of *Parsa Kente Colliers Ltd. vs. Rajasthan Rajya Vidyut Utpadan*

Nigam Ltd.; (2019) 15 SCC 131 in the case of *SSanyong Engineering and Construction Company Ltd. vs. National Highways Authority of India (NHAI)*.

10. As already pointed out that the award is only with regard to the nature of the work done by the claimant as a specific contractor in a compost plant, and in fact that the contract was terminated on 10.08.2010. The fact of acquisition of the place by NHAI is not disputed. The only dispute referred to the learned Arbitrator was as to nature of the measurements of the work done by the petitioners herein. The learned Sole Arbitrator has considered various documents and the Arbitral Tribunal appreciated the evidence of the Engineer as a technical person and accuracy of the documents. Particularly, he has given his own reasons for disagreeing with Exs.R2 to R4 and reason for accepting Ex.C-6. Though the entire averments made by the petitioners are on Exs.R2 to R4 that the respondent herein themselves has valued the work done by the petitioners to the tune of more than a crore rupees. That apart, the P.W.D has also valued the work to the tune of Rs.93,98,928/- and a certificate had been given on 24.06.2011.

The learned Arbitrator has not ignored those documents.



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11. This Court is of the view that when the learned Arbitrator has ignored the vital evidence which is relevant for the entire dispute and considered other materials, such award would be set aside, as being illegal, otherwise illegality goes to the root of the matter. Similarly, it is also well settled that when learned Arbitrator has taken a view and given proper reasons merely because some other view is also possible, the award cannot be interfered. It is also to be noted that while dealing with Section 34, we cannot sit as an Appellate Court to re-appreciate the evidence.

12. The learned Arbitrator has given reasons for rejection of Exs.R2 and R3. The grounds for rejecting Exs.R2 and R3 are that the measurement was recorded from 10.05.2009 to 14.09.2009. Whereas the work was commenced by the petitioners herein, only on 23.05.2009. He has also given reasons for relying upon Ex.C-6 that he has taken note of contention of parties with regard to preparing compost plants and measured the nature of the work. What was meant by him after an entire analysis of the evidence to show that measurements found in Ex.C-6 was taken in the presence of site Engineers of both sides which was accepted by both parties. Therefore, when the parties were present themselves during measurements, it cannot

be said that the learned Arbitrator's finding is perverse. The learned



Arbitrator, being a technical person, has disagreed with the documents Exs.R2 and R3 and recorded reasons for the same. Similarly, he has also recorded his opinion on Ex.R4 for various reasons and similarly, he, in fact, rejected Ex.C-23 issued by NHAI and accepted Ex.C6. The reasons assigned by the learned Arbitrator is plausible.

13. This Court is of the view that merely because some other interpretation also possible, the same cannot be a ground to interfere the well reasoned award. Accordingly, I do not find any merits in this original petition. Accordingly, this original petition is dismissed.

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

17/04/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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