



C.M.A. Nos.1660-1665/2007

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.10.2023	01.11.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.1660 TO 1665 OF 2007

1. M.Natarajan (Died)
 2. N.Murugasamy
 3. N.Balane
 4. N.Selvaraj
- (A-2 to 4 brought as LR's of
Decd. Sole appellant vide order
order of court dated 23.03.2023)

.. Appellants in all CMAs

- Vs -

The Executive Engineer
Irrigation Division
Public Works Department
Pondicherry.

.. Respondent in all CMAs

C.M.A. No.1660 of 2007 filed under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996, against the impugned order of the learned Principal District Judge, Pondicherry, dated 27.09.2006 made in A.O.P. No.1 of 2002 confirming the arbitral award passed by the learned Arbitrator.



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For Appellants : Ms. Radha Gopalan
For Respondents : Mr. Ramasamy Meyyappan,
AGP (Pondy)

ORDER

Challenging the order of dismissal of the arbitration original petition by the Principal District Judge, Pondicherry, filed by the appellant, who was the contractor, assailing the arbitral award, the present appeal has been filed before this Court.

2. The appellant was a government approved contractor, who had come out successful in the tender, which was invited for the purpose of carrying out the work of *“improvements to the western bund of Bahour Tank, Pondicherry, which contemplates standardizing the existing bund and improving its stability by providing revetment”*. As the successful tenderer, the appellant had quoted the lowest cost of Rs.9,04,375/-, which is 10.58% over the technically sanctioned cost of Rs.8,17,821/- of the Department.

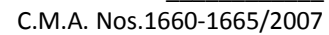
3. It is the further evidenced from the materials that as per the agreement, which was entered into between the appellant and the



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respondent, the work has to be completed within a period of 5 months from the 10th day from the date of work order. On the basis of the above clause, the work ought to have been commenced on 23.5.1998 and completed by 22.10.1998, but in actuality, the work was completed only on 22.10.1999. It is the further contention of the Department that the defects pointed out by the Quality Wing of the Department, both during construction stage as well as during the six months period of completion, were not rectified and was refused to be rectified by the contractor/appellant, which necessitated the department to categorise the work as substandard and, thereby, cost of deduction was worked out from the bills.

4. It is the further case of the parties that the appellant claimed that the work was done in the presence of the officers of the department, who have not termed the work as substandard and that the rates worked out are arbitrary, thereby, the appellant issued a notice u/s 80 of the Code of Civil Procedure calling upon the department to pay escalation cost and extra works to the tune of Rs.12 Lakhs along with interest at 18%. The appellant, to also realise the said amount claimed, instituted a suit in O.S. No.430/2000 before



No.312/2001 was filed seeking arbitration of the disputes as per the terms of the agreement. The Principal Sub Judge, by order dated 4.4.2001 stayed further proceedings in the said suit and consequent upon the same, the Chief Engineer referred the dispute to the Sole Arbitrator, as provided under Clause 25 of the Agreement.

5. In the arbitration proceedings, both the sides filed their written submissions and documents and considering all the materials placed before him and after affording opportunity of hearing to either side, the Arbitrator, after framing seven issues, passed an award dated 12.12.2001 holding that the department shall pay the contractor an amount of Rs.8,81,252 along with interest at 12% per annum on the said amount from the date of completion of work till the claim is settled. Aggrieved by the said award the appellant preferred the arbitration original petition before the Principal District Judge, Pondicherry.



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6. The trial court, after hearing both the parties and after perusing the award passed by the Arbitrator, came to the conclusion that the petition has been filed u/s 34 of the Arbitration and Conciliation Act and Section 34 (2) of the Act provides the circumstances under which the Court can interfere with an arbitral award and the court below, discussing threadbare all the scenarios as provided for u/s 34 (2) held that no grounds have been made out to interfere with the award passed and in the absence of any pleading that the arbitral award had been actuated by fraud or corruption or is in violation of Sections 75 and 81 of the Act, the petition filed by the appellant cannot be entertained and, accordingly, did not find any reason to interfere with the arbitral award. Aggrieved by the said order, the present appeal has been preferred by the appellant.

7. Learned counsel appearing for the appellant submits that it is the ardent duty of the court below to address each and every claim made by the petitioner before the arbitrator which has been considered and on which an award has been passed. However, the court below has not considered the individual claims made by the appellant before the arbitrator, which clearly



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reveals non-application of mind on the part of the court below and, necessarily, the said order deserves to be set aside. Consequently, the award passed by the learned arbitrator also deserves to be set aside as it is not within the four corners of Section 34 of the Act.

8. It is the further submission of the learned counsel that a laconic and perfunctory order has been passed by the court below as none of the claims have been considered by the court below and the order of the court below clearly shows that a subjective satisfaction is arrived at and the court, being the first appellate court, has not discharged its obligation by analysing and discussing each and every claim made before the arbitrator and, therefore, the order deserves to be set aside.

9. It is the further submission of the learned counsel that the findings of the court below that the ingredients of Section 34 of the Act for setting aside the arbitral award have not been attracted, is wholly unsupported by any acceptable reasons. It is the further submission of the learned counsel that if such a finding is allowed to continue, then all the awards would have to be



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universally accepted and, there would be no rejection of any award and, thereby, the appeal against the arbitral award provided under the Act would be nothing but an empty formality.

10. It is the further submission of the learned counsel that the extensions granted by the department, were on account of their fault, which is evident from the finding rendered by the arbitrator, which cannot be fastened on the appellant to deny the claim made by the appellant for the escalated cost along with interest. It is the further submission of the learned counsel that the defects pointed out in the work of the appellant, not being the format prescribed, yet the appellant would be liable for the same cannot be countenanced in law. It is the further submission of the learned counsel that once a work is mandated to be done in a particular manner, it should be done in the said manner and no other manner is permissible and that being the consistent ratio laid down by the courts, the finding recorded by the learned Arbitrator is manifestly improper and not sustainable.



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11. It is the further submission of the learned counsel that the finding of the court below that the grounds in the petition of the petitioner do not attract the ingredients mentioned u/s 34 of the Act to set aside the award, by itself, would not be sufficient in the absence of any pleading by the respondents. Further, the finding that the absence of materials to show that the award was effectuated by means of fraud or corruption or in violation of Sections 75 and 81 of the Act is not supported by any acceptable and valid reasons and, therefore, the order passed by the court below is manifestly erroneous. Therefore, it is prayed that the order of the court below as well as the award passed by the learned arbitrator deserves to be set aside.

12. Per contra, learned Addl. Government Pleader appearing for the respondent submits that the impugned order passed by the court below is perfectly in order and so long as the petitioner has not pleaded any fraud or corruption on the part of the respondent in the award passed by the arbitral tribunal, in the absence of the ingredients mandated u/s 34 of the Act not being made out, the court below was completely justified not to interfere with



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the award passed and, therefore, no interference is warranted with the findings recorded by the court below.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, more particularly Section 34 of the Act to which this Court's attention was drawn, which deals with the provision for setting aside arbitral awards.

14. There could be no dispute about the fact that for setting aside the arbitral award, recourse ought to be taken by the aggrieved party to Section 34 of the Act and the circumstances under which an arbitral award could be interfered with by the Court are spelt out therein. For better appreciation Section 34 of the Arbitration and Conciliation Act is quoted hereunder :-

"Application for setting aside arbitral awards.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--



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(a) the party making the application ¹[establishes on the basis of the record of the arbitral tribunal that]--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that--

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or



(ii) the arbitral award is in conflict with the public policy of India.

¹*[Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--*

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

²*[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if



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a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

³[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]



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15. A careful perusal of the above reveals the circumstances, which, if infringed, could clothe the aggrieved party with the ammunition to knock on the doors of the courts of justice to have the arbitral award set aside. More particular, the circumstances, that would prevail upon the courts to set aside the arbitral award are that the arbitration agreement is not valid; that no proper notice was given to the party prior to the appointment of an arbitrator or commencement of the arbitral proceedings; that the dispute, which is dealt with is not contemplated under the arbitration and is beyond the scope of arbitration; that the composition of the arbitral tribunal or the procedure adopted are violative; that the subject matter of dispute is not capable of settlement under arbitration.

16. There is no quarrel with the fact that the parties to the dispute, viz., the appellant and the respondent are signatories to a contract, which provides for arbitration. Dispute with regard to the work done by the appellant and the resultant actions of the respondent has resulted in the invocation of the arbitration clause by the respondent by appointment of arbitrator. There is



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no quarrel with the aforesaid facts, nor the appellant has any quarrel with regard to the appointment of arbitrator.

17. The circumstances, which have been mandated under sub-section (2) of Section 34, where the courts can set aside the arbitral award, as extracted above. None of the circumstances envisaged under sub-section (2) to Section 34 have been put in issue for setting aside the arbitral award. In fact, the appellant has not even whispered that there was violation in the conduct of the arbitration proceedings or that the dispute, which has been arbitrated does not fall within the scope of arbitration. Neither it is the case of the appellant that there is no clause for arbitration or that no notice was issued prior to arbitration or that he was not issued notice with regard to conduct of arbitral proceedings. Therefore, it is manifestly clear that none of the circumstances spelt out under Section 34 (2) of the Act is put in issue before the court below.

18. What is put in issue before this Court to assail the order passed by the court below is that each claim made by the appellant has not been



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considered either by the arbitrator or the court below. It is the further case of the appellant that a perfunctory order has been passed, wherein the court below has held that it does not find any justifiable reason to interfere with the arbitral award.

19. The mandate of Section 34 (2) is implicitly clear and the circumstances enunciated under the said provision alone would come into play when the court considers the arbitral award. The appellant may have umpteen grievances, but so far as what is mandated under the Act has been followed, the legality of the arbitral award cannot be interfered with. The court is bound to decide the case within the four corners of law and it cannot traverse beyond the boundaries which have been prescribed under the Act to the likings of either party. When there is no infraction of the provisions of Section 34 (2), as is evident from the order of the court below and in fact it is also not even the case of the appellant that there is infraction of the provisions mandated under Section 34 (2), the order passed by the court below, could, by no stretch of imagination, be branded to be illegal or unsustainable.



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20. The party to the *lis* may want the Court to deliberate a case in a different tangent, which does not have the approval of law and if it has not been considered in that manner, the said order cannot be said to be vitiated, as what the duty of the court is to travel only within the boundaries prescribed under the Act and not otherwise. In fact, if the court below had traversed beyond the boundaries, as had been contended by the appellant, only then could the order be held to be illegal and impermissible. The court had travelled within the boundaries and had held that the arbitrator had considered all the issues and the court had found no justifiable reason to interfere with the award. The said finding cannot be said to be perverse or arbitrary, warranting interference at the hands of this Court.

21. Further, this Court is also not required to go beyond the four corners of the Act to deal with each and every individual claim, which has been put forth by the appellant. It is for the arbitral tribunal to dwell into the said exercise, which the arbitral tribunal had done and had passed the arbitral award. Therefore, this Court finds that the order passed by the court below is



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just and proper and it finds no reason to interfere with the same and it is also not necessary for the court below to dwell into each and every claim made by the appellant before the arbitral tribunal to give a finding.

22. For the reasons aforesaid, this Court finds no infirmity with the order impugned herein and, accordingly, this appeal fails and the same is dismissed, confirming the order passed by the court below. There shall be no order as to costs.

01.11.2023

Index : Yes / No

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To

1. The Principal District Judge
Pondicherry.

2. The Executive Engineer
Irrigation Division
Public Works Department
Pondicherry.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
C.M.A. NOS.1660 TO
1665 OF 2007**

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