



O.S.A.(CAD).No.112 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.02.2023

Judgment Pronounced on : **20.03.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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and C.M.P.Nos.11650 and 11652 of 2022

1. M/s.Bharat Sanchar Nigam Limited,
Rep. by its Chief General Manager,
Chennai Telephones, No.78,
Purasawalkam High Road,
Chennai - 600 010.
2. The Deputy General Manager (C&A) (NP)
Bharat Sanchar Nigam Limited,
Chennai Telephones,
No.E-5, III Avenue, Anna Nagar,
Chennai - 600 102. ... Appellants

Versus

Telecommunications Consultants India Ltd. (TCIL)
(A Govt. of India Enterprises)
Ministry of Communications and Information Technology,
Represented by its Senior Manager,
Southern Regional Office, No.20, Potters Street, Saidapet,
Chennai - 600 015. ... Respondent



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Prayer : Original Side Appeal - Commercial Appellate Division filed under Section 13(1) the Commercial Court Act read with under Section 37 of the Arbitration and Conciliation Act, 1996 to allow the Original Side Appeal filed by setting aside the order, dated 04.01.2022 passed in Arb.O.P (Com.Div) No.297 of 2021 in confirming the award passed in O.P.No.875 of 2018 and A.F.No.72 of 2019, dated 23.02.2021.

For Appellants : Mr.T.Ravi Kumar

For Respondent : Mr.Amalraj S.Penikilapatti

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

Challenge made in this intra-Court appeal is to the order of the learned Single Judge, dated 04.01.2022 in Arb.O.P (Com.Div) No.297 of 2021, whereby, the learned Single Judge rejected the prayer under Section 34 of the *Arbitration and Conciliation Act, 1996* (hereinafter referred to '*A&C Act*') to set aside the award passed by the learned Arbitrator, dated 23.02.2021.

2. The brief facts leading to the present appeal are that pursuant to a Letter of Intent, dated 30.03.2001, an agreement, dated 24.09.2001 was entered into by the appellant and the respondent relating to cable works at *Annanagar* Division of the appellants. In relation to a dispute pertaining to



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non-payment for execution of the work, the respondent herein invoked the arbitration clause and made a monitory claim of principle outstanding of Rs.42,25,581/- along with interest thereon at 18% p.a. As a matter of fact, since similar claims were made with regard to sea sand filling and excess earth removal by cable laying contractors and PSUs, a Committee was set up by the appellants by its communication, dated 24.03.2004 and the said Committee also submitted its report recommending the release of such claims. Even thereafter, the amounts were not released. Therefore, the respondent raised a dispute and the same was referred to the sole Arbitrator, appointed by the appellants herein, who rejected all the claims of the respondent. The said award, dated 04.03.2013 was set aside by this Court by an order, dated 06.10.2016 and subsequently, *de novo* proceedings were ordered by appointing a learned Retired Judge of this Court as an Arbitrator.

3. In the second round of arbitration, the respondent filed a Claim Petition seeking to pass an award in terms of the amounts claimed by it under Annexure-A to the claim statement along with *pendente lite* and post award interest. A counter statement was filed by the appellants to the claim statement. In the counter statement, the appellants contended that the



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overhead charges payable to the respondent was 9% on cash component and 4% on stores component of the project cost. Subsequently, the overhead charges payable to the respondent was reduced and fixed through tenders and negotiations. Hereafter, the respondent was entitled to service charges at the appropriate percentage on the cash and stores component of the project cost of each work. However, the respondent arbitrarily claimed the quantum of sea sand in terms of cubic meters and therefore, certain bills were disallowed. He further stated that the M-Book, containing the routine certificate, and the SDE / DE certification were done separately which elevated the cost by about 75% of the bill amount.

4. On the strength of the pleadings, the parties went in for trial and on behalf of the claimant, **C.W.1** was examined and **Exs.C-1** to **C-79** were marked. On behalf of the appellants, no oral evidence was let in, however, **Exs.R-1** to **R-4** were marked. The learned Arbitrator, after considering the pleadings of the parties and evidence on record, passed an award, dated 23.02.2021 awarding a sum of Rs.42,25,581/- along with 12% as *pendente lite* and post award interest. In addition, costs of Rs.3,08,537/- was awarded. Aggrieved by the same, the appellants herein filed a petition



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under Section 34 of the *A&C Act* to set aside the award, *inter alia*, raising grounds that the learned Arbitrator (a) failed to appreciate the fact that no waybills / invoices / tax receipts for lifting sea sand from sea shore is produced along with the claim bills; (b) actual quantum of work carried out by the respondent was not ascertained while allowing the claim; (c) erred in awarding interest in the absence of a specific clause in the contract. After considering the submissions made on either side, by the order, dated 04.01.2022, the learned Single Judge recorded that the factual findings on the basis of documents and work carried out by the respondent cannot be re-appreciated at the stage of filing of petition under Section 34 of the *A&C Act*. As far as interest is concerned, the learned Single Judge confirmed the rate of interest, since there is no prohibition in the contract for award of interest. Therefore, the learned Single Judge concluded that the award did not call for any interference in relation to the claim amount of Rs.42,25,581/- and *pendente lite* and post award interest at the rate of 12% per annum on the principal sum of Rs.42,25,581/-. Aggrieved by the same, the present appeal is filed before this Court.



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5. Heard *Mr.T.Ravi Kumar*, learned Counsel for the appellants and *Mr.Amalraj S.Penikilapatti*, learned Counsel for the respondent.

6. *Mr.T.Ravi Kumar*, learned Counsel for the appellants contended that in spite of an order of this Court, in the earlier round of arbitration, setting aside petition between the parties, there was no finding on the quantum of work executed by the respondent. Secondly, as per Clause-10.4 of the agreement, dated 08.06.2001, all materials required by the respondent would be provided by the appellants and if any material has to be purchased, then the respondent shall do so only after getting prior approval from the appellants. However, their claim relating to procurement of alleged sea sand is not maintainable as no prior approval was obtained. He would contend that when there is no express provision in the contract to award interest, the learned Arbitrator erred in awarding the same. In support of his submissions, the learned Counsel relied upon a judgment of the Hon'ble Supreme Court of India in ***Sree Kamatchi Amman Constructions Vs. Divisional Railway Manager (Works), Palghat and Ors.***¹, more particularly on paragraph No.19, to contend that unless the parties have agreed that interest shall be paid, no interest can be awarded by the learned Arbitrator.

¹ (2010) 8 SCC 767



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He would further place reliance on a judgment of the Hon'ble Supreme Court of India in *Union of India Vs. Manraj Enterprises*² to contend that certain concessions made by the counsel during the arguments shall not bind the parties.

7. Per *contra*, Mr.Amalraj S.Penikilapatti, learned Counsel for the respondent submitted that there are several arbitral proceedings in respect of work of similar nature between the appellants and other contractors. In orders passed in such proceedings, the Courts have consistently rejected the challenge on grounds similar to that raised by the appellants in this case. As regards the quantity of work, the respondent referred to paragraph No.13 of the award and contended that the relevant documents such as the duly certified completion certificates, general work orders, route diagram, acceptance certificate of AT wing, M-Book, sand calculation sheets and the consolidated project-wise check list signed by the appellants were submitted along with the bills. The respondent brought the notice of the Court that the M-Book was signed by the officials of the appellants Company and the signatures were not disputed. Therefore, the quantity of work completed by the respondent is also not disputed.

² (2022) 2 SCC 331



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8. As a matter of fact, immediately after the bills were submitted, the appellants were not sure as to whether those amounts had to be paid or not. Therefore, they referred the matter to the Committee by their communication, dated 24.03.2004 and the said Committee has submitted its report only on 26.03.2004 and thereafter the bills were unpaid, a dispute is raised and arbitration is invoked. Therefore, there is no delay whatsoever on the part of the respondent and the claim is very much within the period of limitation. The learned Arbitrator has power to award *pendente lite* as there is no prohibition in the contract. Both the *pendente lite* and post award interest has been granted at the rate of 12% which is very much reasonable. He would submit that absolutely, no ground whatsoever has been made to interfere with the award under Section 34 of the *A&C Act*.

9. We have considered the rival submissions made on either side and perused the material records of the case. Firstly, it has to be seen that whether the failure of the Arbitral Tribunal to record findings on the quantum of work executed by the respondent is patently illegal. Secondly, whether the award of interest is beyond the scope of the contract.



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10. Under Section 34(2-A) of the *A&C Act*, the award shall not be set aside merely on the ground of an erroneous of application of law or by re-appreciation of evidence. The learned Single Judge decided the first issue by examining paragraph No.15 of the award. The said paragraph in the relevant part is set out below:-

"15.... The Acceptance Test Report as well as entries in the M-book clearly prove that the work has been completed by the Contractor and as such even in the absence of any Work Order, these works were to be carried out to comply with the statutory requirement namely the code of conduct issued by the Corporation of Chennai. It is not in dispute that the code of conduct is applicable to all service departments including Chennai Telephones. Hence, in the considered view of this tribunal, the disallowance of the claim is not proper and correct The Acceptance Test Report and the entries in M-book contains quantitative and qualitative measurement which have been certified by the responsible officers of BSNL regarding the various items of works completed by the Contractor "

11. It is evident from the paragraph that the evidence on record, particularly, the Acceptance Test-Report and the M-Book contained quantitative and qualitative measurements certified and signed by the



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officials of the appellants Company. Such conclusion, as decided by the learned Single Judge, is certainly based on a reasonable appraisal of the documentary evidence on record and therefore, do not warrant interference under Section 34 of the *A&C Act*.

12. Similarly, the question regarding interest is no longer *res integra*. The Hon'ble Supreme Court of India has categorically held in its judgment in ***Sree Kamatchi Amman Constructions Vs. Divisional Railway Manager (Works), Palghat and Ors.*** (cited *supra*), more particularly paragraph Nos.13 to 19 that only if the agreement between the parties expressly prohibits the award of interest, the same would be a bar for the learned Arbitrator to award *pendente lite* interest. But, in this case, there is absolutely no clause whatsoever prohibiting the award of the interest and accordingly, no exception can be taken for the award of interest by the learned Arbitrator.

13. Therefore, we find that the order of the learned Single Judge, in rejecting the challenge to the award, is in order and therefore, this Original



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Side Appeal fails and is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.)

(D.B.C., J.)

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(3/9)

Index : yes

Speaking order

Neutral Citation : yes

grs



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