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O.P.No.685 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

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1.The Chief Engineer, Highways,
NABARD & Rural Roads,
Integrated CE's Office, HRS Campus,
Chennai – 600 025.

2.The Superintending Engineer, Highways,
NABARD & Rural Roads,
No.B48 Alagesan Nagar,
Chengalpattu – 603 001.

3.The Divisional Engineer, Highways,
No.B75, Alagesan Nagar,
NABARD & Rural Roads,
Chengalpattu – 603 001.

... Petitioners

Vs.

Sri Venkateswara Constructions
Rep. by its Proprietor,
Mr.M. Venkatesan,
No.5/19, Michael Garden,
Ramapuram, Chennai – 600 089.

... Respondent

Prayer : Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the impugned award dated 25.01.2019 passed by the learned Arbitrator.



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For petitioners : Mr.A. Edwin Prabakar,
Special Government Pleader (CS)
Assisted by Mr.C. Sathish,
Government Advocate

For respondent : No appearance

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act'), challenging the impugned Arbitral Award dated 25.01.2019.

2. The petitioners herein were the respondents and the respondent herein was the claimant in the arbitration.

3. The respondent was awarded a contract by the petitioners under an Agreement dated 28.05.2007. The contract involved construction of a bridge. The respondent had claimed that the termination of contract done by the petitioners, is bad in law. There seems to be a dispute between the parties arising out of an Agreement dated 28.05.2007. An Arbitrator was appointed by this Court under Section 11 of the Act in



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OP.No.464 of 2017 by its order dated 07.08.2017. The Sole Arbitrator appointed by this Court had acted upon the reference pertaining to the dispute between the parties arising out of an Agreement dated 28.05.2007. The respondent made a claim against the petitioners on 27.01.2018 before the learned Arbitrator seeking for the following reliefs:-

- (1). Declare that the Contract is frustrated and must be short-closed without any liability on either side.
- (2). Declare that the Termination Order dated 29/09/2008 passed in the Contract bearing C.R. Agreement No:42/2006-2007 dated 28/05/2007 by the Respondent/Highways-Department is untenable, unlawful and invalid.
- (3). Declare that the 'Risk and Cost' Recovery Proceedings of the Respondent/Highways-Department is untenable, unlawful and invalid.
- (4). Declare that the Respondent/Highways-Department cannot levy any penalties or liquidated damages on the claimant.



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(5). Declare that the respondent is not entitled to forfeit or make any recoveries whatsoever from the claimant's Bills, SD & EMD under the Contract bearing C.R. Agreement No:42/2006-2007 dated 28/05/2007.

(6). Direct the respondent to pay the cost of Arbitration to the claimant.

4. A counter statement was also filed by the petitioners before the learned Arbitrator denying the liability and they had also raised a specific contention that the claim is barred by limitation.

5. Even though, a limitation plea was taken by the petitioners before the learned Arbitrator, the Sole Arbitrator as seen from the impugned Arbitral Award, has not framed the issue of limitation. The only issues framed by him as seen from paragraph 4 of the Arbitral Award dated 25.01.2019 are as follows:-

(1) Whether the contract could not be performed due to 'Force Majeure Conditions' and 'Escalation of Costs' and it was frustrated as per Sec.56 of the Indian Contract Act as



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alleged by the Claimant?

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(2) Whether the termination order dated 29-09-2008 is not valid in law?

(3) Whether the Claimant is entitled to declarations as prayed for?

6. In the counter statement filed by the petitioners before the learned Arbitrator, it is clear that a specific stand was taken by the petitioners that the arbitral claim made by the respondent is barred by limitation. The same is also recorded by the learned Arbitrator in the impugned Arbitral Award in paragraph 3 wherein, it has been stated that the reliefs claimed in the Claim Petition are belated and not maintainable.

7. The contract awarded to the respondent by the petitioners which is the subject matter of dispute is dated 28.05.2007. The case of the petitioners as seen from the counter statement filed before the learned Arbitrator is that the respondent had abandoned the project and due to the same, they had issued a termination letter on the respondent



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on 29.09.2008. The said termination letter dated 29.09.2008 has also been filed by the petitioners as Ex.C9 before the learned Arbitrator. Despite the termination having been done as early as on 29.09.2008, the respondent has invoked arbitration in accordance with the arbitration clause only in the year 2017 by filing a petition under Section 11 of the Arbitration and Conciliation Act before this Court in O.P.No.464 of 2017.

8. When a specific plea has been taken by the petitioners that the claim is barred by limitation, the learned Arbitrator ought to have framed the issue of limitation. Instead, the learned Arbitrator, without framing the said issue and without adjudicating the said issue as seen from the Arbitral Award, has considered other issues and has passed the impugned Arbitral Award. The limitation issue having not been adjudicated by the learned Arbitrator under the impugned Arbitral Award, it is clear that the impugned Arbitral Award is patently illegal and is opposed to public policy. In view of the same, the impugned Arbitral Award dated 25.01.2019 has to be set aside by this Court.



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9. Accordingly, the impugned Arbitral Award dated 25.01.2019 is hereby set aside and this Original Petition stands allowed, as prayed for. However, both the parties are granted liberty to initiate fresh arbitration in accordance with law since only on the ground that the issue of limitation has not been framed by the learned Arbitrator and not adjudicated upon, the impugned Arbitral Award is being set aside by this Court.

10.08.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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