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Arb.O.P.(Com.Div)Nos.27 and 186 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2024

DELIVERED ON:13.12.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

Arb.O.P.(Com.Div.)Nos.27 and 186 of 2021

Arb.O.P.(Com.Div.)No.27 of 2021

M/s Creators Architects
1106 KLJ Tower,
Netaji Subhash Palace,
Pitampura, New Delhi 110 034.
Rep by its Partner
Utsav Gupta

.... Petitioner

Versus

The Registrar,
Pondicherry University,
Bharat Ratna Dr.B.R.Ambedkar Administrative Building,
R.V.Nagar, Kalapet,
Puducherry-605014.

.... Respondent

Arb.O.P.(Com.Div.)No.186 of 2021

The Registrar,
Pondicherry University,
Bharat Ratna Dr.B.R.Ambedkar Administrative Building,
R.V.Nagar, Kalapet,
Puducherry-605014.

..... Petitioner

VS



Arb.O.P.(Com.Div)Nos.27 and 186 of 2021

M/s Creators Architects
1106 KLJ Tower,
Netaji Subhash Palace,
Pitampura, New Delhi 110 034.
Rep by its Partner
Utsav Gupta

.... Respondent

Arb.O.P.(Com.Div)No.27 of 2021: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned Award dated 18.02.2021 of the Arbitral Tribunal with respect to Claims- 2 to 6 only.

Arb.O.P.(Com.Div)No.186 of 2021: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned Award passed in O.P.No.406 of 2018 and O.A.No.414 of 2018 in A.F.No.134 of 2018 dated 18.02.2021 of the Arbitral Tribunal insofar as allowing (a) the claim of a sum of Rs.66,52,825/- towards Architectural Consultancy fees (Claim No.1), (b) a sum of Rs.6,72,612 towards Travel expenses (Claim No.7) and © direction for interest at 9% from 10.10.2016 till February 2020 and rejecting the counter claim of the petitioner only.

For Petitioner in : Mr.Arun C.Mohan
Arb.O.P.No.27/2021 &
Respondent in Arb.O.P
No.186/2021

For Respondent : Mr.AR.L.Sundaresan
in Arb.O.P.No.27/2021 Addl. Solicitor General
& Petitioner in Arb.O.P assisted by Mrs.A.V.Bharathi
No.186/2021



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COMMON ORDER

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The dispute is between an Architect and Pondicherry University. Both the parties, aggrieved by the Award dated 18.02.2021, are before this Court by way of Arbitration Original Petition (Commercial Division) in O.P.Nos.27 and 186 of 2021 respectively.

2. I have heard Mr.Arun C.Mohan, learned counsel for the petitioner in Arb.O.P.(Com.Div)No.27 of 2021 and the respondent in Arb.O.P.(Com.Div) No.186 of 2021 and Mr.AR.L.Sundaresan, learned Additional Solicitor General, assisted by Mrs.A.V.Bharathi, counsel for the respondent University in Arb.O.P.(Com.Div) No.27 of 2021 and the petitioner in Arb.O.P.(Com.Div) No.186 of 2021.

3. For the sake of convenience, the petitioner in Arb.O.P.(Com.Div.) No.27 of 2021 shall be referred to as petitioner hereafter and the Pondicherry University shall be referred to as respondent.

4. The petitioner was assigned the work of architects to handle various



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buildings which were being constructed under the XI Plan Project in the respondent University, consisting of 10 buildings, in and by letter dated 19.12.2007. The scope of work was defined and allotted by the respondent to the claimant and it was followed up with an agreement between the parties on 28.05.2008. In fact, under the said agreement, the scope of work was reduced from 10 buildings to 3 buildings alone. According to the claimant, he had performed his duties in terms of the requirements of the respondent University and was also coordinating with the Project Management Consultant viz., M/s Rites Ltd besides also the contractors on site, right from the inception of the work.

5. According to the petitioner, the intermediate bills raised by the petitioner was not paid by the respondent, citing some lame excuse or other. The petitioner, therefore, claimed damages under Section 73 of the Indian Contract Act, 1872. The petitioner also claimed breach viz., non-performance of reciprocal promises made by the respondent and also delayed payment being made despite the petitioner completing the work and also issuing Demand notice on 10.10.2008.



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6. As the respondent did not come forward to settle the claim, the petitioner invoked the Arbitration Clause in the contract and the parties were referred to the Sole Arbitrator, Hon'ble Justice.Mr.K.Venkataraman (Former Judge of this Court) in O.P.No.406 of 2018.

7. Before the learned Arbitrator, the petitioner made claims under 8 different heads, which are as follows:

S.No	Claims	Heads
i)	Claim No.1	<i>Architectural Consultancy Fee Due but not paid:Rs.66,52,825/-.</i>
ii)	Claim No.2	<i>Damages on Account of Loss Suffered Due to Delay in intermediate and Final payment – Rs.68,34,962/-(interest computed till 31/12/2017 + further interest w.e.f.01.01.2018 till date of payment is also claimed).</i>
iii)	Claim No.3	<i>The Fee due for preparation of Models of the buildings as per Agreement dated 28/5/2008 – Rs.6,61,200/-</i>
iv)	Claim No.4	<i>Damages because of loss of profit on account of reduction in the Scope of Work – Rs.32,26,400/-.</i>
v)	Claim No.5	<i>Damage suffered on Overhead Expenditure – Rs.38,87,400/-</i>
vi)	Claim No.6	<i>Damage on Account of Loss suffered due to delay in Receipt of Profit – Rs,29,15,000/-.</i>
vii)	Claim No.7	<i>Travel expenses not paid as per terms of Contract – Rs.6,72,612/-.</i>
Viii)	Claim No.8	<i>Pre-suit, Pendente lite, legal expenses and future interest.</i>

8. According to the petitioner, after having committed to allot 10 buildings, the fact that the respondent University allotted only 3 buildings,



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entitled the petitioner to claim damages. The claimant would further contend that he was also called upon to carry out some additional works which were not part of the XI Plan and in respect of the said amount also, the claim has been made for the submission of plans and estimate for the proposed vertical extension over the building for School of Tamil and School of Humanities and Social Science of the respondent University. In all, the claimant sought for Rs.4,20,24,176.50.

9. The respondent resisted the claim stating that in terms of the agreement, the petitioner was assigned only three buildings and therefore, the petitioner cannot claim any damages or alleged loss on account of loss of profit because the scope of work was reduced from 10 buildings to 3 buildings. The respondent would contend that all the bills were duly settled and no amounts are due by the respondent.

10. **The respondent also made a counter claim for a sum of Rs.4,00,00,000/- towards rectification of defects and Rs.16,81,676.50 towards liquidated damages.** The learned Arbitrator dismissed the counter claim in toto and passed an award directing the respondent University to pay



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Rs.66,52,825/-(Sixty Six Lakhs Fifty Two thousand Eight hundred twenty five only) together with interest @ 9% p.a from 10.10.2016 to February 2020.

11. Before the learned Arbitrator, no witness was examined on the side of the claimant. However, Exs.C.1 to C.99 were marked on the side of the claimant and one R.Ramakrishnan was examined as R.W.1 on behalf of the respondent University and one G.Venguidesvarane was examined as R.W.2 in chief as well as cross examination. On the side of the respondent University Exs.R.1 to R.67 were marked.

12. The learned Arbitrator, in respect of the first claim viz., **Architectural Consultancy fee not being paid**, rejected the defence of the respondent and awarded a sum of Rs.66,52,825/-, in favour of the petitioner.

13. In respect of Claim No.2 viz., **Damages on account of loss suffered due to delay in intermediate and final payment**, the learned Arbitrator held that the petitioner has not proved the claim of damages and rejected the same.

14. In respect of Claim No.3 viz., **Fee due for preparation of models**



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of the buildings as per Agreement dated 28.05.2008, the learned Arbitrator found that the claim falls outside the scope of agreement and rejected the said claim.

15. In respect of of Claim no.4 viz., **Damages because of loss of profit on account of reduction in the scope of work, claiming Rs.32,26,400/-**, the learned Arbitrator rejected the claim.

16. Aggrieved by the rejection, the petitioner/claimant has filed **Arb.O.P.(Com.Div) No.27 of 2021**.

17. In respect of Claim No.5 viz., **Damages suffered on overhead expenditure to the tune of Rs.38,87,400/-** the learned Arbitrator rejected the claim.

18. In respect of Claim No.6 viz., **Damage on account of loss suffered due to delay in receipt of profit**, the learned Arbitrator has also rejected the claim on the ground that the petitioner was entitled to interest only in respect of the unpaid amount due to the petitioner.



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19. In respect of Claim No.7 viz., **Travel expenses not paid as per the terms of contract to the tune of Rs.6,72,612/-**, it was allowed by the learned Arbitrator referring to clause No.12.7 of the agreement.

20. Learned counsel for the petitioner, Mr.Arun C.Mohan would contend that the reduction of the scope of work was a unilateral act of the respondent and it clearly resulted in damages on account of loss of profit to the petitioner. He would therefore seek for the said claim being allowed.

21. Learned counsel would also refer to the certification of the bills of the petitioner by the Project Management Consultant viz., M/s Rites and the delay in not only making intermediate payment of bills, but also final payment and would render the respondent liable to pay interest.

22. With regard to the preparation of study models not being part of the agreement, the learned counsel would contend that clause 10.1.1 of the agreement dated 28.05.2008 clearly states that 10% of the quoted fee is payable even for preparation of study models.



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23. Insofar as loss of profit being disallowed, the learned counsel for the petitioner would contend that the learned Arbitrator failed to consider that the loss of profit cannot be compensated by awarding interest which the Arbitrator has done and therefore adequate compensation has not been awarded to the petitioner.

24. Insofar as the counter claim of the respondent, learned counsel for the petitioner would submit that the counter claim was rightly dismissed by the Arbitral Tribunal and the same does not warrant any interference.

25. Learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Limited and Ors vs Brojo Nath Ganguly and Ors*** reported in ***AIR 1986 SC 1571***, where, the Hon'ble Supreme Court held that where contracts are in a standard or prescribed form or consist of a set of rules, they are not contracts between individuals containing terms meant for those individuals alone, but, contracts in standard form which embody a set of rules by the party with superior bargaining power with a large number of persons who have far less



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bargaining power or no bargaining power at all. The Hon'ble Supreme Court further held that such contracts affect large number of persons or a group or groups of persons and therefore, such a contract or such a clause in a contract ought to be adjudged void and opposed to public policy.

26. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondent University would submit that once the petitioner had agreed and entered into an agreement dated 28.05.2008, clearly stipulating the scope of work was only in respect of three buildings, it is not open to the petitioner to claim loss on account of reduction of scope of work and the learned Arbitrator had rightly dismissed the said claims.

27. Insofar as the payment to the petitioner, towards the architectural work for the building project, learned Senior Counsel would refer to the agreement between the respondent University and Rites Ltd, the Project Management Consultant which clearly contemplates payment to the petitioner only upon certification by the Project Management Consultant. According to the learned Senior Counsel, the petitioner acquiesced himself of the said condition and therefore, the petitioner cannot claim any loss on account of



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delay since all the payments certified by the Project Management Consultant were duly settled by the respondent and so far as the claim of Rs.24,00,000/- under the XII Plan, learned Senior Counsel would contend that such a claim would not arise because the XII plan itself was only at the stage of proposal and never fructified for want of funds from UGC. Learned Senior Counsel therefore submits that when the project itself did not take off, there is no question of any payment being made to the petitioner, much less Rs.24,00,000/- under the XII plan. He would further contend that the petitioner has not submitted the models and architectural drawings in respect of buildings for (i) School of Law, (ii) Centre for information, Science and Technology and (iii) Annexure to the existing Department Building for additional facilities – Four units. In such view of the matter, learned Senior Counsel would submit that the learned Arbitrator erred in awarding the claim of Rs.24,00,000/-.

28. Referring to 89th minutes of meeting of the Building Committee dated 31.10.2012, learned Senior Counsel would fortify his contention that only a proposal was mooted and it had to await sanction and also funds from UGC and such being the position, the petitioner cannot claim the said sum of



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Rs.24,00,000/- when there was no sanction accorded by UGC for the XII Plan.

It is also contended by the learned Senior Counsel that the respondent never called upon the petitioner to prepare and submit drawings for the building School of performing Arts, Multipurpose Auditorium and Vertical expansion of school of social science and school of Humanities and Tamil and that only part of the campus was assigned to the petitioner and therefore, the claim ought to have been disallowed by the learned Arbitrator.

29. Insofar as the claim No.1 being awarded in favour of the petitioner, learned Senior Counsel would submit that the estimated cost of the work was Rs.48,45,04,409/- and the completion cost, however, recommended by the Project Management Consultancy viz., Rites Ltd is Rs.56,08,66,908/-, in terms of which, the architect fee payable to the petitioner as per the agreement, was Rs.1,68,26,006/, and over and above the same, the respondent has already paid Rs.1,69,43,648/- i.e, with an excess of Rs.1,17,642/-. It is also contended by the learned Senior Counsel that no GST is payable since the settlement of architect fees was settled even before the implementation of GST and hence inclusion of GST is erroneous.



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30. Insofar as 7th claim which was allowed in favour of the petitioner viz., travel expenses, learned Additional Solicitor General would submit that in terms of Clause 12.7, the respondent is entitled only to 6 visits being reimbursed and anything beyond 6 visits would be reimbursable only on production of paper records and approval of the respondent. However, according to the learned Additional Solicitor General, the learned Arbitrator has not interpreted to clause 12.7 while awarding the claim in favour of the petitioner and would therefore pray for OP No.27 of 2021 being dismissed and OP No.186 of 2021 being allowed.

31. I have carefully considered the submissions advanced by Mr.Arun C.Mohan, learned counsel for the petitioner and Mr.AR.L.Sundaresan, learned Additional Solicitor General for the respondent.

32. Before proceeding to the main claim, I would first take up the counter claim. Though the respondent University made a counter claim before the learned Arbitrator, the learned Arbitrator has rightly found that the respondent has miserably failed to substantiate the counter claim, that too, being raised for the first time before the Arbitral Tribunal. Learned Arbitrator



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also found that no action was taken against the Project Management Consultancy or any of the contractors for the alleged delay in completion of the project and therefore, the counter claim directed against the architect alone was devoid of any merit and the learned Arbitrator also found that the claim was also barred by limitation.

33. I do not find any perversity or illegality in the findings arrived by the learned Arbitrator rejecting the counter claim. Therefore, the rejection of the counter claim by the learned Arbitrator stands affirmed.

34. Coming to the claim which has been partly allowed and partly rejected, (i) insofar as the first claim the petitioner claim 3% of the total completion cost towards architectural fee as verified by Project Management Consultancy viz. Rites Ltd. The claim of the petitioner was opposed on the ground that the petitioner had delayed in performing the work assigned to him which consequently resulted in further delay of preparation of tenders, execution of works etc.,. Further, the respondent University also disallowed the escalation cost in calculating the 3% fee of the architect. In this regard, the learned Arbitrator has elaborately discussed the oral evidence and factored the



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admissions of R.W.1 during cross examination that the Project Management Consultant was paid their agreed fee on the final built up cost and both final built up cost and completion cost are one and the same.

35. The learned Arbitrator has also referred clause 10.1 of the agreement dated 28.05.2008 which clearly fixes the architect fee @ 3% of the total completion cost to be released in stages and the service tax will be paid as per the applicable rate. Therefore, the findings of the learned Arbitrator are clearly a possible view in the light of the available oral and documentary evidence and cannot be said to be perverse or patently illegal and therefore, the findings of the learned Arbitrator in this regard are affirmed.

36. With regard to the claim of Rs.24,00,000/- in respect of XII Plan building project, referring to Clause 10.1, again, the learned Arbitrator found that the scope of work assigned to the claimant was only preparation of drawings and estimates prior to actual construction and as per Clause 10.1 the claimant is entitled to receive 40% of the quoted fee as the non-implementation of the drawings was not directly attributable to the petitioner but only because of the policy decision taken by the respondent to drop the proposal owing to



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financial crisis.

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37. The Bills were certified by the Project Management Consultancy and in fact even in the agreement dated 28.05.2008 it contemplated additions and alterations under Clause 12.2, where, it was agreed by the respondent University that they shall have right to seek additions, modifications and deletions to the designs and drawings submitted by the petitioner and when deviations and additions are substantial, additional fee would be paid to the architect.

38. Here, admittedly, the claim of Rs.24,00,000/- is only in respect of plans submitted by the petitioner. The petitioner has spent his time and energy for preparation of drawings and plans and in terms of clause 10.1, the petitioner is entitled to the claim in respect of the work already executed by him. It is not open to the respondent to contend that UGC did not sanction the proposal and therefore, the petitioner will not be paid.

39. It is contrary to the agreed clauses in the agreement and rightly the learned Arbitrator has found that the petitioner is entitled to the said sum of



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Rs.24,00,000/- and awarded a total sum of Rs.66,52,825 in Claim -1.

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40. With regard to the claim of alleged loss on account of reduced scope of work, the learned Arbitrator has rightly held that when the scope of work was reduced from 10 buildings to 3 buildings between the Letter of Intent and the Agreement viz., 19.12.2007 and 28.05.2008, finally entrusting only three buildings to the petitioner, the petitioner ought to have questioned the same then and there and having accepted the agreement and executed the work, it is not open to the petitioner to thereafter turn around and claim that he suffered loss on account of reduced scope of work. The reference to the decision of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Limited and Ors vs Brojo Nath Ganguly and Ors*** reported in ***AIR 1986 SC 1571*** cannot apply to the facts of the present case. The petitioner has drawn benefit from the said agreement and clauses and now he cannot allege that the petitioner was not having any bargaining power and therefore he was left with no other option but to sign the agreement and accept the reduced scope of work and that the Agreement itself should be treated as void. Therefore, the findings of the learned Arbitrator do not warrant any interference.



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41. With regard to the rejection of Claim Nos.5 and 6 and awarding interest, I again do not find any illegality or perversity in the findings of the learned Arbitrator, especially since the petitioner never challenged the allocation of work at the appropriate point of time.

42. Coming to the award of Claim No.7 towards travel expenses, the learned Arbitrator has found that the respondent has not denied the expenses incurred or the visits made by the petitioner specifically in the statement of defence and entertained the claim of Rs.6,72,612/- towards non-payment of outstanding travel expenses.

43. Here, again I do not find any justifiable grounds to interfere with the findings of the learned Arbitrator.

44. In fine, in view of the above discussions, I do not find that the Arbitral Award suffers from any patent illegality or being opposed to the public policy of India or that it is in conflict with the basic notions of morality or justice. I do not see any reasons to interfere with the well considered Award of the learned Arbitrator.



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45. In fact, I am conscious of the fact that the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited and the grounds on which interference is warranted are also not available in the present case.

46. In the result, both Arb.O.P.(Com.Div) Nos.27 of 2021 and 186 of 2021 are dismissed. There shall be no order as to costs.

13.12.2024

sr
Index:yes/no
Internet:yes/no
Speaking Order/Non-speaking order

To

The Registrar,
Pondicherry University,
Bharat Ratna Dr.B.R.Ambedkar Administrative Building,
R.V.Nagar, Kalapet,
Puducherry-605014.



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Arb.O.P.(Com.Div)Nos.27 and 186 of 2021

P.B.BALAJI,J.

sr

Pre-Delivery Common Order in
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