



Arb.O.P.(Comm.Div.)No.64

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 11.09.2024	PRONOUNCED ON 19.12.2024
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CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

Arb.O.P.(Comm.Div.)No.640 of 2022

V.Krishnamurthy

... Petitioner

Vs

1.The Airport Authority of India,
Represented by its Chairman,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi – 110 003.

2.The Airport Director,
Airport Authority of India,
Chennai International Airport,
Chennai – 600 027.

3.The Deputy General Manager (Commercial),
Airport Authority of India,
Chennai International Airport,
Chennai – 600 027.

4.The Manager (F&A – Revenue),
Airport Authority of India,
Chennai International Airport,
Chennai – 600 027.

... Respondents

PRAYER:- Arbitration Original Petition filed under Section 11(6)34 (2)(b)(ii)

of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs:-

a) set-aside the Impugned Award dated 18.01.2022 passed by the learned

Sole Arbitrator arising out of the order dated 11.03.2021 passed in W.A.No.03



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of 2021

- b) Direct the respondents to pay costs;
- (c) To grant such further or other orders as this Court deem fit.

For Petitioner : Mr.G.Rajagopalan, Senior Counsel
for M/s.G.R.Associates

For Respondents : Mr.Fr.Xavier Arul Raj, Senior Counsel
for Ms.A.Arul Mary

ORDER

This O.P. had been filed challenging the Impugned Award dated 18.01.2022 passed by the learned Sole Arbitrator nominated under the order dated 11.03.2021 passed in W.A.No.03 of 2021.

2. Heard Mr.G.Rajagopalan, learned Senior Counsel for M/s.G.R.Associates for the petitioner and Mr.Fr.Xavier Arul Raj, Senior Counsel for Ms.A.Arul Mary, learned counsel appearing on behalf of the respondents.

3. The learned Senior Counsel for the petitioner would submit that the petitioner herein was a successful bidder for the Aircondition City services on Anna International Kamaraj Domestic Airport Terminal. He had been extending such services from the year 1987 and was the successful tenderer in the year 1988, 1998 & 2007. As per the term of contract, there was an annual license fee with an escalation of 10% per annum. As per the contract, Licence fee was fixed



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at Rs.393.60 per Sq.Mt per annum. However, vide circular dated 06.05.2008, the license fee for the land and space for a period of three years from 01.04.2008 to 31.11.2011 was revised unilaterally by fixing the rent at the rate of Rs.1952/- per Sq.Mt per annum + 20% more in case of pay demand and the same was indicated to the petitioner calling upon him to pay a total sum of Rs.2342.40/- per Sq.Mt per annum. The said circular was challenged by the petitioner in W.P.No.19414 of 2008 and by judgment dated 20.12.2019, the circular was quashed and remanded to the respondent for a fresh consideration. He would submit that without considering afresh the claim made by the petitioner, the respondents had preferred an Intra-Court Appeal in W.A.No.3 of 2021.

4. The Division Bench of this Court considering a clause of arbitration available in the agreement between the parties suggested the nomination of an Arbitrator for deciding the dispute. When the matter was taken up for hearing on 11.03.2021, this Court by consent had appointed a retired Judge of this Court as an Arbitrator particularly to decide the dispute relating to the fixation of the rental charges. During the arbitration proceedings, a question of scope of arbitration arose and hence, the Arbitrator had directed the parties to seek a clarification with regard to the scope of the arbitral proceedings. An application was filed by the petitioner seeking for a clarification and a Division Bench of this Court had held that no clarification as sought is necessary, as it was open to



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the learned Arbitrator to interpret and assess as to whether the order quashing the circular upon being appealed against and upon a consent, an order being passed thereon may be regarded as final or not. He would submit that the learned Arbitrator by relying upon the observation made by the Division Bench, wherein the Division Bench had observed that when an appeal being preferred, the finality of the order passed by the learned Single Judge was undone in the course of appeal, since the parties had agreed to refer all their disputes to arbitration. The learned Arbitrator relying upon the observation had held that by the orders of the Division Bench, the circular remain intact and such circular would be a circular in *rem* and therefore, the petitioner cannot be held to be aggrieved. The learned Arbitrator had also concluded that when a circular is in *rem*, the petitioner cannot seek to challenge the same as if it is a circular in *personam* and had given a finding that there was no arbitrariness in the circular issued by the respondents. He would submit that the learned Arbitrator failed to read the orders of the Division Bench dated 11.03.2021 & 12.11.2021 conjunctively. He would submit what was referred to the learned Arbitrator was the dispute relating to the fixation of rental charges and the subsequent order of the Division Bench had held that the learned Arbitrator will decide upon the finality of the learned Single Judge's order. He would submit that the learned Arbitrator had failed to decide on the finality of the order quashing the circular and also failed to decide the dispute relating to the fixation of the rental charges.



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the respondents to substantiate the claim of rental charges based upon the circular issued in the year 2008 had given a finding that the said circular is not arbitrary and since that it applies in rem, the petitioner cannot challenge the said circular. He would submit that the learned Arbitrator failed to note that the learned Single Judge had quashed the circular and the Division Bench also had directed the Arbitrator to resolve the dispute with regard to the claim of payment of rental charges. Hence, the learned Arbitrator according to him had failed to resolve the dispute and had proceeded on the basis of upholding a policy decision as being done by this Court dealing in cases under Writ jurisdiction and had failed to comply with the mandate issued by the Division Bench in its order dated 11.03.2021. Hence, he would submit that the Award itself is liable to be interfered with.

5. Countering his arguments, Mr.Fr.Xavier Arul Raj, learned Senior Counsel appearing on behalf of the respondents would submit that even under Clause 4 of the Special Terms and Conditions appended to the Award, the petitioner would have to pay the rates fixed from time to time. He would submit that the basis of revision of rental exercise by the competent authority cannot be sought to be nullified in a private Tribunal only in respect of the petitioner while all the other licensees have complied with the same. Had an Award been passed in favour of the petitioner that it would have given rise an anomalous



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submit that the fairness of enhancement of any commercial contract cannot be decided by the Tribunal when it is applicable in *rem*. He would also rely upon a judgment of the learned Single Judge of this Court in O.P.No.903 of 2019 and would contend that as per the contract when the parties have agreed to pay revised rents, the petitioner cannot wriggle out of the contract when he had agreed to pay the revised rent. The only question would had to be decided is whether the revised rents is arbitrary fixation. He would submit that the rents that had been fixed applies to all the persons who had been leased the lands by one contract or the other and all such contractors have paid such increased rent and is only challenged by the petitioner. He would submit that the petitioner had not produced any material proof as to what would be the fair lease rentals. He would submit that when all the contractors who had been in possession of the land under the contract with the respondents had accepted to pay the said rent, the same would amount to be a fair rent which had been universally accepted and when the petitioner had not produced anything contrary, the same could only mean to be a fair rent. He had also relied upon the various other judgments to substantiate the authority of the respondents to fix the fair lease rental leviable from the contractors such as the petitioner.

6. I have heard the submissions made by the learned Senior Counsels appearing for their respective parties and perused the materials available on



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7. Admittedly, the petitioner being successful bidder, had taken on lease the lands belonging to the respondents by accepting to pay the rents as fixed by the respondents from time to time. It is true that a learned Single Judge of this Court had set aside the circular. It is the case of the petitioner that a Division Bench of this Court without disturbing the order of the learned Single Judge passed an order and referred the parties to a learned Arbitrator to resolve the disputes with regard to the claim of these rentals. The clarification order passed by the Division Bench of this Court had left it to the learned Arbitrator to decide the finality of the order passed by the learned Single Judge. At the outset, the interpretation of the Division Bench order as regard to the findings rendered by the learned Single Judge would have to be first resolved before analysing the findings of the learned Arbitrator as regards to the validity of the circular. By order dated 11.03.2021, the Division Bench after hearing the parties had appointed an Arbitrator for resolving the disputes relating to payment of rental charges. The revised rental charges were issued under the impugned circular which was challenged before the learned Single Judge who had held the same to be arbitrary and remanded the matter back to the respondents. However, during the course of the appeal, the Division Bench by its order dated 11.03.2021 had specifically framed the issue of dispute between the parties. The dispute was the payment of rental charges by the petitioner to the respondents. When the parties



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have agreed to resolve the dispute regarding the lease rental charges it would be implied that the successful Writ Petitioner had given up his claim on the circular.

8. As rightly pointed out by the learned Arbitrator, the said circular is a circular in *rem* and not a circular in *personam*. From the records it could be seen that the original lease rentals fixed in the year 2008 after considering certain objections from various quarters had been reduced and therefore, the said circular had already been modified at the instances of the respondents. The said modified circular never came to be challenged by the petitioner. This has been admitted to by the petitioner even in the petition challenging the Award.

9. From the reduction of the license rates by the respondents themselves, it could be seen that the respondents had applied its mind to the earlier circular and had rescinded the said circular by issuing the subsequent circular, in the Board Meeting held by the respondents on 18.11.2009. The said revised rates have not been put to challenge by the petitioner in any of the proceedings. As rightly pointed out by the learned Senior Counsel appearing on behalf of the respondents, the petitioner had also not produced any materials as to what would be the reasonable lease rental for the lands belonging to the respondents in possession of the petitioner during the contract period.



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10. When that being so, I do not find any infirmity with the findings of the learned Arbitrator which upheld the right of the respondents claiming lease rents as per the circular issued by the respondents. Even though, the learned Arbitrator had given a finding that such lease rental had been in the form of a circular in rem as also binding upon the petitioner. The findings of the Hon'ble Apex Court in judgment in the case of ***Jamshed Hormusji Wadia Vs Baord of Trustess, Port Trust of Mumbai and Another*** reported in ***2004 (3) SCC 214*** while appointing a retired judge to resolve the dispute regarding the rents fixed by the Bombay Port Trust had directed all the tenants to place on record the distinguishing features for carving out the exception and relaxing the general terms and entitling them to reduction in right of rents applicable. In the present case, the petitioner had not produced any such materials before the learned Arbitrator to come up to a conclusion in holding that the circular would not be applicable to the petitioner. In the facts and circumstances of the case, with the aforesaid reasoning and findings, I do not find any infirmity in the Award passed by the learned Arbitrator for this Court to interfere by invoking the provisions of Section 34 of the Arbitration and Conciliation Act.

11. In fine, the O.P. is dismissed. However, there shall be no order as to costs.



Index :Yes/No
Speaking Order/Non Speaking Order

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K.KUMARESH BABU, J.

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