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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.No.73 of 2013

The Union of India

Rep. by Commander Works Engineer (Navy)

Fort St. George, Chennai – 600 009.

... Appellant

Vs.

1.M/s.Siva Enterprises

No.16, Kamarajar Complex (New Bus Stand)

Stuartpet, Arakkonam – 631 001.

2.Col. SP Singh, ACE (Works),

C/o. Chief Engineer (Navy)

Station Road, Visakhapatnam – 530 004.

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent, to set aside the award passed by the 2nd respondent dated 6th April, 2009 in CA No.CWE (NAVY)/TVL/06 of 2006-2007 and confirmed by this Court, Original Side, Madras in O.P.No.251 of 2009 by the judgment and decree dated 08.11.2010 and allow the OSA.



For Appellant : Mr.AR.L.Sundaresan,
Additional Solicitor General
Assisted by Mr.K.S.Jeyaganesh

For Respondents : Mr.Bijai Sundar for R1
R2 – Arbitrator

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge in this Section 37 appeal by the Union of India is to the order of the learned Single Judge made in OP.No.251 of 2009, an application under Section 34 of the Arbitration and Conciliation Act seeking to set aside the award of the Arbitrator dated 06.04.2009.

The facts that are necessary for the disposal of the appeal are as follows:

2. The Union of India called for provision of two numbers bituminous hard standing to road specification with earthen shoulders for evaluation of heron at NAS, Ramnad. The total contract value was Rs.41,20,745.40/-. The respondent was L1 contractor and as such its tender was accepted on 04.07.2006. The work that commenced on 06.07.2006 was to be completed



by 06.09.2006. After finishing a part of the contract viz., laying of WBM surface, the contractor found that bituminous hard standing cannot be done without providing bituminous macadam. Since there was no provision in the contract for providing bituminous macadam, the contractor informed the lacuna to the Engineer, who was the Commander Works Engineer (Navy) at Fort St. George, Chennai. The Contractor was asked to do the work on piece rate, but, the Contractor offered to do the work on a total consolidated rate. This led to a spot tender being called and cost of laying the bituminous macadam was fixed at Rs.11,75,000/-.

3. The work was entrusted with a third party viz., M/s.Zohara Trading Company on 1st September 2006. The contractor had also executed a power of attorney to enable the said M/s.Zohara Trading Company to execute the work of laying bituminous macadam. The sub-Contractor viz., M/s.Zohara Trading Company completed the work on 18th September 2006 and the contractor completed the work of laying the bituminous top and the entire work was completed by 20.09.2006. The contractor laid a claim contending that the contractor is entitled to payment for the work done upto the WBM level, but, the said monies that were due to the contractor were not paid to



it. There were other claims also. We are not detailing on the other claims, since before the Section 34 Court the learned Standing Counsel for the Union of India had confined his arguments only to claim No.1 relating to payments due for the second Running Account Receipt (RAR).

4. The claim was resisted by the Union of India contending that the amounts payable for the work were also paid to the power agent and if at all the claimant has a claim, it should be against the power agent and not against the Union of India.

5. The Arbitrator on an interpretation of the power of attorney, particularly, Clause 3, which authorizes the sub-Contractor M/s.Zohara Trading Company represented by its Proprietor Shri. Alhaj Md. Salim Alim to receive only the monies due for the work to be done after the execution of the power of attorney and not for the works already done by the Contractor viz., M/s.Siva Enterprises. On the said finding, the Arbitrator passed an award for payment of a sum of Rs.8,54,013.01/- with interest at 12% per annum from the date of the award till payment. The counter claims made by the Union of India on the grounds of compensation for delay in completing



the work was rejected by the Arbitrator.

6. Aggrieved by the award, the Union of India preferred an application under Section 34 seeking to set aside the award. Before the Section 34 Court, only the award regarding claim No.1 was canvassed. The learned Single Judge upon consideration of the relevant clause in power of attorney, concluded that the conclusion of the Arbitrator is justified and no ground to interfere with the award under Section 34 has been made out. Hence, this appeal.

7. We have heard Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.K.S.Jeyaganesh, learned Senior Panel Counsel for Union of India for the appellant and Mr.Bijai Sundar, learned counsel appearing for the respondent / contractor.

8. Mr.AR.L.Sundaresan, learned Additional Solicitor General would vehemently contend that the Arbitrator and the learned Single Judge erred in the interpretation of the power of attorney dated 05.09.2006. Once payment to the agent is admitted, it is for the principal to seek relief under Section 218 of the Contract Act and the claim against Union of India cannot be



maintained.

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9. Mr.Bijai Sundar, learned counsel appearing for the respondent would submit that interpretation of clause in the power of attorney by the Arbitrator and the learned Single Judge is just and proper. Drawing our attention to the language of the power of attorney, particularly Clause 3, which reads as follows:-

*“3. To collect payment/ cheque in the name of Shri Alhaj Mohamed Salim Alim becoming due to M/s.Siva Enterprises on account of all items of work **to be executed in the work** “Provn of two Nos. bituminous hard standing to road specification with earthen shoulder for evaluation of heron at NAS Ramnad” for the sole utilization of the amount as per discretion of Shri Alhaj Mohamed Salih Alim.”*

Mr.Bijai Sundar, learned counsel would contend that the Contractor was authorized only to receive money for the work to be executed and not the work done before execution of the power of attorney.

10. We have considered the rival submissions.



11. We find that the language of Clause 3 justifies the interpretation placed by the Arbitrator as well as the learned Single Judge. The Clause is very clear and it says that to collect payment / cheque in the name of Sri Alhaj Mohamed Salim Alim becoming due to M/s.Siva Enterprises on account of **all items of work to be executed in the work provision of two numbers bituminous hard standing to road specification with earthen shoulders for evaluation of heron at NAS Ramnad.** This language cannot be said to mean that the power of attorney was for collection of amounts due and payable for the works done by the Contractor before the execution of the power of attorney.

12. Admittedly, the Contractor has done a portion of the work viz., upto laying of WBM lane. Thereafter, a portion of the work of laying bituminous macadam alone was outsourced through M/s.Zohara Trading Company. Therefore, in the light of the background facts and in the light of the specific language in the power of attorney, we are unable to fault either the Arbitrator or the learned Single Judge for having held that payment of the money to the power of attorney, which he had no right to collect, cannot



be deemed as payment to the contractor.

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13. Mr.AR.L.Sundaresan, learned Additional Solicitor General would submit that the interest has been granted at 12% which is on the higher side.

14. The award was passed some time in the year 2009. At that time even the Bank interest was hovering around 10% to 12%. Therefore, we do not see any merit in the contention of the Additional Solicitor General regarding award of interest also.

15. We therefore do not find any merit in this appeal. The appeal therefore fails and it is accordingly **dismissed**. No costs.

(R.S.M., J.) (R.S.V., J.)
11.03.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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