



A.No.4236 of 2024
in Arb.O.P.(Com.Div.)No.335 of 2024

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RESERVED ON
02.09.2024

PRONOUNCED ON
09.09.2024

K.KUMARESH BABU, J.

This Application has been filed to stay the operation of the Arbitral Award dated 07.03.2024 in respect of disputes under Agreement No.25 of 2015 dated 12.08.2015 between the applicant and respondent pending disposal of the above Original Petition.

2. Heard for Mr.Vijaya Narayanan, learned Senior Counsel for Mr.Manoj Menon, learned counsel for the applicant and Mr.R.Parthasarathy, learned Senior Counsel, for Mr.Chaitanya Sanjay, learned counsel appearing on behalf of the respondent.

3. Mr.Vijaya Narayanan, learned Senior Counsel for the applicant would submit that the O.P. had been filed challenging the Award by the Arbitral Tribunal on 07.03.2024. At the outset, he would submit that the Award is wholly perverse and against notions of law and also contrary to the terms of the contract. He would further submit that the Arbitral Tribunal failed to consider that the claimant in the arbitral proceedings, did not have any valid authority on the dates when they had purportedly acted on behalf



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of the claimants and further submit that in spite of the *force majeure* clause for the idle time that had occasioned due to the death of the Tamil Nadu, Chief Minister, the petitioner has been held liable to pay a sum of Rs.25,68,125/- to the claimants. According to him, it was not covered under the contract and is beyond the terms of the Contract. He would also contend that the respondent has also been entrusted with the work of removal of boulders and debris and the petitioner had even during the bid meeting had clarified that the idle time in case of encountering boulders cannot be claimed. In spite of the same, an award was passed to that effect. He would further submit that a sum of Rs.2,48,87,500/- has been awarded for which already payments have been made as claimed by the respondent. Therefore, that would amount to double payment. He would further submit that Building and Other Construction Works Welfare Cess had been remitted to by the petitioner in the respondent's account.

4. By order dated 06.11.2018 of the Deputy Chief Labour Commissioner, it has been held that the Building and Other Construction Workers Welfare Cess Act could not be applicable to the respondent. Therefore, the petitioner is entitled to return the said deposit in the respondent's account. However, the Arbitral Tribunal have directed the petitioner to refund the Cess amount already paid by the petitioner again to

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the respondent. He would submit that in view of the order passed by the



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Deputy Chief Commissioner Labour holding that the respondent is not liable to be pay the amount. Firstly, there can be no question of a direction to refund the cess that is paid on that account. Secondly, the deposit itself had been made by the petitioner and in view of no liability on the respondent to make that payment, the petitioner would only be entitled for the refund of the amount. Therefore, he would submit that the Award suffers from perversity and irregularity and if the Award is implemented, he would submit that it will cause irreparable loss and undue hardship to the petitioner. He would further submit that the petitioner is a statutory undertaking and is not a flyby operator and therefore there would be no prejudice caused to the petitioner if any stay is granted.

5. Countering his arguments, Mr.R.Parthasarathy, learned Senior Counsel appearing on behalf of the respondent would contend that the scope of challenging the Award is circumscribed to Section 34 of the Arbitration and Conciliation Act, 1996 and the grounds raised by the petitioner would not fall within the scope of Section 34 of the Act. He would submit that the Award cannot be held to be perverse merely because one view may have been preferred over the other. He would further support the Award by submitting that the Award had been wholly reasoned and cogent and all the contentions had been taken up by the Arbitral Tribunal in

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deciding the issue. Therefore, he would submit that there is no necessity to stay the Award and in case the Court comes to a conclusion that the Award has to be stayed, the petitioner should be put on terms by directing him to deposit the entire Award amount together with interest as of today to the credit of the Original Petition. He had also placed on record the order of the Hon'ble Apex Court in relation to where the Hon'ble Apex Court had directed the deposit of 100% of the Award amount considering the fact the Award was akin to a money decree and if such deposit is made, the respondent is also entitled to withdraw such amount deposited on furnishing of security to the Court's satisfaction.

6. In reply, Mr.Vijay Narayan, learned Senior Counsel would submit that this Court's power to grant of an interim relief in Section 34 application is circumscribed by the provisions of Section 36(3) of the Act read with Order 41 of CPC and he had also placed various judgements in support of his contentions.

7. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.



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8. An Award came to be passed against the petitioner herein and a challenge had been made by contending that the Award has been passed beyond the terms of contract, which would lead to patent illegality in respect of certain claims. Further, it is also the case of the petitioner that even in respect of payment which already been made by the petitioner, an Award had further been made to make the payment. What is more glaring is the contention of the petitioner with regard to refund of the cess amount. It is the case of the petitioner that the cess had been remitted by it to the account of the respondent.

9. It is the case of the petitioner that by a communication dated 06.11.2018 that Deputy Chief Commissioner Labour had held that the respondent is not liable to pay under the said Act for the payment of cess. But, however the Arbitral Tribunal had made an Award for repayment of the cess that had been made already to the respondent.

10. When that being so, there is no question of refund of the cess amount paid in the account of the respondent. Either the respondent could take appropriate steps to seek refund of the amount if it has been made by him or otherwise the petitioner would be entitled for atleast a set off of the amount that had been deposited by it in the account by it. These issues



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raised by the respective parties could all be only adjudicated in the main O.P. However, I am *prima facie* satisfied that the Arbitral Tribunal had erred in not considering the claim of the petitioner before it. In such view of the matter, I am inclined to grant stay of operation of the Award.

11. Serious contention had been raised by the learned Senior counsel appearing for the respondent that if this Court ought to grant stay, then the petitioner should be put on terms by directing him to deposit 100% of the Award together with interest. In that context, it would be useful to look into the Provisions of Section 36(3) of the Act. Section 36(3) of the Act empowers the Court to grant stay of operation of the Award for the reasons to be recorded in writing and that while granting such an order should be guided by the principles laid down in the CPC, for granting of stay of a money decree. Order XLI Rule 1 (3) of the CPC envisages that when an appeal is against the decree of payment of money, then in that appeal within the time prescribed by the Court may allow the deposit of the disputed amount or direct to furnish such security in respect there of. Sub Rule 5 of the very same Rule envisages that there can be no stay of execution unless the Court is satisfied that substantial loss may result to the party applying for the stay of execution and also by taking into consideration that the security had been given by the appellant which would satisfy at the time

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enforcement of the decree. Since, I am satisfied with the stay of operation of the Award as eminent on the facts of this case, i am inclined to grant an order of stay of operation of the Award on a condition that the petitioner furnishes a Bank guarantee to the Award amount as indicated in Clause (a) of the Award which would satisfy the execution of the decree in case the petitioner fails in the O.P.

12. I am not inclined to direct the respondent to make payment under Clause (b) and (d) considering the fact that the petitioner is not a fly-by operator and is a statutory undertaking.

13. In fine, the impugned Award dated 07.03.2024 shall remain stayed on condition that the petitioner furnishes a Bank guarantee for a sum of Rs.21,07,66,621/- within a period of eight (8) weeks from the date of receipt of a copy of this order.

14. Post for compliance after eight(8) weeks.

Gba

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Index : Yes/ No

Speaking/ Non-speaking order

Neutral Citation : Yes/ No

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