



C.R.P.(MD)No.1626 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1626 of 2024

and

C.M.P.(MD)No.9542 of 2024

M/s.Balaji Industrial and Agriculture Castings,
16, I.D.A.Balanagar,
Hyderabad,
Telangana-500037.

... Petitioner / 1st Respondent

Vs.

1.The Chief Engineer,
Tamil Nadu Water and Drainage Board,
No.1/1, Sambakulam, Ganesh Nagar,
Madurai-625 007.

... 1st Respondent / Petitioner

2.The Presiding Arbitrator,
Er.P.Velu, Plot No.17, Green Palace,
No.1, South Thandapani Street,
T.Nagar, Chennai-600 017.

3.The Co-Arbitrator,
Er.S.Soundarajan,
12th Cross Street, Dhandeswar Nagar,
Velachery, Chennai.

4.The Co-Arbitrator,
S.Pradeep Reddy,
8th Floor, Regus, SLN Terminus,
Besides Botanical Garden,
Gachibowli, Hyderabad,
Telangana-500 032.

... Respondents 2 to 4 / Respondents 2 to 4



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned order passed in Arb.O.P.No.79 of 2022, dated 31.01.2024 on the file of the Principal District Court, Ramanthapuram.

For Petitioner : Mr.B.Saravanan, Senior Counsel
for M/s.B.Saravanan Associates

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.R.Satheesh for R1

ORDER

Tamil Nadu Water and Drainage Board called for tenders for carrying out the work of laying and joining of 400mm dia.CI S/S pipes from MPS to STP-Construction of Sewage Treatment Plant of 4.92 MLD with EASP Technology with 5 years of operation and maintenance for UGSS to Sivagangai Municipality in Sivagangai District – Package III by issuing notification in the year 2013. M/s.Balaji Industrial and Agriculture Castings, Telangana turned out to be the successful bidder. Letter of acceptance was issued by the Chief Engineer on 24.07.2013 and the site was also handed over on 06.08.2013. Dispute arose between the parties and it was referred to an Arbitral Tribunal which awarded compensation at the rate of 9.73% of the contract value. Duly complying with the same, an increased contract price of Rs.88,91,324.00/- was paid to the contractor. The work was completed on 31.12.2019 and the trial run started on 01.01.2020 and was completed on 30.06.2020. Dispute arose again as regards the settlement of the final bill.



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The contractor approached the adjudicator who awarded a sum of Rs. 99,23,875/-. Questioning the award dated 06.02.2022 made by the adjudicator, the board sought reference to the Arbitral Tribunal. The Arbitral Tribunal comprising three members was constituted on 28.06.2022. The claim statement was filed on 11.09.2022. The contractor filed their statement of defence and the counter claim on 03.10.2022. The board felt aggrieved by the quantum of arbitration fees demanded by the arbitrators. It also expressed grievance regarding non-furnishing of the certified copies of the various procedural orders passed by the arbitrator. It also questioned the holding of the arbitration sittings at Chennai instead of Ramanthapuram. The board felt particularly aggrieved by passing of the Procedural Order No.10 dated 27.11.2022 forbearing the board from encashing the bank guarantee furnished by the contractor and seeking renewal of the same until further orders from the Arbitral Tribunal. Citing these grievances, the board filed a petition under Section 14 of the Arbitration and Conciliation Act, 1996 before the Principal District Court, Ramanathapuram. After filing the said application, the board called upon the Arbitral Tribunal to defer further hearings until appropriate orders are obtained from the Court. The application was rejected vide Procedural Order No.11 dated 20.12.2022. Questioning the same, the board filed C.R.P.(MD)No.2613 of 2022. The civil revision petition was listed for admission on 23.12.2022. Interim stay was granted in C.M.P.(MD)No.12750 of 2022 in C.R.P.(MD)No.2613 of 2022 on 23.12.2022 and it was also periodically



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extended. The petition filed under Section 14 of the Arbitration and Conciliation Act, 1996 was numbered as Arb.O.P.No.79 of 2022 and it was allowed vide order dated 31.01.2024 and the mandate of the Arbitral Tribunal constituted on 28.06.2022 was also terminated. Challenging the same, the contractor has filed C.R.P.(MD)No.1626 of 2024.

2.Heard Shri.B.Saravanan, learned Senior Counsel appearing for the contractor and Shri.Veerakathiravan, learned Additional Advocate General appearing for the TWAD Board.

3.The board had filed Arb.O.P.No.79 of 2022 under Section 14 of the Act on four grounds:-

- a. Arbitration fee was fixed exorbitantly.
- b. Though the seat of arbitration is Ramnad, Chennai/online mode was fixed as venue to conduct the arbitration.
- c. The granting of interim order by the Arbitral Tribunal amounts to show partiality in favour of the contractor.
- d. Certified copies of the procedural orders were not furnished to the board.

The core argument of the learned senior counsel for the contractor is that the petition under Section 14 of the Act cannot be maintained on any of the grounds raised by the board. According to him, the mandate of an arbitrator



can be terminated only when the ground projected by the disputant falls under the VIIth schedule of the Act, 1996. Only then, the arbitrator can be declared as ineligible. The learned senior counsel relied on the following decisions:-

“(i). **2018 (12) SCC 471** (HRD Corporation (Marcus Oil and Chemical Division) Vs. GAIL (INDIA) Limited)

(ii). **2019 (5) SCC 755** (Bharat Broadband Network Limited Vs. United Telecoms Limited)

(iii). **2020 (17) SCC 626** (National Highways Authority of India Vs. Gayatri Jhansi Roadways Limited)

(iv). **2022 SCC Online Del 4310** (Union of India Vs. Reliance Industries Limited and others)

(v). **2023 SCC Online 1370** (Chennai Metro Rail Limited Administrative Building Vs. Transtonnelstroy Afcons (JV))”

The learned senior counsel also pointed out that there is a distinction between the seat of arbitration and venue of arbitration. He pointed out that a series of procedural orders were passed by the Arbitral Tribunal in the presence of the representatives of the board who did not express disagreement with the procedural orders. He also pointed out that as per the understanding between the parties, soft copies of all the orders were made available and therefore, no grievance can be made that the certified copies were not given. If the board felt aggrieved by the Procedural Order No.10 whereby they were restrained from encashing or seeking renewal of the bank guarantee, they ought to have filed an appeal. In this case, the board had raised a claim and the contractor



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had raised a counter claim. Fee was demanded by the arbitrators only in terms of the schedule. Thus, according to the senior counsel appearing for the contractor, the conduct of the arbitrators cannot be faulted on any ground. He therefore called upon this court to set aside the impugned order and allow the civil revision petition.

4. The learned Additional Advocate General on the other hand submitted that the impugned order is well reasoned and that it does not call for interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. The TWAD board and M/s.Balaji Industrial and Agriculture Castings entered into an agreement on 16.09.2013. It contains the following clause :-

“Arbitration proceedings shall be held at Ramnad, Tamil Nadu India”.

But the 1st Procedural Order dated 25.07.2022 is as follows:-

“8. Place, Seat and Venue

A. The contract does not contain any jurisdiction or seat or place for Arbitration. Only the clause 25.3.d. of the Special Conditions of Contract states that the Arbitration Proceedings shall be held at Ramnad, Tamil Nadu India.



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B. Based on the discussions with the parties and for convenience, the Arbitral Proceedings to the extent possible will be conducted via online proceedings.

C. If any requirement for a physical meeting arises, then the Venue for such physical meetings shall be Chennai, Tamil Nadu India.

D. For the purpose of Seat and Jurisdiction (as per Section 20 of the Act), Ramnad, Tamil Nadu, India shall continue to prevail. All the Arbitral Proceedings whether in virtual mode or physical mode, shall be deemed to be conducted at Ramnad, Tamil Nadu, India.”

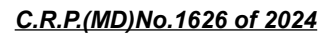
7.It is true that in the hearing held on the said date, the TWAD board was represented by its executive engineer, advocate and some staff. But they were not authorised to give any concession on behalf of the board. When the agreement between the parties clearly stipulated that the proceedings shall be held at Ramnad, it could not have been re-written. If the board was represented by the chief engineer himself who had signed the contract, then, probably with the authorization of the board, concession for changing the venue could have been made. That was not so in this case. Even the procedural order dated 25.07.2022 does not state that the board officials conceded or agreed to the change of venue. It only states that based on the discussion with the parties and for convenience, the Arbitral Tribunal decided to conduct the proceedings via online proceedings. It is true that Section 20(3) of the Act enables the Arbitral Tribunal to meet at any place it considers



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appropriate unless otherwise agreed by the parties. In the present case, the agreement between the parties is reflected in the contract dated 16.09.2013 which is to the effect that the arbitral proceedings shall be held only at Ramnad.

8.It is true that Clause 9 of the Procedural Order No.1 dated 25.07.2022 deals with fee and costs for arbitration. In this case, the board had raised claim to the tune of Rs.1,35,95,000/- whereas the contractor had raised counter claim to the tune of Rs.8,37,29,000/- The procedural order reads that fee shall be calculated based on the combined value of the claim and the counter claim. Several procedural orders were issued insisting that the board should pay the fees as directed by the Tribunal. The Hon'ble Supreme Court of India in the decision reported in **(2024) 4 SCC 481(Oil and Natural Gas Corporation Limited Vs. Afcons Gunanusa JV)** had specifically held that the term “*sum in dispute*” in the IVth schedule of the Arbitration and Conciliation Act refers to the “*sum in dispute*” in the claim and the counter claim separately and not cumulatively. In this case, the Arbitral Tribunal had charged their fees on cumulative basis by adding sum in dispute in the claim and the counter claim. This clearly runs counter to what has been laid down in ***Oil and Natural Gas Corporation Limited Vs. Afcons Gunanusa JV***.



“4.5 Considering the principles of Prima Facie Evidence, Balance of Convenience and Irreparable Harm and without entering into the merits or demerits of the said claim of prayer, the Arbitral Tribunal hereby provides Interim Order as noted below:

The claimant shall not encash the Bank Guarantee (No. 0381BGD21000003, issued by Central Bank of India, Hyderabad, for an amount of Rs.24,20,831, with validity up to 30.11.2022 and Claim period up to 30.11.2023), nor seek renewal of the said Bank Guarantee until further orders of this Arbitral Tribunal)”

Soft copy of the order has been made available and it is seen that the presiding arbitrator Shri.P.Velu alone had signed the same. Signatures of the other two arbitrators namely Shri.S.Pradeep Reddy and Shri.S.Soundararajan are absent. Though board requested for being furnished with the certified copy, it was not furnished. In view of non-furnishing of the certified copy of the order signed by the three contractors, the board has been prevented from availing the statutory remedy of appeal. This in my view would definitely fall within the expression “fails to act without undue delay”. Section 14 of the Arbitration and Conciliation Act, 1996 can be invoked when the arbitrator fails to act without undue delay.



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10.It is well settled that injunction against issuing bank guarantee is not given for the asking. The applicant has to demonstrate the existence of fraud and that irreparable prejudice will be caused if injunction is not granted. In the case on hand, the Arbitration Tribunal had passed what appears to be an extraordinary order. The board has not only been restrained from issuing bank guarantee but it has also been prevented from seeking renewal. The order is also rather non-speaking. There cannot be any dispute that such an order operated to the grave prejudice of the board. The board therefore wanted to question the same by filing an appeal. An appeal can be filed only if certified copy is issued. Soft copy would not do in such cases, particularly, because it has not even been signed by the other two arbitrators. There is nothing on record to show that it was issued with the express consent of the other two arbitrators. In matters such as this, the other arbitrators will have to formally sign the orders. That alone would show that they had consented. When an Arbitration Tribunal passes an order, it is obliged to issue certified copy of the same so as to enable the aggrieved party to file an appeal. Failure to issue certified copy which will have the result of preventing an aggrieved party from filing an appeal would fall within the scope of Section 14(1)(a) of the Act.

11.The learned Principal District Judge, Ramanathapuram took into account the aforesaid three aspects for deciding to terminate the mandate of the Arbitral Tribunal. For all the above reasons, I am not inclined to interfere with the order passed by the Principal District Judge, Ramanathapuram.



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12.The Civil Revision Petition is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Principal District Judge, Ramanthapuram.



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G.R.SWAMINATHAN, J.

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