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O.S.A.Nos.195 of 2018 & 62 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2025

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

O.S.A. Nos.195 of 2018 and 62 of 2022
and
C.M.P. No.9932 of 2018

O.S.A. No.195 of 2018

Ennore Port Limited,
(now known as Kamarajar Port Limited)
represented by Company Secretary,
New No.15 (Old No.8),
Kasturi Rangan Road, Alwarpet,
Chennai - 600 018.

... Appellant

vs.

1.M/s.Hindustan Construction Company Ltd.,
HINCON House, LBS Marg,
Vikhroli (West), Mumbai - 400 083.

2.Jagman Singh
3.Dharm Vir
4.Dr.R.Rajagopalan

... Respondents

O.S.A. No.62 of 2022

Ennore Port Limited,
New No.15 (Old No.8),
Kasturi Rangan Road, Alwarpet,
Chennai - 600 018.

... Appellant



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1.HCC Van Oord ACZ Joint Venture,
Hincon House, LBS Marg,
Vikhroli (West), Mumbai - 400 083.

2.M.C.Bhide
3.O.P.Goel
4.M.Velu

... Respondents

Prayer in O.S.A.No.195 of 2018: Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules read with Clause 15 of Letters Patent read with Section 37 of Arbitration and Conciliation Act, 1996 against the order dated 09.02.2017 made in O.P. No.427 of 2005.

Prayer in O.S.A.No.62 of 2022: Original Side Appeal filed under Section 37 of Arbitration and Conciliation Act, 1996 against the order dated 21.03.2019 made in O.P. No.348 of 2004.

For Appellant : Mr.M.T.Arunan
in both O.S.As

For Respondents : Mr.D.Balaraman
for R1 in both O.S.As
No appearance for R2 to R4
in both O.S.As



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COMMON JUDGMENT

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(Judgment of the Court was delivered by DR.G.JAYACHANDRAN, J.)

These two appeals, directed against (i) the order dated 09.02.2017 in O.P.No.427 of 2005 and (ii) the order dated 21.03.2019 in O.P.No.348 of 2004, in the petitions arising under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The appellant and the respondents are one and the same. The subject matter in both the appeals are also stems from same contract. Hence, the common is passed in common.

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3. Ennore Port limited and M/s.Hindustan Construction Company Ltd, entered into a contract for transporting quarry from Karaikal to Melpakkam Quarry Transfer Station by road and from Melpakkam to Ennore by rail wagons. The Chennai Port Trust was required to arrange for railway wagons through Southern Railways as a facility provider to the Contractor. For the said purpose, Rs.5500/- was paid to Southern Railway. The said rate was periodically increased and by the end of the contract period, it was Rs.8185/- for each round trip. The total approximate value of the contract



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was Rs.119,52,21,700/- for supply of 3.07 Million Tons of rocks. The transportation charges paid to the Southern Region deducted from the contractor's month bills. The date of commencement of the work and completion of work at 14.05.1996 and 31.01.2000.

4. The salient features of the work to be executed under the Contract is as follows:-

(i) Blasting and screening the rock into different grades at Karikkal Quarry.

(ii) Transporting the stone/Boulders by Truck from Quarry to Melpakkam Transfer Station using special container called "Skips".

(iii) Loading the filled skip into the wagons at Melpakkam Transfer Station.

(iv) Transporting the loaded skips from Melpakkam Transfer Station to Ennore Port Site.

(v) Unloading from the Wagons and stockpiling in the ear marked stackyard at Ennore Port Site.

(vi) Reloading the empty skips into the wagons.



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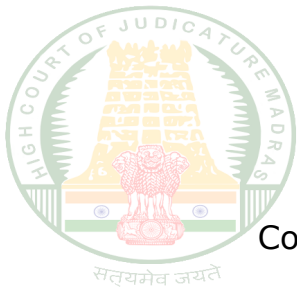


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(vii) Transporting the empty skips from Ennore Port Site to Melpakkam Transfer Station.

5. Based on the periodic monthly statements submitted by the supplier, payment was made only after due verification and certification by the Engineers of the Chennai Port trust. While so, during the course of Audit, the Controller and Auditor General pointed out that the price adjusted for wagon charges not properly calculated and excess payments made to the supplier, due to wrong price adjustment and failure to deduct the wagon charges from the basic unit rate and price.

6. Further, during the audit, it was observed that there was excess payment towards wagon charges and price variation and attempt for recovery was contemplated. Meanwhile, the contractor, invoking the Arbitration clauses had raised 11 disputes, including the recovery of liquidated damages and interim extension of time. On the part of the employer, disputes regarding price variation, escalation towards the wagon charges and operational delays were raised. In a meeting between the parties with the arbitrator, it was agreed to frame the following counter claims:



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Counter Claim No.1-Price Variation of Explosive case,
Counter Claim No.2-Escalation Towards Wagon Charges,
Counter Claim No.3-Operational delay.

7. The Arbitration Award dated 03.08.2004 is in respect of Counter Claim No.2, which is in respect of refund of price escalation received towards wagon hike charges. The Tribunal by 2:1 held in favour of the supplier and by majority held that Counter Claim No.2, for the refund of price escalation by the Contractor towards the wagon hike charges to be rejected. Consequently, interest claiming at the rate of 8% does not arise.

8. Being aggrieved, the Chennai Port Trust had invoked Section 34 of the Arbitration and Conciliation Act, 1996, by filing O.P.No.427 of 2005, before the High Court of Madras. It was contended that the award passed by the Arbitral Tribunal by majority is in conflict with the 'Public Policy of India' and not in accordance with usage of trade practice. It was contended that as per the trade practise prevailing in India, escalation or price adjustment not applicable in respect of costs of material or inputs provided by the owner/employer. Whereas, the Arbitrator failed to direct the recovery of the excess amount unjustly received by the supplier towards the price adjustment on the costs of rocks, on the grounds that there is no



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specific contractual provision explicitly excluding the escalation/price adjustment from being applied to the costs of rock supplied.

9. The Learned Judge, after considering the grounds of appeal, pointed out that the challenge to the Arbitration Award is not based on any of the grounds set out in Section 34 (2)(a)(i) to (a)(v) of Act. It is challenge on the ground that the award is not in accordance with the Public Policy of India and amounts to unjust enrichment on the part of the supplier.

10. After considering the view of the majority as well as the minority recorded in the arbitrial award and dictum laid down by the Hon'ble Supreme Court of India in **ONGC Ltd vs. Saw Pipes Ltd** reported in **(2003) 5 SCC 705**, which has discussed about the scope of the Court jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the Learned Judge held that the dispute between the parties in the instance case lies in a very narrow campus pertaining to the price adjustment.

11. The General Conditions of Contract defines, the contract price as well as Clause 70 Changes in costs and legislation read along with Clause 60.1, which provides for price adjustments of escalation which has to be certified by the Engineers of the Port Trust. In this case, the price



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escalation been proved and the factor for price adjustment formula duly applied as per the terms of the contract. Therefore, there is no breach of any public policy in the award passed by the majority.

12. The Learned Judge further observed that the view of the minority is perverse, which tantamounts to rewriting the terms of contract agreed between the parties which the Tribunal is not empowered to do.

13. Considering the objections pointed out by the Controller of Auditor General, the Chennai Port Trust has initially explained that payments were made to the contractor has certified by the Engineer. While the parties have understood the terms of the contract in a particular manner and acted upon, it is too late for the day to make an argument contrary to the terms of the contract. Thus, the petition is dismissed, holding that the petitioner/Chennai Port Trust has not made out a case to set aside the majority view of the Arbitral Tribunal.

14. Being aggrieved, the present Original Side Appeal No.195 of 2018 is filed, reiterating the plea of violation of public policy.

15. On examination of the terms of contract, reference to



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Arbitration Tribunal and the award along with the impugned order, we find the grounds of appeal does not really disclose any basis to attract violation of public policy. Courts have time and again has held that the scope of Sections 34 & 37 of the Arbitration and Conciliation Act, 1996 is very limited and these provisions cannot be treated as appellate provisions as provided under Section 96 of C.P.C.

16. The Hon'ble Supreme Court, even recently in ***Consolidated Construction Consortium Limited vs. Software Technology Parks of India*** reported in **(2025) 7 SCC 757**, had very consistently observed as below:

"Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the



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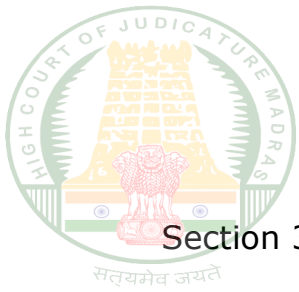


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arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

17. Considering the grounds of appeal in the light of the above dictum laid down by the Hon'ble Supreme Court, we find that the well-considered award of the arbitrator, after due examination of the terms of the contract and the conduct of the parties, cannot be interfered under Section 34 of the Arbitration and Conciliation Act, 1996.

18. The Learned Single Judge has elaborately discussed the facts in the light of the terms of the contract and upheld the majority view expressed by the Arbitral Tribunal. It is time and again held by the Court that merely because there is also possibility of alternate view, the Court cannot interfere in an Arbitration award by exercising the powers under



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Section 34 or 37 of the Arbitration and Conciliation Act, 1996.

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19. We find that the ground raised in this appeal, merely the projection of alternate view, there is no infraction of any public policy in the arbitral award or in the order passed by the Court under Section 34 of the Arbitration and Conciliation Act, 1996.

20. Hence, hold that the appeal is dismissed as devoid of merits.

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21. This appeal is directed against the dismissal of petition in O.P.No.348 of 2004, dated 21.03.2019 filed under Section 34 of the Arbitration and Conciliation Act, 1996. Challenging the Arbitral Award dated 10.10.2003.

22. Ennore Port Trust entered into an agreement on 22.08.1997 with M/s.Hindustan Construction Company limited and HCC Van Oord ACZ Joint Venture, for the supply of rocks for the construction of two breakwaters at the stockpile in Ennore Port. The price for the supply of rock was fixed Rs.250/- per MT, which agreed to be constant price during the entire period of the contract. The rocks were quarried and transported from



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the quarry site and Karaikal to Ennore Port, to some extent by road and major extent through railway wagons.

23. During the execution of the contract, the supplier invoked the price adjustment/escalation clause in respect of the rocks supplied and the same was duly certified by the Engineers of the Chennai Port Trust.

24. During the audit conducted by the Controller and Auditor General of India, it was pointed out that the rock were agreed to be supplied at fixed price and the price adjustment/escalation clause not applicable to the costs of the rock and it was instructed to recover the excess money paid. Initially, in response to the audit objection, the Port Trust had stood by payment of price variation citing the provisions of the contract as well as the certificate issued by the Engineer. However, for the reasons best known, the arbitration proceedings was later initiated for recovery of sum of Rs.8,72,30,963/-. The Tribunal, by majority, dismissed the claim petition *vide* award dated 10.10.2003. While, the said sum of Rs.8,72,30,963/- was claimed as excess payment and refund sought with interest at the rate of 18% p.a., the contractor countered stating that the price variation paid in accordance with the terms of the contract, after being duly certified by the Engineer of Chennai Port Trust. Hence, the claim of alleged excess payment



is without any basis and contrary to the provisions of the contract.

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25. The Arbitral Tribunal, after due assessment of the rival claims and the provisions of the contract, held that the audit seem to have failed to appreciate and accept the contractual explanation furnished by the supplier. The Tribunal observed that the formula for price adjustment has been provided under Clause 70.3 of the Condition of Particular Application. Having been determined as per the terms of the contract and due certification given by the Engineers periodically, the claim of Chennai Port Trust that they have paid in excess to the contractor is without any basis. Two of the Arbitrators, by assigning reasons, rejected the claim of Chennai Port Trust, whereas one of the Arbitrator dissented and recorded the dissent view.

26. Being aggrieved, the petition in O.P.No.348 of 2004 under Section 34 of Arbitration and Conciliation Act been filed stating that the award of the Arbitral Tribunal is contrary to the public policy and the trade usage prevailing in India. It was contended that the price adjustment/escalation is in the nature of compensation, which is payable only in respect of the materials/inputs that are provided by the contractor which are subject to fluctuations in the price and it will not apply to the supplier by the employer.



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27. The Learned Single Judge, while considered the challenge to the Arbitral award and the submissions made by the parties through their respective Counsel, took note of the fact that the contractor had raised about 20 claims and same were considered separately and most of them settled. One of the counter claims, pertaining to liquidated damages was dismissed and another claim for recovery of price variation (escalation charge for the rock supplied by Ennore Port Limited) which is subject matter of the petition under Section 34 of Arbitration and Conciliation Act, also dismissed in view of Clauses 60.1 and 70.1 to 70.3 of the Contract, which provides for payment for price escalation and the adjustment formula.

28. In respect of the plea regarding violation of public policy, the Learned Single Judge held as below:-

“15. With regard to public policy, without going into any debate or dispute about public policy as occurring in Section 34 prior to 23.10.2015 and post 23.10.2015, one can safely rely on the Western Geco **[ONGC Ltd. v. Western Geco International Ltd., reported in 2014 (9) SCC 263]** and Associate Builders case **[Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49]**. Three distinct juristic principles



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were culled out in Western Geco and reiterated in Associate Builders case with regard to fundamental policy of Indian law, which is one of the facets of public policy and these three distinct juristic principles are judicial approach, principles of natural justice and perversity/irrationality.

16. With regard to these three distinct juristic principles, the tests for the same have also been laid down by Hon'ble Supreme Court. The tests are fidelity in judicial approach, *audi alteram partem* and wednesbury principle of reasonableness in that order. In other words, for judicial approach, the test is fidelity in judicial approach, for principles of natural justice, the test is *audi alteram partem* and of course reasons being given and with regard to irrationality/perversity, the test is the time honoured Wednesbury principle of reasonableness. In the instant case, in the light of the submissions made, the third juristic principle i.e., perversity/irrationality is the lone plank on which instant OP gets predicated. For this, if the time honoured test of Wednesbury principle of reasonableness is applied to test the impugned award, the Tribunal ought to have arrived at a conclusion, which no reasonable person will arrive at on the basis of material which has been placed before the AT. In this view of the matter a careful perusal of the impugned award leaves this Court with the considered opinion that it certainly qualifies as one which will not get disqualified for not passing the muster of wednesbury test of reasonableness."



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29. When there is specific terms of agreement which provides for price escalation and formula to calculate the price escalation, the Engineer of Chennai Port Trust had applied the terms of contract and had paid the price difference. This has been tested by the Arbitral Tribunal and found that no excess payment made.

30. The Learned Single Judge, before whom the award was challenged under Section 34 of Arbitration and Conciliation Act, 1996 had examined the impugned award and held that there is no violation of public policy. While so, we are of the firm view that the present appeal, filed projecting an alternate view and as if, it is the appeal under Section 96 of C.P.C., has to be deprecated.

31. Hence, we conclude, the grounds raised in these appeals, on perusal, are purely on facts projecting an alternate view. We do not find any infraction of public policy in the award as well as in the orders passed by the Learned Single Judge of this Court under Section 34 of Arbitration and Conciliation Act, 1996.



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32. In the result, these two Original Side Appeal Nos.195 of 2018 & 62 of 2022 stand dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

[G.J., J.] & [M.S.K., J.]
22.09.2025

Index :Yes
Neutral Citation :Yes/No
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DR.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.
mmi/bsm

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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