



O.P.No.747 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2024

Pronounced on : 31.01.2025

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

O.P.No.747 of 2016

The Superintending Engineer,
Highways, Construction and Maintenance,
Chennai Circle, No.299, Anna Salai,
Chennai-600 006.

Petitioner(s)

Vs

M/s.S.Arumairaj
Rep.by its Partner L.Subramaniam,
No.15, Kasturi Rangan Road,
Alwarpet, Chennai-600 018.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 20.10.2015 passed by the learned Arbitrator.

For Petitioner : Mr.R.Ramanlal,
Additional Advocate General
Assisted by Mr.R.Siddharth
Government Advocate

For Respondent : Mr.D.Balaraman



WEB COPY

O.P.No.747 of 2



ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award of the learned Sole Arbitrator dated 20.10.2015.

2.I have heard Mr.Ramanalal, learned Additional Advocate General for the petitioner and Mr.D.Balaraman, learned counsel for the respondent. I have also gone through the entire records in original as also the impugned award.

3.The brief facts of the case leading to the award are as follows:

The Government of Tamil Nadu invited bids for improvement of radial roads around the city of Chennai. The respondent submitted a bid along with the required EMD to the tune of Rs.7,00,000/- in the form of a bank guarantee. The petitioner accepted the bid of the respondent and issued a letter of acceptance on 26.05.1999. The contract value was fixed at Rs.14,39,91,834/- and an agreement was entered into on 09.06.1999 with a contract period of eighteen months from the date of the agreement. The commencement date was reckoned as 24.12.1999 and the contract was expected to be completed by 23.12.2000.



WEB COPY

O.P.No.747 of 2



4. According to the petitioner, the respondent failed to complete the contractual work within the time stipulated and in fact, though the respondent ought to have commenced the work even in June 1999, the respondent commenced the work only in June 2000. Pending the execution of the contract, the respondent S.Arumairaj fell ill and was unable to complete of the contract. The said S.Arumairaj entered into a partnership with his wife, Edwin Amudha and one L.Subramanian. The partnership was styled as M/s.S.Arumairaj. The respondent submitted its final bills and also claimed price escalation. The petitioner noticed the defects in the work and called upon the respondent to rectify the defects to release the amounts payable to the respondent. According to the petitioner, the respondent did not come forward to rectify the defects and the petitioner had to carryout the same through other agencies, after expending Rs.35,05,698/-. The allegation of the petitioner is that the respondent committed breach and also enormous delay which was only because of the disputes amongst the partners of the firm. The respondent issued a notice in 19.09.2002 invoking the arbitration clause and followed it up with a petition under Section 11(6) of the Act in O.P.No.435 of 2010. The then Hon'ble Chief Justice who heard the matter



appointed Hon'ble Judge Mr.K.Govindaraj, a retired Judge of this Court as a Sole Arbitrator in and by an order dated 01.08.2014.

5.Before the Arbitrator, the respondent made eight claims and after elaborate trial and hearing, the learned Arbitrator passed an award on 20.10.2015, partly allowing the claims of the respondent.

6.Aggrieved by the said award, the present Original Petition has been filed by the petitioner.

Mr.Ramanlal, learned Additional Advocate General, before going into the actual challenge to the award on merits, would first and foremost contend that the claim is hopelessly barred by limitation. According to the learned Additional Advocate General, the learned Arbitrator had failed to notice that O.P.No.535 of 2010 seeking appointment of Arbitrator under Section 11(6) ought to have been filed within three years from the date of issuance of the Section 21 notice which was on 19.09.2002. According to the learned Additional Advocate General, the original petition ought to have filed on or before 19.09.2005 but however, it has been filed only 30.01.2006.



WEB COPY

7.The learned Additional Advocate General would place reliance on the following decisions:

- i) *Mahindra Land and Building Corporation Limited Vs. Bhutnath Banerjee and Others (AIR 1964 SC 1336).*
- ii) *V.M.Salgaocar and Bros Vs. Board of Trustees of Port of Mormugao and Another ((2005) 4 SCC 613)*
- iii) *Chennai Metropolitan Water Supply & Sewerage Board Vs. Aban Constructions Private Limited (2006 (3) CTC 794).*
- iv) *Ranganathan Vs. Narayanan (2015 (2) MWN (Civil) 2019).*
- v) *Bharat Sanchar Nigam Limited Vs. Nortel Networks India Private Limited ((2021) 5 SCC 738).*
- v) *Geo Miller and Company Private Limited Vs. Chairman, Rajasthan Vidyut Utpadan Nigam ((2020) 14 SCC 643).*

8.In all these decisions, the Courts have consistently held that the Limitation Act applies to arbitration proceedings and in terms of Section 3 of the Limitation Act, the Court has a duty to dismiss any suit, appeal or application made after the period of limitation, that has been prescribed there for under Schedule I, irrespective of whether the opposite party has set



WEB COPY

up the plea of limitation. The learned Additional Advocate General would also make a request to me to go through the original records to see whether the OP was in fact filed within three years i.e., on or before 19.09.2005. Acceding to the request of the learned Additional Advocate General also summoned the original records relating to the above OP including the O.P.No.435 of 2010 filed under Section 11(6) of the Act.

9.It is seen from the records that in Diary No.19395 of 2005, the OP was filed before the Original Side of this Court. It appears that the original papers were misplaced in the year 2007 and hence, the learned counsel for the claimant i.e., the respondent herein had addressed a communication to the Assistant Registrar I, Original Side on 23.12.2009 seeking permission to reconstruct the papers in Diary No.19395 of 2005. A photostat copy of the Filing Register is also available which confirms that the said OP has been filed in Diary No.19395 of 2005. Though there is seal of the High Court in the said copy of the Filing Register, the year of filing alone is clearly noticeable as 2005. However, the date and month are not clearly visible. However, the Daily Register of Court Fees which is dated 25.07.2005 confirms the fact that the above OP has been filed and the same is reflected



WEB COPY

in Serial No.148. Therefore, at least on or before 25.07.2005, the OP has been filed and there can be no dispute regarding the same. Therefore, the OP has been clearly filed within a period of three years i.e., on or before 19.09.2005. Subsequently, after obtaining orders from the Hon'ble Chief Justice, the papers were reconstructed and the OP came to be numbered as O.P.No.435 of 2010 which was also subsequently allowed on 01.08.2014. In view of the above, I am unable to countenance the submissions made by the learned Additional Advocate General with regard to the limitation point and I find that the OP has been filed within time and not barred by limitation.

10.In fact, it would not be out of place to mention that order dated 24.07.2024 in O.P.Nos.747 of 2016 was challenged in O.S.A(CAD) No.100 of 2024 before the Hon'ble Division Bench on the score that the State has been denied the argument on limitation since the Section 34 Court had concluded that the Section 11 petition filed by the contractor was well within time. The Hon'ble Division Bench, in and by judgment dated 02.09.2024, held that it is open to the State to raise limitation point if the Section 34 Court order goes against the State and the State comes on appeal



O.P.No.747 of 2

under Section 37 against the final order of the Section 34 Court. The OS Appeal was dismissed with the above said observation.

WEB COPY

11.Firstly, I have gone through the original records and satisfied myself that the OP has been filed in time. Secondly, the Hon'ble Division Bench has confirmed the order of this Court dated 24.07.2024, holding that the Section 11(6) petition has been filed in time and only giving liberty to the petitioner to raise the point of limitation in the Section 37 appeal, if and when the petitioner prefers the same, of course consequent to suffering a dismissal in the present OP. Dehors the said observation, I have independently heard and discussed the point of limitation canvassed by the learned Additional Advocate General, though I am conscious that it is only an exercise in futility and only in duplication since by order dated 24.07.2024 itself this Court held that the OP was filed in time and the same was also confirmed by the Hon'ble Division Bench of this Court.

12.In view of the foregoing discussion, there is absolutely no merit in the contentions advanced by the learned Additional Advocate General regarding the plea of limitation in filing the Section 11(6) petition.



WEB COPY

13.The learned Additional Advocate General would mainly contend that the learned Arbitrator has ignored the terms of the contract while dealing with escalation costs and there is a violation of Section 28(3) of the Act. The learned Additional Advocate General would invite my attention to clause 4.57.1 (c) which reads as follows:

“The payment for variation in prices shall not apply to the work carried out by the contractor beyond the stipulated time for reasons attributable to the Contractor, even if the time extension is allowed.”

14.According to the learned Additional Advocate General, the learned Arbitrator had ignored the above term and awarded price escalation to the respondent. The learned Additional Advocate General would also contend that the delay was clearly occasioned because of the ill health of the original tender awardee, Mr.S.Arumairaj and subsequently, the delay because of the disputes amongst the partners. Further, the learned Additional Advocate General would also rely on the clause 4.33.1 which makes time essence of the contract and would contend that when the respondent had even commenced the work belatedly, the learned Arbitrator ought to have taken note of the delay occasioned by the respondent and



ought not to have re-written the contract while awarding the claims, ignoring the material terms of the contract. In this regard, the learned Additional Advocate General would place reliance on the following decisions:

i) Bharat Coking Coal Limited Vs. Annapurna Constructions (2003) 8 SCC 154).

2.Food Corporation of India Vs. Chandu Construction and Another (2007) 4 SCC 697).

3.Satyanarayana Construction Company Vs. Union of India and Others (2011) 15 SCC 101).

4.Development Corporation of Konkan Limited Vs. Saidhara – DCK Agro Product & Plantation Limited (2015 SCC Online Bom 3606).

15.The ratio laid down in the above cases are that the Arbitrator being a creature of the agreement between the parties, the Arbitrator has to necessarily operate only within the four corners of the agreement and ignoring specific terms of the contract would amount to a jurisdictional error resulting in the award being becoming ex-facie, invalid and liable to be set aside.



WEB COPY

16.The next contention urged by the learned Additional Advocate General is that the learned Arbitrator has ignored the material evidence while rendering findings regarding various claims made by the respondent. In this connection, the learned Additional Advocate General would point out Ex.C24, a letter dated 04.12.2000, in and by which, the petitioner had called upon the respondent to show cause why liquidated damages should not be levied on the respondent for the delay in execution of the work. Therefore, according to the learned Additional Advocate General, the Arbitrator has ignored material evidence. The learned Additional Advocate General would also point out Exs.C54 and C59 which are letters dated 12.08.2002 and 18.11.2002, in and whereby the petitioner had called upon the respondent to rectify the defects to avoid further damages and also enable pending bills to be cleared. The learned Additional Advocate General would also refer to clause 2.6.1 which requires the bidder to visit and examine the site and its surroundings and obtain all information that may be necessary for preparing the bill and entering into a contract. Therefore, according to the learned Additional Advocate General, the learned Arbitrator has ignored the above clause since the respondent was obligated to make himself aware of the site conditions and was not entitled



to subsequently shift the blame on the petitioner by stating that the site contained various hindrances. In any event, according to the learned Additional Advocate General, the said contention raised by the respondent was only an afterthought.

17.Lastly, the learned Additional Advocate General would attack the award of interest, totally ignoring the aspect of delay caused by the respondent. The learned Additional Advocate General would place reliance on Ex.C10 which clearly evidences that the contractor was responsible for the initial delays. Further, he would contend that the OP under Section 11(6) was also belatedly filed and numbered only in 2010 and there is no explanation as to why steps were not taken to number the application immediately and there has been a delay of five years and therefore, the petitioner cannot be penalized with interest for the delays occasioned by the respondent. The learned Additional Advocate General would also point out that the defect liability period was five years and the learned Arbitrator has ignored even this material condition agreed upon between the parties. Therefore, he would pray for the award of the Sole Arbitrator being set aside.

12/22



WEB COPY

18.Per contra, Mr.D.Balaraman, learned counsel for the respondent would first and foremost contend that no grounds available under Section 34 have been made out by the petitioner and all the grounds that have been raised are merely revolving around the factual matrix of the case and therefore, there are no grounds for interference of the award. He would also invite my attention to the award, where, as against eight claims only some of the claims were allowed and rest of the claims were rejected and hence, he would contend that the learned Arbitrator has applied his mind to the facts and circumstances of the case and rendered plausible findings which a reasonable person would certainly arrive at. Therefore, on this ground also, he would seek for dismissal of the OP.

19.The learned counsel for the respondent would invite my attention to clause 4.65.3 which is a clause under the head 'defect liability'. The defect liability period has been clearly agreed upon to be 24 months from the date of completion of whole of the work. Therefore, he would contend that it is not five years as contended by the learned Additional Advocate General but it is only two years and therefore, there is no infirmity in the findings arrived at by the learned Arbitrator.



WEB COPY

20.The learned counsel for the respondent would also invite my attention to Exs.C27 and C50. Ex.C27 is the letter dated 22.12.2000 sent by the respondent to the petitioner where the respondent has replied to the letter dated 30.11.2000 issued by the petitioner accusing the respondent of delay and preventing performance at the end of the respondent. In the said communication, several letters starting right from 28.10.1999 to 13.12.2000 addressed by the respondent to the petitioner have been referred, informing the petitioner that all these letters have been suppressed while choosing to accuse the respondent of delay. In the very same letter, the respondent has also called for reasonable extension of time. In Ex.C50, the respondent has again written to the petitioner on 25.01.2002 regarding deep pot holes and bad stretches of the road and pointing out various other reasons which have caused the delay. In and by the said letter, the respondent also highlighted the fact that despite various requests and warnings by the respondent, the petitioner has failed to strengthen the driving surface in line with the Ministry of Road and Surface Transport Standards to withstand heavy traffic. He would therefore contend that there is absolutely no delay occasioned on the part of the respondent and therefore, the grounds of



challenge to the award in this connection are bereft of any material particulars and consequently, are liable to be rejected.

21.The learned counsel for the respondent would further contend that the scope of work allotted to the respondent was only pertaining to workmanship and execution and not design and even before the Arbitral Tribunal, the petitioner has not disputed the same. He would also refer to the additional works allotted to the respondent after completion of the contract and also the fact that the Engineer had certified the final bill which was not cleared by the higher officials alone. He would also refer to the statement of defense and point out that the respondent has not even met the detailed claims made by the respondent. Even regarding interest, learned counsel for the respondent would contend that there has been no delay on the part of the respondent and rightly the Arbitrator has awarded interest. In short, the learned counsel for the respondent would seek for dismissal of the Original Petition.

22.Having already discussed the question of limitation in detail and rejected the same, I now proceed to deal with the merits of the challenge to



WEB COPY

the award which is mainly two-fold. Firstly, the learned Arbitrator has ignored material terms and conditions of the contract and secondly, the learned Arbitrator has ignored vital evidence while awarding the claims in favour of the respondent. In this regard, I have carefully gone through the impugned award dated 20.10.2015.

23. With regard to the argument relating to the Arbitrator ignoring material terms of the contract and there being violation of Section 28(3) of the Act, I find that the Arbitrator has proceeded on the footing that the defect liability period is 24 months and the same expired on 25.10.2015. In this connection, the argument of the learned Additional Advocate General is that the defect liability period is five years and not two years which has been ignored by the learned Arbitrator.

24. However, I find from the award that the Arbitrator, while dealing with the issue No.1, has specifically and rightly applied the defect liability period of 24 months, in terms of the contract and in the absence of a counter claim being made by the petitioner, the learned Arbitrator has rejected the adjustment of rectification works to the alleged tune of Rs.35,05,698/- said



to have been incurred by the petitioner. I do not find that the Arbitrator has ignored the terms and conditions of the contract in this regard warranting interference in a Section 34 petition.

25. With regard to price escalation and reliefs of balance retention money on expiry of the defect liability period, the learned Arbitrator has rightly found that the claimant was entitled to the escalation charges in the absence of even a specific denial in the statement of defense. The learned Arbitrator has relied on clause 4.57.1 of the agreement in Ex.R1 and considered the objection of the petitioner in this regard. Further, the Arbitrator has also referred to several letters issued by the claimant to the respondent starting from the Exs.C13 to C18 and also found that even in Ex.C24, the petitioner had only called upon the respondent to only accelerate the progress of work and did not even deny the complaints raised by the respondent. The learned Arbitrator also referred to Exs.C26 and C27 which were also not denied by the petitioner. The learned Arbitrator has also referred to Ex.C22, letter dated 30.11.2000 in and whereby the petitioner had granted extension of time to the respondent to complete the work and under Ex.C49, the Superintending Engineer, H & RW



WEB COPY

Department, had certified that the work was satisfactorily completed in all respects and free from noticeable defects. Ex.C49 is completion certificate dated 25.10.2001 and the Arbitrator also found that if really the work was defective or delayed, the respondent would have certainly claimed liquidated damages as contemplated under Ex.R1. The learned Arbitrator, on facts, placing reliance on the documentary evidence, has arrived at a finding that the claimant could not complete the work only because of the failure on the part of the petitioner to remove the various hurdles pointed out by the respondent and therefore, the respondent was entitled to the escalation amount. The said finding is based on evidence and therefore, the same does not required to be interfered with.

26.The Arbitrator has clearly relied upon the documentary evidence and various letters issued by the respondent, pointing out several defects and hindrances which were causing the delay. Therefore, it is not appropriate on the part of the learned counsel for the petitioner to contend that the learned Arbitrator has failed to advert his attention to material documents. In fact, it is only the petitioner who has chosen not to highlight several of the letters sent by the respondent regarding his inability to proceed with the matter.



WEB COPY

27.As regards the claim of unpaid bills, the learned Arbitrator, referring to Ex.R2, found that a sum of Rs.13,25,2261/- alone remained unpaid and despite demands made by the claimant vide Annexure I to Ex.C58 by the respondent, the petitioner did not dispute the same and even before the Arbitral Tribunal, the Arbitrator has found that the petitioner has not produced any documents justifying non-payment of the bills submitted and found that the respondent was entitled to recover Rs.13,25,2261/-.

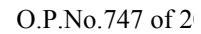
28.With regard to the claim of statutory deductions, the learned Arbitrator has arrived at a factual finding based on documents that the amount of Rs.42,01,427/- was arrived at only after factoring all statutory deductions and hence, the said finding also cannot be said to be illegal or perverse.

29..With regard to interest, the learned Arbitrator has found that the respondent has submitted the final bill in Ex.C48 on 24.10.2001 and the same was also certified by the petitioner's authority / representative as early as on 28.10.2001 and despite expiry of 60 days from the said date, the



amount was not settled and hence, arrived at a finding that the respondent is liable to pay the interest. The contention of the learned Additional Advocate General placed before the Arbitrator has also been considered while rejecting the argument of the petitioner while awarding interest as contemplated in clause 4.59.2 of Ex.R1 agreement. Future interest has also been awarded at 18% per annum (Simple Interest) from 01.01.2015 that is post filing of the claim petition, till the date of the award and the same is also neither illegal nor perverse.

30. In view of the categorical findings arrived at by the learned arbitrator that the respondent is not responsible for the delay and also in view of the fact that I have already found the OP under Section 11 has been filed in time, the respondent is entitled to interest as awarded by the learned Arbitrator. Though an argument is advanced by the learned Additional Advocate General that the respondent slept over the matter after filing the OP for close to five years, I am unable to accept the same since the note of the Registry clearly evidences that after the OP was filed, the Registry found it to be in order and only at the stage of numbering, the papers were misplaced by the Registry and on a complaint made by the counsel for the



31.As repeatedly held by the Hon'ble Supreme Court as well as this
 , the scope of interference under Section 34 of the Arbitration and
 Conciliation Act is very narrow and limited and interference can be made
 on stated grounds under Section 34 of the Act being made out by the
 petitioner. I have already discussed the grounds raised in the above OP and I
 do not find any of such grounds being made out warranting interference
 under Section 34 of the Arbitration and Conciliation Act.

32. In fine, this Original Petition is dismissed. However, there shall be no order as to costs.

31.01.2025
(1/3)

ata

Index : Yes / No

Internet : Yes / No



WEB COPY



O.P.No.747 of 2

P.B.BALAJI, J.,
ata

O.P.No.747 of 2016

31.01.2025
(1/3)