In the High Court of Judicature at Madras

Reserved on : **16.10.2025**	Delivered on: **24.10.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div) No.448 of 2023

M/s.Proconnect Supply Chain Solutions Ltd., rep.by its Authorized Signatory ...Petitioner

Vs

M/s.G.I.Staffing Services Pvt. Ltd., through its Authorized Representative ...Respondent

PETITION under Section 34(2)(b)(i) & (ii) of the Arbitration and Conciliation Act, 1996 praying to set aside the impugned arbitral award dated 18.5.2023 passed by the learned sole Arbitrator in A.F.No.04/2020.

For Petitioner : Mr.S.S.Rajesh
For Respondent : Mr.S.Balasubramaniam

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) challenging the award dated 18.5.2023 passed by the sole Arbitrator.

2. Heard both.

3. The facts leading to filing of this petition are as follows :

(i) The respondent is a human resources outsourcing company, which identifies laborers for various companies on temporary basis and those identified laborers are deployed in those companies. The petitioner and the respondent entered into an outsource agreement dated 01.6.2015 and under this agreement, the respondent must identify and source laborers to be deployed at various warehouses of the petitioner Pan India. Subsequent to the said agreement, the respondent provided man power to the petitioner and raised invoices for the resources deployed at the petitioner's location.

(ii) The respondent raised invoices for ex-gratia/bonus for the resources deployed at the petitioner's location for the financial years 2015-16, 2016-17 and 2017-18. On account of the non payment of the amounts based on the invoices raised by the respondent, a notice dated 11.3.2019 came to be issued by the respondent claiming for the payment of ex-gratia/bonus. Since the same was not paid by the petitioner, arbitration proceedings were initiated before the sole Arbitrator demanding payment towards ex-gratia/bonus for the resources employed by them to the tune of Rs.33,39,540/- for the financial years 2015-16, 2016-17 and 2017-18 and another sum of Rs.12,83,808/- for the financial year 2018-19 along with interest.

(iii) The petitioner filed a statement of defence denying the claim made by the respondent on the ground that no proper details or the supporting documents were filed by the respondent, that the petitioner had honored and made all the payments that were legitimately due and payable to the respondent and that even when the demand notice dated 11.3.2019 was issued by the respondent, the petitioner was informed that the notice was issued as a mere formality and that there was no need for sending a formal reply. That apart, the ex-employees of the respondent, whenever approached the petitioner with proper proof, were paid ex-gratia/bonus. Accordingly, the petitioner questioned the very invoices that were raised by the respondent and sought for rejection of the claim.

(iv) Based on the pleadings, the sole Arbitrator framed the following issues :

> *"1. Whether the claimant had provided the services to the respondent as per the outsource agreement dated 01.6.2015 ?*
>
> *2. Whether the invoices submitted by the claimant are in accordance with the provisions of the outsource agreement dated 01.6.2015 ?*
>
> *3. Whether the claimant has established the basis of its claims through oral and documentary evidence ?*
>
> *4. Whether the respondent is liable to pay the ex-gratia and bonus amount for the personnel deployed by the claimant ?*
>
> *5. Whether the claimant is entitled to claim amount ?*
>
> *6. Whether the claimant is entitled to any interest ?*
>
> *7. Whether the parties are entitled to the costs ? and*
>
> *8. To what reliefs are the parties entitled to?"*

(v) Before the sole Arbitrator, the respondent examined C.W.1 and C.W.2 and marked Ex.C.1 to Ex.C.13. The petitioner did not examine any witness. But, they marked Ex.R.1 to Ex.R.4.

(v) The sole Arbitrator, on considering the claim made by the respondent and the defence taken by the petitioner and on appreciation of evidence, passed the following award :

> *"a. The claimant is entitled to recover a sum of Rs.33,39,540/- from the respondent towards the payment of ex-gratia/bonus for the resources deployed by the claimant at the respondent's place for the financial years 2015-16, 2016-17 and 2017-18;*
>
> *b. The claimant is entitled to recover a sum of Rs.12,83,808/- towards the payment of ex-gratia/bonus of the resources deployed by the claimant at the respondent's place for the financial year 2018-19;*
>
> *c. The claimant is entitled to pendente lite and future interest at the rate of 12% per annum from the date of the award amount till the date of its actual payment; and*
>
> *d. There shall be no order as to costs."*

(vi) Aggrieved by the award passed by the sole Arbitrator, the petitioner approached this Court under Section 34 of the Act.

4. The main ground that was raised by the learned counsel for the petitioner was that the sole Arbitrator did not properly appreciate

the terms of the contract between the parties, which stipulates that the monthly invoice payment was inclusive of ex gratia/bonus, increment, etc. It was further submitted that there was inconsistency in the invoices and apart from that, a separate invoice was also raised for the same claim under the GST regime, that there was a lack of employer – employee relationship between the petitioner and the associates in order to claim ex-gratia/bonus, that the witnesses examined on the side of the respondent/claimant made inconsistent statements during cross examination, that the same were not properly appreciated by the sole Arbitrator and that the award has been passed on mere assumption and surmises.

5. Per contra, the learned counsel appearing for the respondent submitted that the sole Arbitrator had considered the case of the respondent on a whole and given proper reasons while awarding the claim in favour of the respondent, that the so-called inconsistencies on the part of the witnesses examined on the side of the claimant were properly considered by the sole Arbitrator along with the available documents, that the findings did not suffer from any perversity or manifest illegality, that the interest that was awarded towards the

claim made at the rate of 12% per annum was based on the settled proposition of law, that no interest has been awarded for the pre-claim period and that there was no ground to interfere with the award passed by the sole Arbitrator.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. It will be relevant to take note of certain important clauses in the outsource agreement dated 01.6.2015 and they are extracted as hereunder:

> *"<u>Clauses 4.7</u> :*
>
> *<u>4.Bill Raising & Salary Disbursement :</u>*
>
> *........*
>
> *7. Notwithstanding the schedule of invoice/ payment dates mentioned above, the contractor may be required to prepare and produce separate invoices in between any dates in a month, in regard to any other payouts other than salary (like bonus/increment arrears/special incentives etc.) as and when become absolutely necessary and as advised by the company.*

<u>Clauses 7.1 & 7.2 :</u>

<u>7. Bonus/Exgratia</u>

1. The contractor will calculate the amount of exgratia of exgratia/bonus if any payable as per statute or at the rates (which shall not be less than the rates prescribed under the statute) advised by the company to each associate and hand over the invoice to company every month and the same will be disbursed along with the salary of the associate. And also ensure disbursal as and when the amount is cleared by the company. The contractor will submit appropriate statements/registers for the same and provide a copy to the company.

2. Company shall not be responsible to pay any amount other than the payment agreed under the terms of this agreement or any other form pre-agreed in writing. Contractor or Associate shall not make any claim on the company on account of bonus or exgratia.

....

<u>Clause 9.6 :</u>

<u>9. Contractor's Obligations and Miscellaneous Provisions:</u>

....

6. The contractor shall be liable and responsible for the compliance of the provisions of all the Acts and Rules in respect of Contract Labour (Abolition and Regulation) Act, 1970, or other *applicable Central/State Acts, statutory rules, regulations, by-laws as applicable or which might be applicable."*

8. On a careful reading of the above terms of the agreement that governs the parties, it is seen that the contractor namely the respondent would calculate the amount of ex gratia/bonus payable as per the relevant statute and hand over the invoice to the company every month. Notwithstanding the schedule on invoice payment date mentioned, it was also left open to the contractor to prepare and produce separate invoices with regard to payment other than salary like bonus, special incentives etc., as and when necessary. It was also abundantly made clear that it was the obligation of the contractor namely the respondent to fulfill all the statutory compliances like bonus.

9. The specific case of the respondent/claimant was that for those employees deployed for the petitioner, ex gratia/bonus was not paid. Hence, the respondent raised invoices for the financial years from 2015-16 till 2018-19.

10. The petitioner had broadly raised two contradicting defences.

On the one hand, the petitioner stated that all the payments have been made as and when the monthly bills were raised by the respondent. Since Clause 7.1 provides that the invoice for payment towards ex gratia/bonus would be raised every month, those payments were also made along with monthly salary payable to the employees deployed by the respondent. On the other hand, the petitioner had also taken a stand that there was no employer employee relationship between the petitioner and those persons deployed by the respondent and it was the look out of the respondent to comply with the mandatory requirement under various labour enactments.

11. The sole Arbitrator clearly identified the inconsistent stand taken by the petitioner and concluded that the payments of ex gratia/ bonus for the deployed personnel vested only upon the petitioner. The finding that was rendered by the sole Arbitrator for point No.3 does not suffer from any perversity or manifest illegality. Hence, the conclusion arrived at by the sole Arbitrator that the petitioner is liable to pay ex-gratia/bonus amount for the personnel deployed by the respondent is perfectly in order.

12. The next issue that has been raised is that the invoices

raised did not contain individual particulars of the employees, who were deployed and hence, a vague claim has been raised by the respondent/claimant based on those invoices. To substantiate this submission, the learned counsel for the petitioner strongly relied upon certain contradictions that were elicited in the evidence of C.W.1.

13. The sole Arbitrator dealt with this issue and had taken note of those contradictions pointed out on the side of the petitioner. The sole Arbitrator rendered a finding that the invoices produced before him were GST invoices that were issued after introduction of the GST regime in India.

14. The witnesses also stated that the sum covered under the said invoices have not been paid by the petitioner and hence, the invoices were once again raised under the GST Regime. The witnesses also explained that the earlier invoices, for which, service tax was applicable, could be once again raised under the GST regime and that the input credit could be received by both parties. The witnesses asserted that the petitioner had also taken input credits for the said invoices as could be found in the GST portal. The witnesses further

stated that the respondent raised original invoices as per the terms of the agreement during the relevant year and that since the payments were not made by the petitioner, the respondent once again raised invoices taking into consideration the GST implication.

15. In this regard, C.W.1 was recalled for the purpose of marking Ex.C.1G, H and I and he also explained that the salary invoice comprised of the cost of salary for each associate, service charges charged with the claimant in accordance with the agreement and the service tax as required by law.

16. The sole Arbitrator, as a matter of fact, found that in the salary invoice, the payment of any ex-gratia/bonus was not charged and that therefore, a separate invoice was raised towards the same. Accordingly, the sole Arbitrator came to the conclusion that there was no infirmity in the invoices raised by the respondent after considering the contradictions pointed out in the evidence of C.W.1 along with the documents that were marked.

17. In so far as the ground raised on the side of the petitioner

that there was no correlation between the total number of associates, who actually worked and the total number of associates shown in the invoices is concerned, the sole Arbitrator took into consideration the explanation given by C.W.1 stating that the invoices that have been produced only related to the GST invoices that remained unpaid by the petitioner and that wherever payments have been effected, no claims have been made.

18. Accordingly, the number of associates/employees pertaining to each financial year was taken into consideration by the sole Arbitrator from the invoices that were marked before him. Even though no individual statements were filed by the respondent along with invoices by correlating the amount payable with the number of employees deployed, the sole Arbitrator ultimately came to the conclusion that the calculations for the individual associates had been factored cumulatively in the invoices that were raised from time to time.

19. The above finding rendered by the sole Arbitrator is questioned on the ground that such a finding was rendered on assumption without any basis.

20. In the considered view of this Court, such a finding is a possible view of the sole Arbitrator based on the cumulative reading of the evidence placed before the Tribunal. If really the petitioner made all the payments towards ex-gratia/bonus based on the invoices that were raised from time to time, no one prevented the petitioner from producing those records before the sole Arbitrator.

21. The sole Arbitrator has also taken into consideration the fact that the petitioner had, in fact, paid the ex-gratia/bonus to many of those personnel, who were deployed by the respondent and who had approached them directly. Therefore, it is the stand of the petitioner that wherever any claim was made, it was settled then and there. Since the respondent has not produced any material to show that any of the employees had made a claim for ex-gratia/bonus, an imaginary claim has now been made against the petitioner.

22. As already stated supra, the statutory obligation is on the respondent towards payment of bonus. The petitioner, by their own conduct, admitted the fact that they are liable to pay the ex-gratia/ bonus for the employees deployed by the respondent and in fact, they made such payments whenever any claim was made by the employees. Just because the respondent did not produce any material before the sole Arbitrator that any of the employees had subsequently made a demand for payment of ex-gratia/bonus, that, by itself, will not deprive the respondent from insisting for payment based on the invoices raised against the petitioner.

23. The ex-gratia/bonus payable to the employees is a statutory mandate irrespective of any specific demand made on the side of the employees. So long as the liability subsists, the respondent is duty bound to pay the ex-gratia/bonus. As per the terms of the agreement, it is the duty of the petitioner to factor those payments payable towards ex-gratia/bonus along with salary for the employees deployed by the respondent. Hence, the petitioner cannot turn around and say that since no claims were made by any of the employees for payment of ex-gratia/bonus, they are not liable to make payment. The nature of

liability involved in this case was properly reasoned out by the sole Arbitrator while dealing with point No.4.

24. In the light of the above discussions, this Court holds that the award passed by the sole Arbitrator does not suffer from any perversity or manifest illegality warranting its interference.

25. In fine, this original petition is dismissed with costs of ***Rs.1,50,000/- (Rupees one lakh and fifty thousand only)*** payable by the petitioner to the respondent.

24.10.2025

RS

N.ANAND VENKATESH,J

RS

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