



Arb.O.P.(Comm.Div.) No.655 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.01.2025

Pronounced on: 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Comm.Div.) No.655 of 2022
and A.No.5456 of 2022

Bharat Sanchar Nigam Limited,
ABM Civil Division,
Rep. by its Executive Engineer,
Mr.M.Balasubramanian,
16, Greams Road, Thousand Lights,
Chennai – 600 006.

... Petitioner

VS.

M/s.Akshaya Associates,
Engineers and Contractors,
198/5, Triveni Lands,
Nagaramalai Raod, Alagapuram,
Salem – 636 016.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 34 (2) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 20.05.2022 and corrected award dated 04.07.2022 passed by the Sole



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Arbitrator in its entirety to which it is challenged.

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For Petitioner : Mr.S.Udayakumar

For Respondent : Mr.M.Marudhachalam,
for Mr.K.Govi Ganesan

ORDER

The respondent in the Arbitration Proceedings viz., Bharat Sanchar Nigam Limited (BSNL) who suffered an award dated 20.05.2022 and 04.07.2022 is the petitioner in the present Arbitration Original Petition, challenging the award under Section 34 (2) of the Arbitration and Conciliation Act, 1996.

2. I have heard Mr.S.Udayakumar, learned counsel for the petitioner and Mr.M.Marudhachalam, learned counsel for Mr.K.GoviGanesan, learned counsel for the respondent.

3. The learned counsel for the petitioner would submit that the learned Arbitrator has ignored material terms and conditions of the Contract



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between the parties and on this ground alone, the award is liable to be set aside. In this regard, he would take me through the grounds of challenge set out in the petition under Section 34 as well as the relevant portions in the Award, which according to the learned counsel for the petitioner Mr.S.Udayakumar are clearly patently illegal, warranting the impugned award dated 20.05.2022 and 04.07.2022 to be set aside.

4. Per contra, learned counsel for the respondent would submit that the Award is a speaking order and the learned Arbitrator has rightly discussed the respective contentions of the parties and found the claimant to be entitled to the award amount and the interest portion has also been rightly allowed exercising judicial discretion and he would contend that the award is not liable to be interfered with and prays for dismissal of the Original Petition.

5. I have carefully considered the submissions advanced by the learned counsel on either side and perused the materials available on record.



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6. The respondent/claimant engaged the petitioner herein for construction of tower foundation and control room for Fisheries Department at Nemili, Kancheepuram District by way of agreement dated 26.07.2017 and the contract contemplated completion of the work by 25.01.2018. It is the case of the petitioner that the work was completed only on 20.10.2018, the delay was not on account of the petitioner, but only because of the respondent and therefore, the learned counsel for the petitioner contended that the learned Arbitrator ought not to have awarded the interest pendete lite, the same being against settled principals of law.

7. It is the specific contention of the learned counsel for the petitioner that the learned Arbitrator awarded interest for delay in payment especially a sum of Rs.3,26,724/- towards pendete lite interest, without even giving a fair opportunity of hearing to the petitioner to counter the claim for such pendete lite interest. The said award was granted by way of modification to the original award after 45 days of the award was



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published, thereby enhancing the award from Rs.15,98,163/- to Rs.19,24,887/-.

8. In fact, it is the specific contention of the petitioner that the interest for delayed payment was already covered in the Final bill in terms of Clause 41.1 of GCC of agreement which was marked under Ex.P9 and therefore, the payment of additional interest was not warranted at all in the first place. Even insofar as the deduction of sum of Rs.4,58,575/- made by the project manager for using 'M' sand instead of River sand was erroneously disallowed by the learned Arbitrator. The learned counsel would therefore submit that the award is against the public policy and also patently illegal and contrary to the terms and conditions agreed upon between the parties.

9. On going through the award, I find that insofar as the learned Arbitrator initially passed an award dated 20.09.2022 for a sum of Rs.15,98,163/- to be paid on or before 31.07.2022, failing which, the same



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would attract simple interest at the rate of 8% per annum payable from first August 2022 till the date of actual payment. However, by subsequent award modifying the earlier award, the learned Arbitrator has awarded interest pendete lite. It is seen from the modified award dated 04.07.2022 that the learned Arbitrator has not put the respondent on notice before proceedings to modify the award and there is no reference to any such notice having been served on the petitioner herein before proceedings to modify the award under Section 33(a) of the Arbitration and Conciliation Act, 1996.

10. The learned Arbitrator does have power to correct any computation error, clerical or typographical error in the award under Section 33(a). However, the said corrections cannot be unilaterally made or ordered without notice to the other parties to the Arbitration proceedings, in the present case, the learned Arbitrator without even giving an opportunity to the petitioner to offer its comments on the modification of the award by awarding pendete lite interest. The learned Arbitrator has denied/deprived



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the petitioner's opportunity which is mandated under the provisions of the Arbitration and Conciliation Act, 1996. Therefore, on this limited ground itself, the award of pendete lite interest has to necessarily go and modified portion of the award is liable to be set aside.

11. The learned counsel for the petitioner, on instructions, submitted that the petitioner is willing to settle the original award amount within a period of eight weeks. The award can be split up and allowing this Original Petition will not amount to modifying the award which is impermissible in the light of the decision of the Hon'ble Supreme Court viz., in *Project Director NHIA Vs. M.Hakeem (batch of Appeals)* reported in 2021 SCC Online SC 473. The award is severable being principal and interest component especially in the light of the award of interest being incorporated only by way of a modified award under Section 33 of the Arbitration and Conciliation Act, 1996.

12. In view of the above findings that the learned Arbitrator has



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proceeded to exercise power under Section 33 without affording an opportunity to the petitioner to even meet the claim for modification, the second award dated 04.07.2022 has to necessarily go. However, insofar as the award dated 20.05.2022, I do not see any of the grounds available under Section 34 being made out and consequently, the petitioner is liable to pay a sum of Rs.15,98,163/-. Considering the fact that the petitioner did not have the benefit of any interim order of stay pending this Original Petition, the petitioner shall settle the claim of the award amount viz., Rs.15,98,163/- together with interest at 8% from 01.08.2022 till date of actual payment.

13. In fine, this Arbitration Original Petition is partly allowed. Consequently, connected Application is closed.

17.02.2025

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,

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Pre-delivery Judgment in
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