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OP.No.957 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2025

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

OP.No.957 of 2019

Union of India
Rep. By Chief Engineer (AF)
Bengaluru – 560 022.

.... Petitioner

Vs

M/s.VCC Enterprises
Chalam Nivas, No.19, 1st Main Road
Krishnapuram, Thirunindravur
Chennai – 602 024.

.... Respondent

Prayer : Original Petition (Commercial Division) filed under Section 34 of Arbitration and Conciliation Act, 1996, praying (a) to set aside the award made and published on 27.02.2018 (received on 06.03.2018) and Amended award dated 14.03.2018 (received on 28.03.2018) passed by the Sole Arbitrator in Arbitration proceedings Ref.C.A.No.CE(AF)BANG/18 of 2007-08 PROVISION OF CERTAIN SINGLE ACCOMMODATION FOR 279 WIRMEN AT TAMBARAM, CHENNAI; (b) cost of the present petition and pass orders.

For Petitioner : Mr.G.Ilangovan
Senior Panel Counsel

For Respondent : Mr.T.V.Lakshmanan



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity referred to as 'Act'] challenging the award passed by the sole Arbitrator dated 27.02.2018.

2. The respondent/claimant is a Contractor who participated in the tender called for by the petitioner for undertaking a work of “Provision of Certain Single Accommodation for 279 Airmen at Tambaram, Chennai”. The contract was for a total sum of Rs.5,87,34,962.37. The tender submitted by the respondent was accepted on 14.01.2008 and the work order was issued on 23.01.2008. The date of commencement of work was fixed on 28.01.2008 and it was supposed to be completed by 27.09.2009. However, due to various reasons, the commencement of work was getting prolonged and the period was extended from time to time. Ultimately, the contract was cancelled on 05.10.2013.

3. As a result of the above dispute, as agreed in the terms and conditions of the tender, the dispute was referred to a sole Arbitrator.



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4. The respondent/claimant made the following claims :

Claim No (1) -	Loss due to delay in decision on hard rock	Rs.1,66,10,000.00
Claim No (2) -	Reimbursement of Addl cost	Rs.81,65,000.00
Claim No (3) -	Under pricing of DOs	Rs.6,62,000.00
Claim No (4) -	Loss of profit & establishment	Rs.4,63,00,000.00
Claim No (5) -	Loss due to interests paid to other establishment	Rs.37,00,000.00
Claim No (6) -	Loss due to confiscated T&P	Rs.28,88,750.00
Claim No (7) -	Balance payment in Final bill	Rs.47,47,700.00
Claim No (8) -	Risk & cost of UOI	Rs.Nil
Claim No (9) -	Loss due to illegal cancellation	Rs.65,76,824.00
Claim No (10) -	Damage due to mental agony	Rs.1,00,00,000.00
Claim No (11) -	Interest past, Pendente lite and future	To be calculated
Claim No (12) -	Cost of Arbitration Reference =	To be decided during hearing
TOTAL		Rs.9,97,49,274.00

Say Rs.9,97,49,000

5. The petitioner submitted a statement of defence and denied all the claims made by the respondent. The petitioner also made a counter claim for a sum of Rs.38,85,210.21 under the head of “*Minus Amount of Final Bill on Account of Execution of Work at the risk and cost of the Contractor, Levy of Compensation, Security Deposit for ATT, Roof Treatment etc.,*” and a further sum of Rs.4,00,000.00 under the head of “*Miscellaneous Expenditure Consequent on Cancellation, Arbitration and Legal Procedures*”.



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6. The sole Arbitrator on considering the pleadings and also the claim and counter claim made by the respective parties, and also considering the evidence let in by both sides, allowed Claim Nos.3, 6, 7 and 9 in favour of the respondent/claimant, and also Claim Nos.11 & 12 which pertain to interest and costs. The other claims were rejected and the counter claim made by the petitioner was also rejected. Aggrieved by the award passed by the sole Arbitrator, the Union of India has approached this Court by filing a petition under Section 34 of the Act.

7. Heard Mr.G.Ilangovan, learned Senior Panel Counsel appearing for the petitioner and Mr.T.V.Lakshmanan, learned counsel appearing for the respondent.

8. Mr.G.Ilangovan, learned Senior Panel Counsel appearing on behalf of the petitioner confines his arguments to the claims that were awarded in favour of the respondent viz., Claim 3, 6, 7 and 9, and consequently also questioned the interest that were awarded as against these claims and the costs that was imposed by the sole Arbitrator.



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WEB COPY 9. Claim No.3 pertains to '*Under pricing of the Deviation Orders*

[DOs] and certain DOs due for payment but not initiated / paid'. This claim was made by the respondent on the ground that such a deviation order was necessitated either due to design fault or improper soil investigation carried out, than what was specified in the contract. In view of the same, the pricing had to be fixed based on the costs actually incurred by the claimant. This costs was fixed by the Board of Officers [BOO] at Rs.4,940.91 per cubic metre and whereas, what was allowed / permitted was only Rs.3,304.26 per cubic metre.

10. The main ground on which the learned Senior Panel Counsel appearing for the petitioner questioned the award passed by the sole Arbitrator under Claim No.3 is that the claimant had accepted the finalised rate of Rs.3,304.26 per cubic metre on 19.03.2012 and it was signed in the presence of the witnesses. Therefore, whatever that was accepted by the claimant alone must be awarded and the original amount that was fixed, cannot be taken into account for calculating the compensation under this head.



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11. In order to appreciate the findings of the learned sole Arbitrator, it will be relevant to take note of the background facts of this case. As per the work order, the date of commencement of work was fixed on 28.01.2008 and the date of completion was fixed on 27.09.2009. The sole Arbitrator on considering the evidence, found that there were various obstructions right from the commencement of the work. Even the layout of the building was shifted 5 mtrs. away from the edge of the existing road as against 10 mtrs., as per the original site plan. Apart from that, the CI water supply lines that was running across the entire stretch of the building, required removal and re-routing. One of the major obstructions encountered by the claimant was that the excavation of hard rock required chiselling. The BOO has assessed the rates for excavation of hard rock and recommended Rs.4940.91 per cubic metre. However, the petitioner/UOI allowed only Rs.3,304.20 per cubic metre.

12. The petitioner relied upon Amendment No.2 dated 19.03.2012, where the Chief Engineer had reduced the rate to Rs.3,304.20 per cubic metre. There is no doubt that the petitioner has also signed this document.



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13. The sole Arbitrator while dealing with this issue, took into consideration the fact that, originally under Amendment No.1 dated 02.08.2010, the rate was provisionally fixed at Rs.3,304.20 per cubic meter and this was subsequently refixed by BOO at Rs.4,940.91 per cubic metre. The sole Arbitrator who is the Additional Director General (Contracts), is well-versed in such contracts, came to a conclusion that the BOO had recommended the rate at Rs.4,940.91 per cubic metre and that the same cannot be reduced by the Union of India. Apart from that, the respondent through its letter dated 04.03.2012 had agreed for the provisional rates fixed by BOO and not the final rates, as the subsequent rate was fixed by BOO, by its letter dated 14/18 May 2010. Hence, the sole Arbitrator held that the rates fixed by BOO cannot be unilaterally reduced by the petitioner, without assigning any reasons. Therefore, the sole Arbitrator has awarded the compensation by fixing it at the rate of Rs.4,940.91 per cubic metre.

14. The above reasoning given by the sole Arbitrator does not suffer from any perversity or patent illegality. The sole Arbitrator who has experience in such contracts, has come to the conclusion that the final rate



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fixed by BOO cannot be reduced by the Chief Engineer. This finding, arrived by the sole Arbitrator, based on the background facts of the case, does not warrant interference of this Court.

15. The next issue pertains to Claim No.6 namely “*Loss due to confiscated T &P*”. This claim was questioned by the petitioner on the ground that whatever that was available in the site, was taken away by the claimant and nothing remained in the site and inspite of the same, the sole Arbitrator had assumed that, only 50% of the materials were removed from the site and for the balance 50%, the compensation has been fixed and awarded in favour of the respondent. It was further contended that under Clause 54 of the General Conditions of Contract [GCC], the respondent has the power to confiscate the materials in the event of default in completing the contract. In the case on hand, the sole Arbitrator on considering the repeated delays caused in completing the contract work and the extension of time that was granted by the petitioner, came to a conclusion that time is not the essence of this contract. However, after the expiry of last extension which came to an end on 30.04.2012, the contract was cancelled on 05.10.2013, when the contract was not even in subsistence. In fact, the



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claimant was continuing to hold the materials till 05.10.2013.

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16. Exhibit-C49, pertains to the materials that were removed from the site. It is seen that vide Ext.C49, letter dated 06.08.2013, the claimant had requested the Security Officer, Tambaram, (through AGE B/R(P), Tambaram) for removal of 850 nos. of Old Cementing Steel Sheets; 300 nos. of Old Spans Steel and 550 nos. of Old Props Steel. However, the claimant was permitted to remove only 425 nos, 150 nos., and 175 nos. of the respective materials. The same is apparent from the endorsement that has been made in Ext.C49.

17. The sole Arbitrator, after considering the fact that there was absolutely no explanation forthcoming from the petitioner regarding the remaining materials, has rightly calculated the value of those materials and awarded a sum of Rs.19,71,250/- to the claimant. This finding cannot be held to be perverse or patently illegal. In fact, the claimant had sought for nearly Rs.28,88,750/-. However, the sole Arbitrator took the effort of making an independent calculation and assessed the claim of Rs.19,71,250/- This also shows that the sole Arbitrator has assigned proper reasons and



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calculated the correct compensation amount payable to the claimant.

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18. The next issue pertains to Claim No.7, which is the “*Balance Payment of Final Bill*”. It was contended on the side of the petitioner that the Government had recovered a sum of Rs.17,00,000/- from the retention amount of Rs.30,47,700/-, since there was no separate security deposit available. According to the petitioner, due to non-completion of the work, the Government had sustained huge loss and towards the same, the recovery was made. Condition No.50 of GCC authorises the Government to levy compensation. Therefore, the sole Arbitrator, without appreciating the fact that the Government had the power of cancellation and levying compensation, ought not have awarded the claim in favour of the respondent.

19. The sole Arbitrator had already given sufficient reasons as to why time is not the essence of the contract and has also taken into consideration the scope of Section 55 of the Indian Contract Act, in this regard. The sole Arbitrator also took into consideration the fact that the permission was granted only upto 30.04.2012, but, the contract was cancelled on



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05.10.2013, almost 1 ½ years after the permission was granted to complete the work without levy of compensation. On the date when the cancellation was made, the contract was not in subsistence.

20. Apart from the above, the sole Arbitrator made an independent assessment / detailed assessment under various heads at Paragraph No.98 of the award, while arriving at the net total compensation of Rs.27,14,234.53 under this claim. The sole Arbitrator also came to the conclusion that the petitioner has not proved any loss suffered by them on account of the delay in completion of work. On this very ground, the counter claim made by the petitioner was also rejected.

21. The sole Arbitrator has properly appreciated the evidence and given a factual finding, apart from making a detailed calculation under this claim. Certainly, the findings of the sole Arbitrator under Claim No.7 does not suffer from any perverse or patent illegality, warranting interference of this Court.

22. Finally, this Court deals with Claim No.9 which relates to *'Loss*



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due to illegal cancellation'. Under this claim, the sole Arbitrator has awarded a sum to the tune of Rs.10,16,155/- in favour of the claimant.

23. The main ground that was urged by the learned Senior Panel Counsel appearing for the petitioner is that the issue concerns TDS deposit and issuance of Form-16A, or credit in Section 26A or 26S of the Income Tax Act. The claim was made on the ground that the dues for the year 2008-2009 upto 2011-2012 was uploaded only on 31.07.2013, and due to this delay, the financial position of the claimant was adversely affected and he was not in a position to complete the work. The claimant had claimed a sum of Rs.65,76,824/- under this head and what was awarded by the sole Arbitrator is Rs.10,16,155/-.

24. In the considered view of this Court, such matters which fall within the realm of TDS deduction, cannot fall within the scope of arbitration proceedings before the Tribunal. Useful reference can be made to the judgment of a Division Bench of this Court in ***Sree Kamatchi Amman Constructions Vs The Divisional Railway Manager Works, Palghat Division*** reported in ***2007 5 CTC 17***.



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25. Even otherwise, there is absolutely no discussion or reference to any evidence to justify as to how the sole Arbitrator came to a conclusion that a sum of Rs.10,16,155/- can be awarded in favour of the claimant. Thus, the sum awarded is not supported by any evidence and has been awarded on a mere surmise and it certainly suffers from patent illegality under Section 34(2A) of the Act and it warrants interference of this Court.

26.The upshot of the above discussion, this Court upholds the compensation given under Claim Nos.3, 6 and 7, and sets aside compensation awarded under Claim No.9.

27. The next question to be dealt with is as to whether the award of the sole Arbitrator can be modified by interfering only with one of the claims awarded in favour of the claimant. In the light of the judgment of the Apex Court in *Gayatri Balasamy Vs ISG Nova Soft Technologies Limited* reported in **(2025) 7 SCC 1**, such modification is permissible, if the invalid portion can be severed from the valid portion of the award. Certainly, the compensation awarded for Claim No.9 can be severed from the other claims



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awarded in favour of the claimant which has been upheld. Consequently, relying upon the judgment of the Apex Court in **Gayatri Balasamy** referred supra, the award can be modified.

28. Insofar as the award of interest and costs is concerned, this Court finds that the sole Arbitrator has only awarded simple interest at the rate of 12% per annum and with regard to costs, the sole Arbitrator has only fixed the reasonable cost of Rs.45,000/- incurred by the claimants towards making reference, administrative costs etc.,

29. In the result, this petition is partly allowed in the above terms with costs of Rs.1,00,000/- payable by the petitioner to the respondent.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No
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N.ANAND VENKATESH,J.

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