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O.P. No.933 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2025

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P. No.933 of 2019

M/s.V.N.V. Builders Pvt. Ltd.
Rep. by Managing Director,
No.149, Kalaramani Moduchur Village,
Gobichettipalayam, Erode - 638 476.

... Petitioner

Vs.

1.The Superintending Engineer (Project),
Tamil Nadu Slum Clearance Board,
5, Kamarajar Salai, Chennai - 600 005.

2. The Executive Engineer - Division III,
Tamil Nadu Slum Clearance Board,
Chennai - 600 039.

3. The Chief Engineer - Division III,
Tamil Nadu Slum Clearance Board,
Chennai - 600 039.

... Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award of the sole arbitrator dated 19.06.2017 to the extent of reliefs not granted and direct the respondents to pay a sum of Rs.2,25,92,486/- less the amount granted to the petitioner / claimant, as per the claims made with interest at 24% from the date of filing the claim before the arbitrator, i.e., from 29th June, 2015 till the date of payment in full.



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O.P. No.933 of 2017



For Petitioner : Mr.K.V. Subramanian
Senior Counsel
for M/s.K.V. Subramanian Associates

For Respondents : Mr. M.K. Kabir
Senior Counsel
for Mr.S. Karthikeyan

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 19.06.2017 passed by the arbitrator.

2. Before the arbitrator, the petitioner was the claimant and the respondent Nos.1 to 3 were the respondents. The petitioner was appointed as a contractor by the respondent Nos.1 to 3 in respect of a construction work. There arose disputes out of the said contract, which contains an arbitration clause. The petitioner initiated arbitration in accordance with the arbitration clause, against the respondent No.1 to 3.

3. This Court had appointed an arbitrator to adjudicate the dispute between the parties under Section 11 of the Arbitration and Conciliation Act, 1996. The arbitrator acted upon the reference and has awarded the



following:

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a) It was declared by the arbitrator that the respondents had not breached the terms of the agreement dated 28.02.2011 (Ex.C3);

b) It was held that the Tamil Nadu Detailed Standard Specification - General Conditions of Contract (TNDSS) (Ex.R29) incorporated in the agreement in Ex.C3 is fully operational and binding on both parties;

c) The petitioner is not entitled for any relief except to the extent of getting interest on the delayed payment covered by the 1st and part bill amounting to Rs.55.98 lakhs, which will carry an interest of 18% from the date it became payable (05.06.2011) till the date it was actually paid (30.11.2011). The full claim for refund of EMD and interest is negatived. But, the petitioner is entitled to get back the amount of Rs.1,32,949/- together with interest accrued on the EMD. If the 5th and part bill is not paid so far, then the petitioner is also entitled to get (as determined by the respondents in their M.Book) the amount paid together with interest at the rate of 18% p.a. from the date it became payable till the date of the payment;

d) The counter claim made by the respondents was maintainable;

e) The counter claim made by the respondents was disallowed on the ground that they have brazenly violated orders of the High Court and



granted the contract to a third party even while the order of interim injunction was in force;

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f) Parties were allowed to bear their own costs.

4. Aggrieved by the findings of the arbitrator in the impugned arbitral award, this petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award, by the claimant in the arbitration. The respondent Nos.1 to 3 chose not to challenge the impugned award and therefore, the findings rendered by the Arbitrator against them has attained finality.

5. Before the arbitrator, the following claims were made by the petitioner against the respondent Nos.1 to 3:

<i>Sl. No.</i>	<i>Work Details</i>	<i>Amount Rs.</i>	<i>Interest Rs.</i>	<i>Total Amount Rs.</i>
1.	FDR EMD Refund claim with interest	9,97,949	5,37,497	15,35,446
2.	With held amount claim with interest	6,20,772	4,29,775	10,50,547
3.	Delay in payment claim with interest	3,37,445	2,33,621	5,71,066
4.	Piling and concrete work finished claim with interest	18,06,958	16,96,332	35,03,290
5.	Pile loading test value with interest	1,31,880	1,23,806	2,55,686
6.	Equipment idle charges paid claim with interest	25,38,200	17,57,254	42,95,454



Sl. No.	Work Details	Amount Rs.	Interest Rs.	Total Amount Rs.
7.	Material loss claim with interest	10,47,520	7,25,222	17,72,742
8.	Labour idle charges paid claim with interest	11,58,300	8,01,918	19,60,218
9.	Administration cost paid claim with interest	9,09,000	6,29,322	15,38,322
10.	Price Escalation charges claim with interest	11,10,254	7,68,654	18,78,908
11.	Company Revenue Compensation claim with interest	25,00,000	17,30,807	42,30,807
	Total	1,31,58,278	94,34,208	2,25,92,486

6. Before the arbitrator, the respondent Nos.1 to 3 had categorically disputed the claim made by the petitioner. They also made a counter claim against the petitioner. The arbitrator under the impugned arbitral award framed the issues viz., Issue Nos.1 to 6, based on the pleadings of the respective parties. As seen from the impugned arbitral award, each and every issue was considered at length by the arbitrator based on the evidence available on record. Before the arbitrator, both the parties to the dispute filed documents and they were marked as exhibits. The details of the exhibits marked on the side of the petitioner and the respondents, which have been considered by the arbitrator under the impugned arbitral award are detailed hereunder:

a) List of documents filed by the petitioner (claimant):



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Sl.No.	Date	Description	Exhibit
1.	29.10.2010	Tender Notice issued by the 1 st respondent	C1
2.	28.02.2011	Letter of acceptance from the 1 st respondent	C2 = R2
3.	28.02.2011	Article of Agreement between the Claimant and the respondents	C3
4.	08.03.2011	Claimant's letter to the 2 nd Respondent	C4
5.	16.05.2011	Site Handing Over Report issued by the respondent	C5 = R4
6.	06.06.2011	Claimant's letter to the Respondent	C6
7.	17.06.2011	Claimant's letter to the Respondent	C7
8.	24.06.2011	Respondent's letter to the Claimant	C8 = R5
9.	25.06.2011	Claimant's letter to the Respondent (enclosed with paper clipping)	C9 = R6
10.	25.06.2011	Claimant's letter to the Respondent (enclosed with paper clipping)	C10
11.	25.06.2011	Claimant's letter to the Respondent (enclosed with paper clipping)	C11
12.	28.06.2011	Respondent's letter to Claimant.	C12 = R7
13.	29.06.2011	Claimant's letter to Respondent (with paper clippings)	C13
14.	14.07.2011	Claimant's letter to Respondent	C14
15.	30.7.2011	Claimant's letter to Respondent	C15 = R8
16.	21.09.2011	Claimant's letter to Respondent	C16
17.	14.11.2011	Respondent's letter to Claimant	C17
18.	18.11.2011	Claimant's letter to Respondent	C18
19.	06.12.2011	Claimant's letter to Respondent	C19
20.	05.01.2012	Claimant's letter to respondent (together with photographs)	C20
21.	05.01.2012	Claimant's letter to respondent	C21
22.	12.01.2012	Respondent's letter to Claimant	C22 = R10
23.	19.01.2012	Claimant's letter to Respondent	C23
24.	16.02.2012	Respondent's letter to Claimant	C24 = R11
25.	02.03.2012	Claimant's letter to Respondent (together with program chart)	C25 = R13
26.	05.03.2012	Claimant's letter to Respondent	C26 = R14
27.	12.03.2012	Claimant's letter to Respondent	C27
28.	19.03.2012	Claimant's letter to Respondent (together with revised program chart)	C28
29.	27.03.2012	Claimant's letter to Respondent	C29
30.	29.03.2012	Claimant's letter to respondent (regarding site status)	C30
31.	07.04.2012	Respondent's notice proposing to terminate the contract	C31 = R16
32.	23.04.2012	Respondent's order terminating the contract given to the Claimant	C32 = R18
33.	30.04.2012	Claimant's letter to respondent	C33
34.	30.04.2012	Claimant's letter to respondent	C34



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35.	16.06.2012	Claimant's appeal to the respondent to reconsider their decision	C35
36.	03.07.2012	Respondent's rejection of Claimant's request	C36 = R19
37.	06.07.2012	Respondent's reply to Claimant threatening to blacklist the Claimant from the Contractors list.	C37 = R20
38.	10.07.2012	Fresh Tender Notice issued by the Respondent for completing the unfinished work	C38
39.	19.07.2012	Form 16A under the Income Tax Act given for the period April 2011 to March 2012	C39
40.	13.08.2012	Claimant's notice regarding filing of Original Application before the High Court	C40
41.	15.10.2012	Claimant's pre-contempt notice (with proof of service)	C41
42.	05.11.2012	Respondent's reply to Claimant	C42 = R21
43.	04.12.2012	Letter to Indian Overseas Bank, Chennai-39 regarding handing over the deposit proceeds to the Respondent	C43
44.	21.04.2013	Claimant's notice to the respondent regarding filing of O.A.672 & 673 of 2012, High Court: Madras with proof of service	C44
45.	11.06.2014	Claimant's letter to respondent demanding settlement of their bills	C45
46.		Photographs showing the site condition	C46 series
47.	13.8.2012	Order passed by High Court, Madras in O.A.No.672 of 2012	C47
48.	9.6.2013	Claimant's Affidavit in Contempt Petition No.1847 of 2013, Madras High Court	C48
49.	September 2013	Counter affidavit filed by the Respondent in Contempt Petition No.1847 of 2013	C49
50.	25.9.2013	Rejoinder in C. P.No.1847 of 2013 by the Claimant	C50
51.	20.6.2014	Order passed by the Hon'ble High Court, Madras in C. P. No.1847 of 2013	C51

b) List of documents filed by the respondents (respondents):

Sl.No.	Date	Description	Exhibit
1.	19.02.2008	G.O.(Ms) No.37 Housing & Urban Development Department, Govt. of Tamil Nadu regarding reconstruction of the dilapidated tenements in various places including the site under dispute	R1
2.	28.02.2011	Letter of acceptance from the respondent	R2 = C2

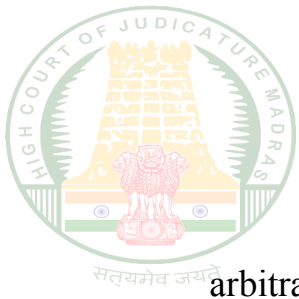


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3.	01.03.2011	Press Note issued by the Election Commission of India notifying model code of conduct	R3
4.	16.05.2011	Site handing over report	R4 = C5
5.	24.06.2011	Respondent's letter to the Claimant	R5 = C8
6.	25.06.2011	Claimant's letter to the Respondent	R6 = C9
7.	28.06.2011	Respondent's letter to Claimant.	R7 = C12
8.	30.07.2011	Claimant's letter to Respondent	R8 = C15
9.	04.01.2012	Respondent's letter to the claimant to speed up the progress of work	R9
10.	12.01.2012	Respondent's letter to Claimant	R10 = C22
11.	16.02.2012	Respondent's letter to Claimant	R11 = C24
12.	02.03.2012	Respondent's letter to the Claimant to contact the Chief Engineer of the Board	R12
13.	02.03.2012	Claimant's letter to Respondent (together with program chart)	R13 = C25
14.	05.03.2012	Claimant's letter to Respondent (with enclosures)	R14 = C26
15.	09.03.2012	Final notice sent by the respondent to the claimant regarding slow progress of work (postal receipt produced and later acknowledgement card produced on 22.10.2016)	R15
16.	07.04.2012	Respondent's notice proposing to terminate the contract	R16 = C31
17.	11.04.2012 to 22.05.2012	Letters sent by the claimant to the respondent regarding removal of construction materials from site	R17 series
18.	23.04.2012	Respondent's order terminating the contract given to the Claimant	R18 = C32
19.	03.07.2012	Respondent's rejection of Claimant's request	R19 = C36
20.	06.07.2012	Respondent's reply to Claimant threatening to blacklist the Claimant from the Contractors list.	R20 = C37
21.	05.11.2012	Respondent's reply to Claimant	R21 = C42
22.	14.03.2013	Respondent's letter informing various collectorates to withhold amounts due to the Claimant and to be sent to the Board	R22 series
23.	17.04.2013	Respondent's letter to the Superintending Engineer regarding the balance amount payable to the Claimant.	R23
24.	09.05.2013	Notice to the Claimant regarding recover to be made from him.	R24
25.		Report from the Meteorological department regarding the rainfall during the periods May, 2011 to April, 2013	R25
26.		Extract from the M-book containing detailed and accepted measurements done by the claimant and the bill abstract of the claimant	R26 Series



27.		Statement containing details of the works done by various contractors under the K.P.Park Scheme	R27
28.		Particulars showing the works executed by the claimant under various heads	R28
29.		Tamil Nadu Detailed standard specification – General Conditions of contracts	R29
30.	02.08.2012	Charges incurred by the respondent calling for tender for the balance work	R30
31.	11.10.2012	Order between the respondent and the new contractor for completing the works not executed by the claimant	R31
32.	09.11.2012	Site handing over report to the new contractor	R32
33.		Bill abstract for the works done by the new contractor	R33
34.		Details of the balance amount to be recovered from the claimant	R34
35.		M-Book [I-309]	R35
36.		M-Book [I-307]	R36
37.		M-Book [I-303]	R37
38.		M-Book [I-304]	R38
39.		M-Book [I-308]	R39
40.		M-Book [I-309]	R40
41.		M-Book [I-307]	R41
42.		M-Book [I-308]	R42
43.		M-Book [I-304]	R43
44.		M-Book [I-736]	R44
45.		M-Book [I-308]	R45
46.		M-Book [I-304]	R46
47.		M-Book [I-736]	R47
48.		M-Book [I-308]	R48
49.		M-Book [I-303]	R49
50.		M-Book [I-304]	R50
51.		M-Book [I-307]	R51
52.		M-Book [I-736]	R52
53.		M-Book [I-735]	R53
54.		M-Book [I-308]	R54

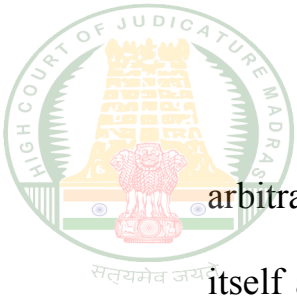


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7. Oral evidence was also let in by both the parties before the arbitrator. The managing director of the petitioner Company was examined as CW1 on the side of the petitioner. On the side of the respondents, three witnesses were examined viz., RW1, RW2 and RW3. The arbitrator under the impugned arbitral award has considered each and every issue framed by him in detail and has also given due consideration to the documents marked as exhibits on the side of both the parties and also considered the deposition of the witnesses on both sides and only thereafter, came to the findings, which have been disclosed in paragraph No.3 of this order.

8. An indepth discussion and findings have been rendered by the arbitrator with regard to the issues framed by him. An in-depth analysis has also been made by him with regard to the documentary evidence placed on record as well as the deposition of witnesses while answering issue No.2 and issue Nos.1 and 3 in the arbitral award.

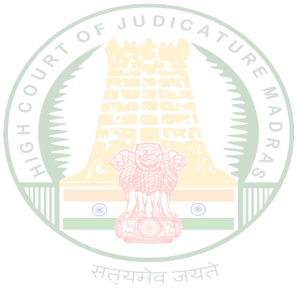
9. It is clear that only based on the evidence available on record, the conclusions have been arrived at by the arbitrator. This Court is not reiterating the discussions made by the arbitrator under the impugned



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arbitral award for coming to the conclusion. The arbitral award speaks for itself and it can be seen that the arbitral award is a speaking award, which has been passed after considering all the contentions that have been raised by the petitioner before this Court once again in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The respondents have also not challenged the impugned arbitral award though their counter claim was rejected by the arbitrator under the impugned arbitral award. The learned arbitrator has also taken into consideration various Judgments rendered by the Constitutional Courts apart from giving proper consideration to the evidence available on record while rendering his findings with regard to the issues framed by him.

10. This Court while deciding an application under Section 34 of the Arbitration and Conciliation Act, 1996, is not an appellate Court. It cannot re-appreciate the evidence. When the arbitrator has passed the impugned arbitral award only based on the evidence available on record and the view taken by the arbitrator is a plausible view, the question of interference by this Court under Section 34 of the Arbitration and Conciliation Act, 1996 does not arise.



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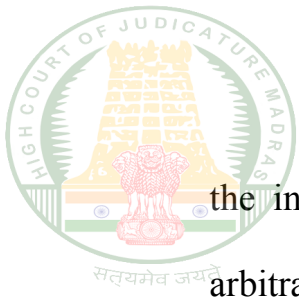


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11. The petitioner has raised the following grounds before this Court:

- a) The site was handed over belatedly - Section 51 of Contract Act was not complied with;
- b) 7 Months delay for releasing the funds to the contractor to proceed with the work - Section 51, 54 and 55 of the Contract Act were not complied with;
- c) Genuine hurdles were not considered despite a provision in the agreement - Section 67 of Contract Act not complied;
- d) Time is not the essence of the Contract - Reference - Clause 4(A) of the agreement in page No.9 of Vol-I - Violative of Clause 56 of Tamil Nadu detailed Standard Specification - General Condition of Contract;
- e) Termination is illegal and therefore, Null and Void - violative of Clause 57 of Tamil Nadu detailed standard specification - General condition of contract;
- f) Impossibility of performance of the contract.

12. All the contentions as stated supra, were also raised by the petitioner before the arbitrator and the same has also been considered during



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the in-depth analysis made by the arbitrator as seen from the impugned arbitral award. Therefore, the question of re-appreciating the evidence once again is not permissible under Section 34 of the Arbitration and Conciliation Act, 1996. Unless and until, without any evidence, the arbitrator had passed the impugned arbitral award, this Court cannot interfere under Section 34 of the Arbitration and Conciliation Act, 1996. As observed earlier, the view taken by the arbitrator is a plausible view and it cannot also be inferred that it is an unintelligible view. Therefore, this Court cannot interfere under Section 34 of the Arbitration and Conciliation Act, 1996.

13. For the foregoing reasons, this Court does not find any merit in this petition. Accordingly, this petition is dismissed. No Costs. Since certain amounts were directed to be paid by the respondent Nos.1 to 3 to the petitioner under the impugned arbitral award, the learned senior counsel appearing for the respondent Nos.1 to 3 would fairly submit that he will advise the respondent Nos.1 to 3 to make the said payments to the petitioner at the earliest. This Court after giving due consideration for the long delay, directs the respondent Nos.1 to 3 to pay the petitioner the amount payable to the petitioner as per the impugned arbitral award within a period of six



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weeks from the date of receipt of a copy of this order.

24.03.2025

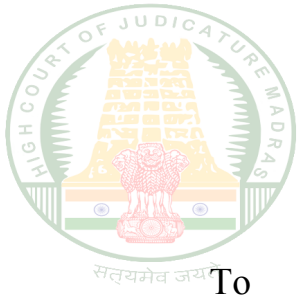
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Index : Yes/No

Speaking Order : Yes / No

Neutral Citation Case: Yes / No

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To
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1. The Principal Commissioner of Customs (General),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Inquiry Officer / Assistance Commissioner of Customs,
R & I Section (Airport), New Custom House,
Meenambakkam, Chennai - 600 027.



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ABDUL QUDDHOSE. J.,

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24.03.2025