



WEB COPY

OSA No.135 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28 / 04 / 2026

PRONOUNCED ON : 09 / 06 / 2026

CORAM

**THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

**O.S.A. No. 135 of 2020 &
C.M.P.No.6403 of 2020**

Chennai Metropolitan Water Supply
and Sewerage Board
No.1 Pumping Station Road,
Chennai-600002,
Through The Managing Director

Appellant(s)

Vs

1. SPML Infra Limited
Having its office at F-27/2,
Okhla Industries Area Phase-II,
New Delhi - 110 020.
Through its Authorized Signatory,

R1 Company Name amended Vide
Order of Court dated 05.01.2024
made in C.M.P.No.27832/2023 in
O.S.A.No.135 of 2020

2.Dr.T.S.Sethuraman,
Presiding Arbitrator, C-137
Sarvodaya Enclave,
New Delhi-110017



3.Capt.S.Raja Rao
Arbitrator, House No. 279,
1st B-cross, 8th Main Road,
4th Block, Basveswara Nagar,
Bangalore-560 079

4.K.Ramalingam
Arbitrator,
Ap-506, 16th Street,
Vaigai Colony,
Anna Nagar West,
Chennai-600040

Respondent(s)

PRAYER: This Original Application is filed under Clause 15 of the Letters Patent of the High Court of Madras and Order XXXVII Rule 1 of the Original Side Rules of the High Court of Madras, 1956 read with Section 37 of the Arbitration & Conciliation Act, 1996, against the Judgement and Decree passed by this Court dated 14.08.2019 made in O.P.No.324 of 2009.

For Appellant(s): Mr. D.Balaraman

For Respondent(s): Mr.K.Ashok Kumar for R1

No appearance for R2 and R3
R4 - No More



JUDGMENT

WEB COPY

(Order of the Court was made by P.Velmurugan J.)

The present Original Side Appeal has been filed challenging the order dated 14.08.2019 passed by the learned Single Judge in O.P.No.324 of 2009, whereby the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 was partly allowed by setting aside the Award only in respect of Claim No.6 and confirming the Award in all other respects.

2. The Appellant Board invited tenders for construction of Permeate Conveyance Pipeline forming part of the Chennai Sewerage Renovation and Functional Improvement Project funded by the Overseas Economic Co-operation Fund of Japan. The scope of the contract consisted of supply and laying of pipelines of various diameters within the stipulated completion period. The first respondent submitted its tender, the same was accepted by the appellant and an agreement came to be entered into between the parties.

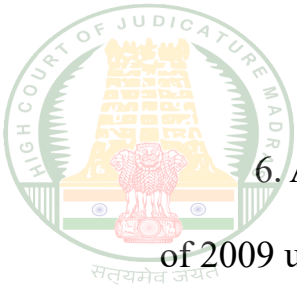
3. According to the first respondent/claimant, during execution of the work, the appellant made substantial post contractual changes in the alignment and scope of work resulting in drastic reduction in quantities originally contemplated under the agreement. It was further alleged that there was



abnormal delay in handing over the site, issuance of revised drawings and approvals and that because of post contractual changes in alignment, the excavation depth substantially increased, resulting in additional work and expenditure.

4. The appellant Board disputed the claims contending that the contract was a lump sum contract and that under the terms of the agreement, the contractor was deemed to have inspected the site and understood the underground conditions. According to the appellant, no additional monetary claim could be made on account of underground obstructions or variation in site conditions.

5. In view of disputes arising between the parties, the matter was referred to arbitration in terms of the arbitration agreement. The claimant raised various claims including compensation towards reduction in scope of work, prolongation costs, additional excavation due to change in alignment, unpaid amounts and interest. The appellant resisted the claims and also raised counter claims. Upon consideration of the pleadings, oral and documentary evidence and the submissions made by both parties, the Arbitral Tribunal passed a majority Award allowing several claims in favour of the claimant and awarded compensation together with interest. One of the Arbitrators passed a separate minority Award granting substantially lesser amounts.

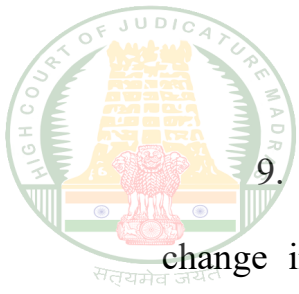


6. Aggrieved by the majority Award, the appellant Board filed O.P.No.324 of 2009 under Section 34 of the Arbitration and Conciliation Act, 1996.

WEB COPY

7. The learned Single Judge, while considering the challenge to the Award, principally dealt with Claim Nos.5, 6 and 12. Insofar as Claim No.5 relating to compensation for reduction in scope of work is concerned, the learned Single Judge held that the Arbitral Tribunal, after considering the contractual clauses and evidence on record, found that the reduction in quantities was far beyond the permissible contractual variation and therefore could not be treated as a mere variation under the contract. The learned Single Judge further held that the interpretation placed by the Tribunal on the contractual provisions was based on the nature of the work and evidence available on record and therefore did not warrant interference under Section 34 of the Act.

8. Insofar as Claim No.6 relating to prolongation costs and loss of profit is concerned, the learned Single Judge held that there was no sufficient evidence regarding the actual loss allegedly sustained by the claimant and that the Tribunal had adopted the Hudson formula without adequate evidentiary basis. On the said reasoning, the Award insofar as Claim No.6 alone was set aside.



9. In respect of Claim No.12 relating to additional excavation due to change in alignment, the learned Single Judge held that the Tribunal had recorded factual findings regarding post contractual changes in alignment and increase in excavation depth based upon pipe laying cards, job records and contemporaneous documents jointly signed by both parties. The learned Single Judge further held that such factual findings based on evidence cannot be re-appreciated in proceedings under Section 34 of the Act.

10. Accordingly, the learned Single Judge partly allowed the petition by setting aside the Award only in respect of Claim No.6 and confirmed the Award in all other respects.

11. Challenging the said order passed in O.P.No.324 of 2009, the Chennai Metropolitan Water Supply and Sewerage Board has filed the present Original Side Appeal.

12.1. The learned counsel appearing for the Appellant submitted that the learned Single Judge failed to appreciate that the very reference of disputes to arbitration itself was contrary to the terms of the contract and therefore the Arbitral Tribunal lacked jurisdiction to entertain the claims. According to the learned counsel, the claims projected by the claimant were expressly barred under the terms and conditions of the agreement and consequently the Award passed by the Tribunal suffered from patent illegality and material irregularity.



12.2. The learned counsel further submitted that the contract between the parties was a lump sum contract and that under Clause 8.1 read with Clauses 20.1, 28 and other relevant provisions of the agreement, the contractor was deemed to have fully satisfied itself regarding the nature, extent and practicability of the work, including underground conditions and utilities. Therefore, according to the learned counsel, the contractor was not entitled to raise any additional claim on the ground of underground obstruction, increase in excavation depth or variation in site conditions. It was further contended that the learned Single Judge failed to appreciate that the alleged variation was not a variation at all, since the contract itself contemplated laying of pipelines underground and dealing with obstructions and utilities. According to the learned counsel, the contractor, being an expert in the field, had quoted rates after fully understanding the site conditions and therefore could not subsequently seek compensation on account of alleged additional work.

12.3. The learned counsel further submitted that the Arbitral Tribunal travelled beyond the terms of the contract in entertaining claims which were otherwise prohibited under the agreement and that the learned Single Judge failed to interfere despite such patent illegality apparent on the face of the Award.



12.4. The learned counsel further submitted that though the Tribunal had permitted the Appellant to file an additional statement of defence, the same was not properly considered while passing the Award. According to the learned counsel, the Tribunal observed that the Appellant could not improve upon its original defence and thereby ignored vital pleadings and materials placed on record. It was further submitted that the Award suffered from absence of proper consensus amongst the Arbitrators. According to the learned counsel, one of the Arbitrators had rendered a separate Award and the same was not circulated to the other Arbitrators. Therefore, according to the Appellant, the majority Award suffered from want of mutual consultation and consensus and consequently the entire Award was liable to be set aside.

12.5. The learned counsel further contended that the majority Arbitrators merely extracted the submissions of the parties and allowed the claims without proper discussion or independent analysis of the evidence and contractual provisions. According to the learned counsel, there was no proper reasoning regarding the amounts awarded and the Tribunal mechanically accepted the claims without adequate reasons.

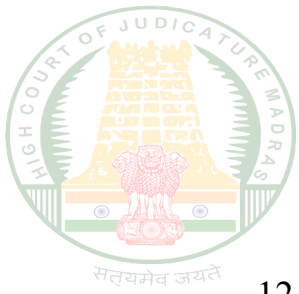
12.6. Insofar as Claim No.5 is concerned, the learned counsel submitted that the reduction in scope of work was permissible under Clause 73.4 of the General Conditions of Contract and that the Tribunal erred in treating the same



as abnormal variation beyond the contemplation of the contract. It was further submitted that the reduction in the length of pipeline was necessitated due to delay on the part of the contractor in completion of the work and therefore the Appellant was justified in issuing part termination under the contract.

12.7. The learned counsel further submitted that the Tribunal awarded compensation at 20% of the value of omitted work without any legal evidence regarding actual loss or damages suffered by the contractor. According to the learned counsel, the contractor failed to establish deployment of sufficient resources, machinery or infrastructure so as to substantiate any claim towards loss of profit or overheads.

12.8. The learned counsel also submitted that the payment of Japanese Yen component under the contract was intended only for procurement of pipes and since the reduced quantities were never procured, no loss whatsoever was caused to the contractor. Insofar as Claim No.12 relating to additional excavation is concerned, the learned counsel submitted that the tender drawings only indicated an average excavation depth and that variation in depth depending upon underground structures was always contemplated under the contract. According to the learned counsel, the contractor was fully aware of such possibilities at the tender stage itself and had quoted the contract price after conducting site inspection.



WEB COPY

12.9. The learned counsel further submitted that the Tribunal wrongly construed the increased excavation depth as additional work and awarded compensation without independently analysing the facts of the present case. It was contended that the learned Single Judge travelled beyond the scope of Section 34 of the Arbitration and Conciliation Act while dealing with the findings relating to compensation events.

12.10. The learned counsel further submitted that there was neither pleading nor proof regarding actual damages allegedly suffered by the contractor towards overheads and profits and therefore the Award of huge amounts without supporting evidence was wholly perverse and unsustainable. It was also contended that in an identical dispute between the same parties arising out of a similar Award passed by the very same Arbitral Tribunal, this Court in ***O.P.No.325 of 2009*** reported in *2017 (6) MLJ 582* had reduced the rate of interest awarded by the Tribunal on the ground that there was no proper reasoning for awarding such rate of interest. According to the learned counsel, the learned Single Judge ought to have adopted the same approach in the present case also.

12.11. On the above submissions, the learned counsel prayed that the order passed by the learned Single Judge confirming the majority Award, except



in respect of Claim No.6, is liable to be set aside and the Original Side Appeal deserves to be allowed.

WEB COPY

13.1. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the scope of interference under Sections 34 and 37 of the Arbitration and Conciliation Act is extremely limited and that both the Arbitral Tribunal and the learned Single Judge had rendered concurrent findings of fact based on pleadings, documentary evidence and interpretation of contractual clauses and therefore the same do not warrant interference by this Court in an appeal under Section 37 of the Act.

13.2. The learned counsel submitted that the dispute arose out of a highly technical infrastructure project relating to supply and laying of pipelines and that all the three Arbitrators were retired Government officials possessing technical expertise in the subject matter. It was submitted that after considering the pleadings, oral and documentary evidence and rival submissions, the Arbitral Tribunal, by majority, allowed only certain claims and rejected several other claims as well as the counter claims raised by the appellant. According to the learned counsel, the Award is a reasoned Award rendered upon appreciation of technical and factual materials and cannot be characterised as arbitrary or perverse.



13.3. The learned counsel further submitted that during execution of the contract, the appellant substantially altered the extent and alignment of the pipeline laying work originally contemplated under the agreement. According to the learned counsel, the quantity of supply and laying of pipelines was drastically reduced far beyond the permissible contractual variation and therefore the Tribunal rightly held that the same could not be treated as a normal contractual variation contemplated under the agreement.

13.4. The learned counsel further submitted that the Tribunal had recorded specific findings regarding post contractual changes in alignment and increase in excavation depth based upon contemporaneous records, job cards and pipe laying details jointly signed by both parties during execution of the work. It was submitted that the execution of work was carried out under day to day supervision, inspection and approval of the appellant and therefore the appellant cannot now dispute the factual findings recorded by the Tribunal. The learned counsel further submitted that the learned Single Judge independently analysed the findings of the Tribunal in respect of Claim Nos.5, 6 and 12 and rightly held that the findings relating to Claim Nos.5 and 12 were based upon evidence and contractual interpretation and therefore do not warrant interference under Section 34 of the Act.



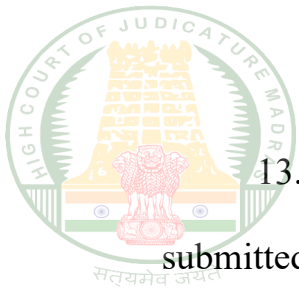
WEB COPY

13.5. Insofar as Claim No.6 is concerned, the learned counsel submitted that though the learned Single Judge set aside the Award under the said claim, the first respondent has not challenged the same and has accepted the findings rendered by the learned Single Judge.

13.6. The learned counsel further submitted that the appellant had mainly challenged only Claim Nos.5, 6 and 12 before the learned Single Judge in the proceedings under Section 34 and therefore cannot now be permitted to raise fresh grounds in respect of Claim Nos.7C, 7D and 15 for the first time in the present appeal under Section 37 of the Act.

13.7. The learned counsel further submitted that the contention regarding absence of consensus amongst the Arbitrators is wholly misconceived since the Arbitration and Conciliation Act itself recognises a decision by majority and merely because one of the Arbitrators rendered a minority Award, the majority Award would not become invalid.

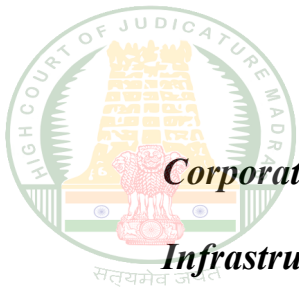
13.8. The learned counsel also submitted that the Award contains elaborate discussion regarding pleadings, evidence, contractual clauses and rival submissions and therefore the contention that the Tribunal mechanically allowed the claims without assigning reasons is factually incorrect.



13.9. Insofar as Claim Nos.7C and 7D are concerned, the learned counsel submitted that the Tribunal had discussed the claims in detail and had relied upon documents produced by the appellant itself acknowledging the amounts due and payable to the claimant and accordingly allowed the claims on the basis of such materials available on record.

13.10. Insofar as Claim No.15 relating to interest is concerned, the learned counsel submitted that the said issue was never raised before the learned Single Judge in the proceedings under Section 34 and therefore the appellant cannot be permitted to raise the same for the first time in the present appeal. The learned counsel further submitted that the rate of interest awarded by the Tribunal was in accordance with the prevailing legal position and banking rates applicable during the relevant period and therefore the same cannot be said to be unreasonable.

13.11. Placing reliance upon the judgments of the Hon'ble Supreme Court in *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163; *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1; *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49; *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131; *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*, (2022) 1 SCC 131; *Bombay Slum Redevelopment*



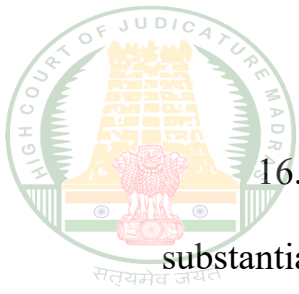
Corporation Pvt. Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218; Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479; UHL Power Company Ltd. v. State of Himachal Pradesh, (2022) 4 SCC 116; and Somdatt

Builders-NCC-NEC (JV) v. NHAI, 2025 SCC OnLine SC 170, the learned counsel submitted that re-appreciation of evidence is impermissible in proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act and unless the Award suffers from patent illegality or perversity going to the root of the matter, interference is wholly unwarranted.

13.12. On the above submissions, the learned counsel prayed for dismissal of the Original Side Appeal.

14. We have carefully considered the rival submissions made on either side and perused the materials available on record.

15. The learned Single Judge, while considering the challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996, principally examined Claim Nos.5, 6 and 12, which constituted the main grounds of challenge before the Court. Upon such consideration, the learned Single Judge interfered only with the Award relating to Claim No.6 and confirmed the Award in respect of the remaining claims.



16. The records disclose that during the execution of the contract, substantial post-contractual changes were introduced in the alignment of the pipeline work. The materials placed before the Tribunal further indicate a considerable reduction in the original scope of work and an increase in excavation depth consequent upon the revised alignment. The disputes relating to such changes formed the basis of the principal claims raised before the Arbitral Tribunal.

17. The Arbitral Tribunal, consisting of members possessing technical expertise in engineering and infrastructure projects, examined the pleadings, documentary evidence, contractual provisions, pipe-laying cards, job records, and other contemporaneous records maintained during execution of the work. Upon appreciation of the materials placed before it, the Tribunal recorded findings that the revised alignment resulted in additional excavation, additional manpower deployment, and increased execution costs. The Tribunal further found that, because of the revised alignment and the existence of underground utility structures and other obstructions, excavation had to be undertaken manually in several stretches, thereby resulting in additional expenditure. These findings were arrived at on the basis of technical records and contemporaneous documents maintained during execution of the work.



WEB COPY

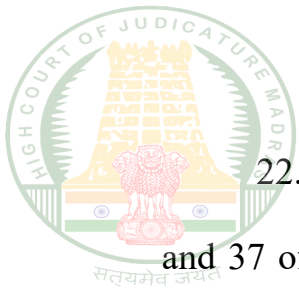
18. Insofar as Claim No.5 is concerned, the Tribunal found that the reduction in the quantity relating to supply of pipes was approximately 65% and the reduction in laying of pipelines was nearly 80%. Upon interpretation of the relevant contractual provisions, the Tribunal concluded that such a drastic reduction could not be treated as an ordinary contractual variation contemplated under the agreement and that the same amounted to an abnormal post-contractual reduction in the scope of work, entitling the claimant to compensation. The learned Single Judge examined these findings and found no ground warranting interference under Section 34 of the Act.

19. In respect of Claim No.12 relating to additional excavation due to change in alignment, the Tribunal recorded findings that the revised alignment resulted in an increase in excavation depth and consequential additional work. The learned Single Judge noted that such findings were based on pipe-laying cards, job records, and other contemporaneous materials, and rightly held that a Court exercising jurisdiction under Section 34 cannot re-appreciate evidence or substitute its own conclusions on disputed questions of fact.



20. The contention of the appellant that the contract was a lump-sum contract and that Clauses 8.1, 20.1, 28, and other provisions barred any additional claim was also considered by the Tribunal. Upon examining the contractual clauses in the light of the factual circumstances arising during execution of the work, the Tribunal concluded that the claims arose not from ordinary site conditions contemplated under the contract, but from substantial post-contractual changes in alignment and scope of work and the additional work resulting therefrom. The interpretation placed upon the contractual provisions by the Tribunal is a plausible view based on the materials on record and does not warrant interference in exercise of jurisdiction under Section 37 of the Act.

21. The further contention that the Award is liable to be set aside for want of consensus amongst the Arbitrators cannot be accepted. Admittedly, the Tribunal consisted of three Arbitrators and the impugned Award is a majority Award. Section 29 of the Arbitration and Conciliation Act, 1996 expressly recognises decision-making by majority. Therefore, the mere fact that one Arbitrator rendered a minority opinion granting lesser amounts does not render the majority Award invalid.



22. It is well settled that while exercising jurisdiction under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, the Court does not sit in appeal over the findings of the Arbitral Tribunal. Re-appreciation of evidence is impermissible. Interference is warranted only where the Award is shown to suffer from patent illegality, perversity, or any other recognised ground under the Act.

23. In the present case, both the Arbitral Tribunal and the learned Single Judge have concurrently found that there were substantial post-contractual changes in alignment, abnormal reduction in the scope of work, and additional excavation arising therefrom. These findings are based on evidence, technical materials, and contemporaneous records. We find no patent illegality, perversity, or anything opposed to public policy in the conclusions reached by the Tribunal and affirmed by the learned Single Judge. Insofar as Claim No.6 is concerned, the learned Single Judge has already interfered with the Award. The learned counsel appearing for the first respondent has fairly submitted that the first respondent has accepted the findings rendered by the learned Single Judge in respect of Claim No. 6 and has not chosen to challenge the same any further.



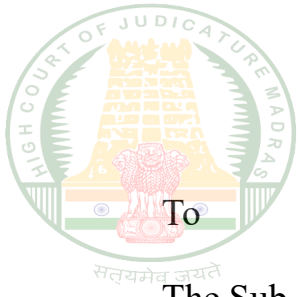
24. Upon an overall consideration of the Award, the order passed by the learned Single Judge, and the submissions advanced before us, we are of the view that no case has been made out for interference under Section 37 of the Arbitration and Conciliation Act, 1996.

25. Accordingly, the Original Side Appeal fails and is dismissed. The order dated 14.08.2019 passed in O.P.No.324 of 2009 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.,] [K.G.T.J.,]
09 / 06 / 2026

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes

r n s



OSA No.135 of 2



To

The Sub Assistant Registrar,
(Original Side)
Madras High Court,
Chennai.



WEB COPY

OSA No.135 of 2



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.**

r n s

**O.S.A.No.135 of 2020 &
C.M.P.No.6403 of 2020**

09 / 06 / 2026