



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2026

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CORAM

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

CMA No. 1214 of 2023

AND

CMP No. 11986 of 2023

The Superintending Engineer
PWD/WRO
Water Resources Organization
Parambikulam-Aliyar Basin Circle
Pollachi Taluk, Coimbatore District

Appellant

Vs

1. M/s S & S Co.,
Contractor rep. by its Proprietor
V.P.Shamsudeen (Died)
Kumaresan Smaraka Building
TASS Road, Aluva 683 101, Kerala

M.Velu (Died)

2. Sohail Shamsudeen
S/o. Late.V.P. Shamsudeen
Vadapilly House, Thaikkattukara
Aluva West Village, Aluva Taluk
Kerala State

3. Aysha Shamsudeen
D/o. Late V.P. Shamsudeen
Vadapilly House, Thaikkattukara
Aluva West Village, Aluva Taluk
Kerala State



4. Nimitha Riyas
D/o. Late.V.P.Shamsudeen
Vadapilly House, Thaikkattukara
Aluva West Village, Aluva Taluk
Kerala State

5. Nasiya Sihabudeen
D/o. Late.V.P.Shamsudeen
Vadapilly House, Thaikkattukara
Aluva West Village, Aluva Taluk
Kerala State

Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the Judgment and Decree dated 21.11.2022 made in Arb.O.P.No.276 of 2015 on the file of the learned Principal District Judge, Coimbatore, confirming the award dated 25.08.2015 passed by the sole Arbitrator in MV/Arb/S&S/SE-PWD Pol/2015.

For Appellant: Mr.M.Hemanth Kumar
Government Counsel

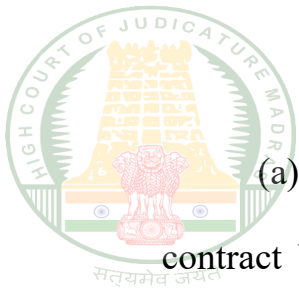
For Respondents: Mr.Navod Prasannan
for R2 to R5
R1-Died

JUDGMENT

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

This civil miscellaneous appeal is directed against the judgment and decree dated 21.11.2022 made in Arb.O.P.No.276 of 2015 on the file of the learned Principal District Judge, Coimbatore, confirming the award dated 25.08.2015 passed by the sole Arbitrator in MV/Arb/S&S/SE-PWD Pol/2015.

2. The facts leading to the filing of this appeal are as follows:-

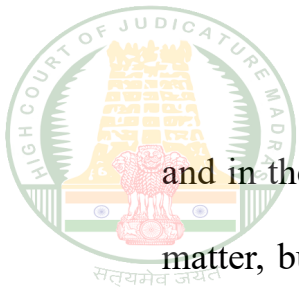


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(a) The first respondent/claimant-contractor was awarded a works contract by the appellant-Department for rehabilitation of left out reaches in Poosaripatty Branch canal and its distributaries, off-taking at LS 30.210 KM and Boliampatty Branch off-taking at LS 31.590 KM of Parambikulam Main Canal and an agreement was executed in this regard on 27.12.2007. The work order pertained to earth work excavation, preparation of the sub-surface and concrete lining of the sides and bed (bottom) for a total length of about 70 km of irrigation canal. The completion period was 17 months and the work was completed within the due date and the final bill was also raised by the claimant.

(b) After completing the contract, the claimant raised a dispute by invoking the arbitration clause and an Arbitrator came to be appointed. Before the arbitral tribunal, the claimant raised four claims, namely, (i) for additional payment of plastering the concrete lining, (ii) for excise duty exemption for cement, (iii) for escalation on the cost of cement & (iv) for interest on outstanding payments due to claims. Total value of the four claims amounted to Rs.2,70,07,688/-.

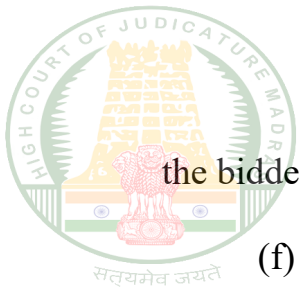
(c) With regard to Claim No.1 for a sum of Rs.1,20,73,060/-, the claimant stated that the additional work of plastering of the concrete lining was asked to be done in order to obtain smooth concrete surface on the canal lining as required by the site Engineers. Since the additional work was not part of the contract, this issue was raised at the Management meeting held on 12.05.2008



and in the said meeting, the Chief Engineer replied that he would look into the matter, but insisted that the work should be continued at any cost. Hence, the work was carried out in obedience. Though the additional work was executed, no payment was made. Therefore, the claimant met the Project Director on 14.07.2008 and gave a letter and as per the advise of the Project Director, the matter went to the Adjudicator. But the Adjudicator could not decide the same, as the Project was already completed. However, when the matter came before the arbitral tribunal, the Department rebutted the same by stating that no additional work was carried out as stated by the claimant and it was part of the works contract awarded and there was no necessity to pay the additional amount on completion of the works contract, since the final bill was already settled.

(d) With regard to Claim No.2 for a sum of Rs.16,50,655/-, the claimant stated that he reduced the rate since he could avail the excise exemption on cement used for the work, if the required certificate was issued by the Department. Since the certificate was issued belatedly, it resulted in a loss. This contention was rebutted by the Department on the ground that getting the excise duty exemption is the responsibility of the contractor and no assurance whatsoever was made in this regard.

(e) With regard to Claim No.3 for a sum of Rs.35,88,907/-, the contractor sought for escalation on the cost of cement and it has been contended by the Department that the contract itself provides that the rates and prices quoted by



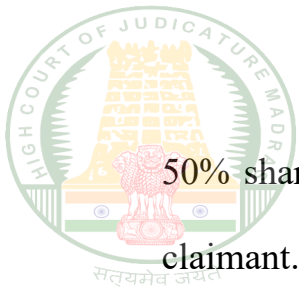
the bidder shall be fixed and it shall not be adjusted on any account.

(f) Claim No.4 related to the payment of interest on the outstanding payments for a sum of Rs.96,95,066/-.

3. During the pendency of the proceedings before the arbitral tribunal, the claimant died and therefore, his legal heirs, respondents 2 to 5 herein, were brought on record and they have prosecuted the claim.

4. In order to substantiate the claim before the arbitral tribunal, the claimant produced one witness and marked 22 documents, of which one document, namely, letter dated 21.08.2008 said to have been written by the claimant was not received by the Department and that no proof was produced by the claimant. Similarly, the Department produced one witness and marked 15 documents on their side.

5. The arbitral tribunal, after considering the oral and documentary evidence produced by both sides, passed an award on 25.08.2015 allowing the claim nos.1 & 4 of the claimant i.e., additional payment for plastering the concrete lining and directed the Department to pay a sum of Rs.70,59,394/- together with simple interest at the rate of 9% per annum, which worked out to Rs.38,31,133/-. The arbitral tribunal also awarded a sum of Rs.93,500/- towards



50% share of Arbitrator's fees, which was not paid by the Department, to the claimant. Thus a total sum of Rs.1,09,84,027/- was awarded to the claimant to be paid by the Department within 90 days from the date of award, failing which it shall carry simple interest at the rate of 12% per annum till the date of payment. However, the arbitral tribunal rejected the other two claims in entirety.

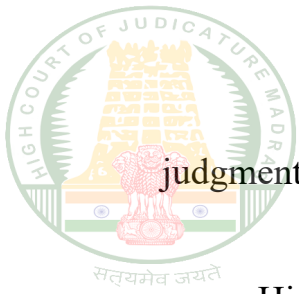
6. Aggrieved by the same, the Department filed the arbitration original petition under Section 34 of Arbitration and Conciliation Act, 1996 before the learned Principal District Judge, Coimbatore. The learned Principal District Judge, Coimbatore, after hearing both sides, dismissed the original petition with costs and confirmed the award passed by the arbitral tribunal holding that there is no perversity in the findings to warrant interference under Section 34(2) of the Arbitration and Conciliation Act. Aggrieved thereby, the Department has filed the present appeal under Section 37 of the Arbitration and Conciliation Act before this Court.

7. The learned Government counsel appearing on behalf of the appellant Department would submit that both the arbitral tribunal and the lower appellate Court allowed the additional payment of plastering the concrete lining by relying upon Section 70 of the Indian Contract Act, whereas in the contract entered into between the Department and the Claimant, there is no provision for



payment of money for the work done beyond the scope of agreement. For this purpose, the arbitral tribunal has placed reliance upon the judgment of the

Hon'ble Supreme Court cited by the claimant in the case of *State of West Bengal v. M/s Mandal & Sons, AIR 1961 SC 779*. That was a case in which the contractor therein had filed the civil suit based on Section 70 of the Indian Contract Act and hence the Hon'ble Supreme Court held that the contractor was entitled for payment. However, in arbitration proceedings, the arbitral tribunal is bound by the terms of the contract and cannot travel beyond its scope. Therefore, the award passed by the arbitral tribunal invoking Section 70 of the Contract Act for payment of the additional sum to the claimant and affirmed by the lower appellate Court in the impugned judgment, are liable to be set aside. He would further submit that when there is no scope for award of interest for the work carried outside the scope of the agreement, both the arbitral tribunal and the lower appellate Court erred in awarding interest to the claimant. The learned counsel would further submit that when the award itself was passed by the arbitral tribunal beyond the period of mandate stipulated under Section 29(A)(1) & (4) of the Arbitration and Conciliation Act, the same is non-est in the eye of law. Hence, he contended that the award passed by the arbitral tribunal and the judgment passed by the lower appellate Court have to be set aside and the civil miscellaneous appeal has to be allowed. In support of his contentions, the learned Government counsel relied upon the following



judgments:-

(i) Judgment passed by a learned single Judge of Gauhati High Court in the case of *Sports Authority of Assam v. Larsen and Toubro Limited & another* in Arb.Case No.7 of 2020 dated 21.12.2022.

(ii) Judgment of the Hon'ble Supreme Court in the case of *Associated Engineering Company v. Government of Andhra Pradesh & another*, (1991) 4 SCC 93.

(iii) Judgment of the Hon'ble Supreme Court in the case of *Bharat Coking Coal Limited v. Annapurna Construction*, (2003) 8 SCC 154.

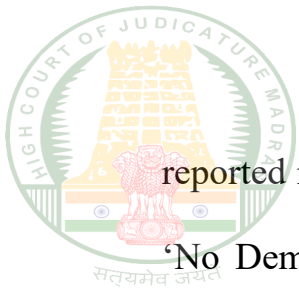
8. We have also heard the learned counsel appearing for the respondents and perused the materials available on record.

9. It is not in dispute that the first respondent/claimant was awarded a works contract by the appellant-Department for rehabilitation of left out reaches in Poosaripatty Branch canal and its distributaries, off-taking at LS 30.210 KM and Boliampatty Branch off-taking at LS 31.590 KM of Parambikulam Main Canal and an agreement was executed in this regard on 27.12.2007. The work order pertained to earth work excavation, preparation of the sub-surface and concrete lining of the sides and bed (bottom) for a total length of about 70 km of irrigation canal. The work was completed within the due date and the final bill was also raised by the claimant. However, after completion of the work, the claimant raised a dispute and before the arbitral tribunal, the claimant raised



four claims, namely, (i) for additional payment of plastering the concrete lining, (ii) for excise duty exemption for cement, (iii) for escalation on the cost of cement & (iv) for interest on outstanding payments due to claims, to the total value of Rs.2,70,07,688/-. After considering the oral and documentary evidence, the arbitral tribunal allowed the claim pertaining to the additional payment for plastering the concrete lining and directed the Department to pay a sum of Rs.70,59,394/- together with simple interest at the rate of 9% per annum, which worked out to Rs.38,31,133/- and also a sum of Rs.93,500/- towards 50% share of Arbitrator's fees, totalling to Rs.1,09,84,027/- to be paid within 90 days, failing which it shall carry interest at the rate of 12% per annum. The Department, having tested the said award before the lower appellate Court unsuccessfully, is before this Court.

10. While considering the objection raised by the Department that the claimant is not entitled for the additional payment towards plastering the concrete lining, since it was outside the terms of the contract, after raising the final bill, the lower appellate Court accepted the contention of the claimant that the final bill was submitted only as per the demand made by the Department and if there is no final bill, huge sums would not be released to the claimant, which would adversely affect his interest, relying on the judgment of the Hon'ble Supreme Court in the case of N.T.P.C. Ltd vs M/s.Reshmi Constructions



reported in 2004(2) SCC 663, holding that necessity knows no law and that, if a

‘No Demand Certificate’ was issued in order to enable the processing of the

‘Final bill’, it would not preclude the subsequent claims. The lower appellate

Court also considered the reply given by the claimant during cross examination

that he has not raised any objection at the time of raising the final bill, because,

if he had raised any objection, he would not have received the payment, since he

completed the work and submitted the final bill in the month of July, 2009 and

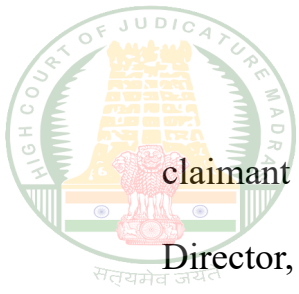
received the final payment in the month of December, 2009. The above

evidence of the claimant shows that apprehending that the final bill payment

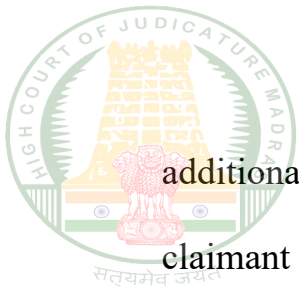
would get stuck in the hands of the Department, he has agreed for the final bill

payment in the month of December 2009.

11. The lower appellate Court also considered the evidence of the claimant that he raised the issue of additional work during the Management meeting held on 12.05.2008 and also subsequently in writing on 21.08.2008 and that during cross examination, he stated that he sent a specific letter addressed to the Chief Engineer on 03.04.2009. The lower appellate Court also perused the Minutes of the Management meeting held between the contractor and the Department on 12.05.2008 produced before the arbitral tribunal, which shows that though the claimant participated in the meeting, the subject of additional plastering work carried out by the contractor was not recorded. However, the



claimant has marked the letter dated 14.07.2008 addressed to the Project Director, which shows that he carried out the plastering over the cement concrete lining on the instructions of the site engineer, even though there is no provision for the same. The claimant also marked the letter dated 02.06.2009, wherein he has stated that the additional work was informed to the Superintending Engineer vide letter dated 21.08.2008. The records also show that on 24.06.2009, a letter addressed by the Superintending Engineer bearing No.TS/JD02/F.T.8/2007-2008/143 to the claimant stating that the claimant was informed during the Management Meeting held on 12.05.2008 that no extra rate could be given for doing plastering over the lining concrete surface as the description for the laying the lining concrete in the agreement includes the finishing the lining concrete surface smoothly i.e. the rate for this smooth finishing operation is included in the above item itself, which clinchingly supports the case of the claimant that in the Management Meeting itself, the claimant did raise the issue of payment of extra rate for doing the plastering work over the lining concrete surface. This also supports the case of the claimant that even before submitting the final bill, he claimed extra rate from the Department and on 24.06.2009, before making the final payment, the payment of extra rate has been denied only on the ground that it forms part of the agreement since the finish lining of concrete surface is to be smooth. The above communications between the parties would show that the claim of

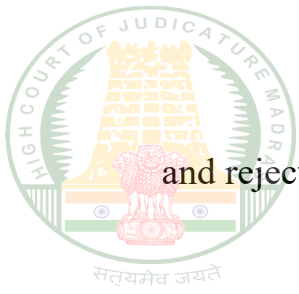


additional amount for doing the plastering work was not given up by the claimant and that only for the purpose of avoiding the stoppage of final payment, he has submitted the final bill and only after submitting the final bill, the Department has denied the claim of additional payment for the extra work. The lower appellate Court also appreciated the observation made by the arbitral tribunal in the award that the claimant admitted that he already raised this issue through site engineers with regard to the continuation of plastering work and also the payment of extra money for such plastering work in the Management meeting, but no minutes of the meeting was served on him. Thereafter, the claimant also met the Project Director and handed over the letter dated 14.07.2008. The claimant has also met the Adjudicator in this regard, who reported that he can give opinion/decision only in pending matters, necessitating the claimant to invoke the arbitration clause.

12. It is also seen that the arbitral tribunal, relying on Clause 31.2 of the terms of contract, has held that there is no proper service of the copy of the record of the Management meeting to the claimant, more particularly, the Minutes of the Meeting held on 12.05.2008 was not served on the claimant, which is in violation of the contract. The arbitral tribunal has also held that the claim of plastering made by two other contractors have been recorded. In the communication dated 24.06.2009, the Department has stated that no extra



payment would be made for doing plastering, but the fact that plastering done by the claimant was not categorically denied or objected. After appreciating the various letters/communications made between the claimant and the Department, the arbitral tribunal has arrived at the conclusion that the claimant has been demanding payment for plastering and he has been made to do the work gratuitously. Similarly, the Minutes of the Management meeting held on 12.05.2008 shows that two other contractors asked for payment of plastering, which corroborated with the case of the claimant. The arbitral tribunal also considered the technical test report submitted by an independent agency to arrive at the conclusion that as a result of the work done by the claimant, the Department has been benefitted for getting smooth flow of water and therefore compensated the claimant by invoking Section 70 of the Indian Contract Act based on the decision of the Hon'ble Supreme Court in the case of State of West Bengal vs M/s.Mandal & Sons reported in AIR 1961 SC 779 and fixed the value of compensation for the plastering work at Rs.70,59,394/- by adopting the method of calculation for the particular area as detailed therein and also awarded reasonable interest thereon. Therefore, the lower appellate Court, while exercising jurisdiction under Section 34, has rightly accepted the above finding of the arbitral tribunal that from the beginning of the contract, the claimant has demanded extra payment for doing the additional plastering over the cement concrete lining and held that there is no need to interfere with the said finding



and rejected the contention of the Department in this regard.

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13. In the light of the above, this Court, while exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, is unable to interfere with the judgment and decree passed by the learned Principal District Judge, Coimbatore, confirming the award passed by the arbitral tribunal. Accordingly, finding no merits whatsoever on any of the grounds raised by the appellant, this civil miscellaneous appeal is dismissed. Consequently, the connected CMP is closed. There shall be no order as to costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
10-06-2026

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

ss

To

1. The Principal District Judge
Coimbatore

2. The Superintending Engineer
PWD/WRO
Parambikulam-Aliyar Basin Circle
Pollachi Taluk, Coimbatore District



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