

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10-02-2026 ::: DELIVERED ON04.2026

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THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OSA No. 308 of 2019

M/s.Nirdosh & Ajay Engineers (P) Ltd.
Rep. By Its Chairman & Managing Director,
No.504, F Block, Bridge Gateway, Malleswaram,
Bengaluru-560055.

**(Cause title accepted vide Court order dated
13.11.2019 (RPSJ & TKJ)**

..Appellant(s)

Vs.

1. The General Manager
Southern Railways, Chennai-600003.
2. The Chief Administrative Officer
(Earlier Designated as Chief Project Manager)
Metropolitan Transport Project (Railways)
Periyar E.V.R. High Road, Egmore,
Chennai-600003.

..Respondent(s)

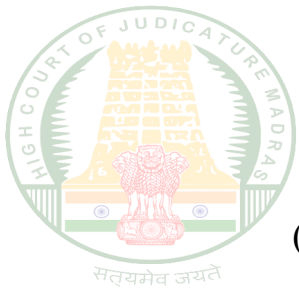
Prayer : This appeal has been filed to set aside the order of the Learned Judge dated 21.03.2019 in OP 358 of 2002.

For Appellant(s):

Mr.R.Suresh Kumar
For M/s.K.M.Vijayan Associates

For Respondent(s):

Mr.M.Vijay Anand (R1 & R2)
Addl. Standing Counsel For Railways



J U D G M E N T

(Judgment of the Court was delivered by K.Kumaresh Babu J.)

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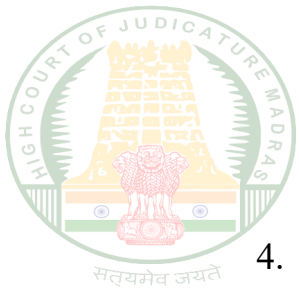
The present Appeal is challenge to the order made by the learned Single Judge whereunder he had declined to interfere with the arbitral award.

2. The second respondent had floated the Tender for commercial exploitation of station premises and lands at Chintadripet and Chepauk stations under the Mass Rapid Transport System (MRTS). The appellant had emerged as a successful bidder for one of the scheme and was also issued a Letter of Acceptance. Disputes arose between the parties with regard to (i) the commencement of the license period; (ii) alleged unilateral modification of tender conditions through the Letter of Acceptance; (iii) non-provision of essential amenities such as electricity; and (iv) entitlement to license fee in the absence of commercial exploitation. The appellant, who is the claimant before the Arbitration Tribunal claimed that the second respondent arbitrarily introduced a Clause in the Letter of Acceptance, making the license period to commence 30 days from its date, contrary to a Clause of the tender which provided that it would commence only after 30 days from execution of the agreement. It was claimed that such unilateral alteration of tender conditions was impermissible. It was further claimed that the respondents failed to provide basic infrastructure, rendering commercial exploitation of the 2 stations impossible, but was yet compelled the payment of license fees even in the



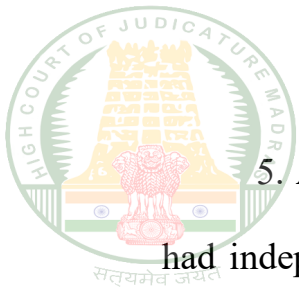
absence of a formal agreement and prior to commencement of Commercial operations. It is also claimed that payments under were wrongfully withheld and that their licence was unlawfully terminated on 18.02.1997.

3. On the other hand, the respondents resisted the claim contending that the claimant had accepted the terms of the Letter of Acceptance by its reply dated 11.03.1995 and was therefore liable to pay the licence fee in terms thereof. It is further contended that, under the terms tender, the respondents were not obligated to provide any infrastructure. It was also contended that the appellant initially furnished unsigned agreements on 05.08.1996 and subsequently signed copies on 14.08.1996, which were returned on 21.08.1996 for not conforming with the draft agreement sent by the respondents. Despite the communications made by the respondents, the appellant failed to rectify the discrepancies in the agreements and therefore, the appellant was responsible for the non-execution of the formal agreement. Tthe respondents contended that they were therefore not liable to pay any damages to the appellant but, the appellant was responsible to pay the respondent damages for not complying with the tender conditions.



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4. The learned Sole Arbitrator, upon consideration of the oral and documentary evidence, finding that even although no formal agreement was executed between the parties, series of communications existed between them by way of letters, particularly the Letter of Acceptance dated 01.03.1995 issued by the respondents and the reply dated 11.03.1995 issued by the appellant, and came to a conclusion that a concluded contract had come into existence. It was further noted that, as per the Letter of Acceptance dated 01.03.1995, the licence period was to commence on 01.04.1995, however, at the request of the appellant, it was postponed to 16.11.1995, which was agreed to by the respondents. Therefore, the learned Sole Arbitrator had held that the licence period commenced on 16.11.1995, as mutually agreed between the parties, and consequently held the appellant is liable to pay licence fee for the relevant period. The claims and counter-claims were accordingly adjudicated by award dated 23.07.2001. As per the aforesaid award dated 23.07.2001, the respondents were held to be entitled to recover a sum of Rs.4,27,043/- from the appellant together with interest at the rate of 15% per annum from the date of the award. Subsequently, certain mistakes and typographical errors in the said arbitral award were corrected by order dated 17.11.2001, without any major alteration to the findings and no alteration with regard to the relief granted in the award.



5. Aggrieved by the arbitral award both the appellant and the respondent had independently challenged the same before the learned Single Judge under Section 34 of the Act. The learned Single Judge, after hearing both sides and after perusing the oral and documentary evidence available on record, applying the scope and the principles had held that re-appreciation of evidence is impermissible and dismissed the appeals filed by the respective parties. The appellant, being aggrieved against the dismissal of its challenge, is before this Court.

6. Heard Mr.R.Suresh Kumar, learned counsel appearing on behalf of the appellant and Mr.Vijay Anand, learned Additional Standing Counsel for the Southern Railways, appearing on behalf of the first and second respondents.

7. The learned counsel for the appellant contended that the arbitral award is vitiated by patent illegality and is contrary to the fundamental principles of contract law. It was submitted that the respondents vide the Letter of Acceptance dated 01.03.1995 had unilaterally altered the terms of the tender, particularly with regard to the commencement of the licence period, which could not bind the appellant in the absence of a formal agreement. It was further contended that in the absence of commercial exploitation and non-provision of essential amenities such as electricity, the levy of licence fee is wholly unsustainable. The learned counsel also submitted that the arbitrator erred in



treating the series of letters of correspondence as a concluded contract and in permitting adjustment of amounts payable towards supporting services against alleged licence fee dues.

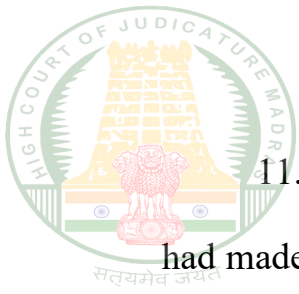
8. He further submitted that the learned Single Judge had erred in holding that the view taken by the Arbitral Tribunal is a plausible view, merely because the matter examined by the Arbitral Tribunal had commenced more than two decades ago. He further contended that the Learned Judge erred in dismissing the Petition placing reliance on the case of *Fiza Developers & Inter Trade Private Ltd. Vs. AMCI (India) Private Ltd.* reported in (2009) 17 SCC 796 without considering the ratio laid down in the cases of *ONGC Vs. Saw Pipes Limited* reported in (2003) 5 SCC 705. The learned counsel also contended that the learned Single Judge failed to appreciate that the arbitral award is vitiated by patent illegality and that the relief granted in favour of the respondents was based on untenable reasons and that the findings of the Arbitrator in favour of the respondents are wholly unsustainable in law and liable to be set aside. In view of the aforesaid facts and circumstances, it is contended that the impugned order of the learned Single Judge warrants interference by this Court and the claim made by the appellant should be granted.

9. *Per contra*, countering the submissions made on behalf of the appellant, Mr. Vijay Anand, learned Additional Standing Counsel appearing for



the respondents, would submit that the impugned judgment passed by the learned Single Judge does not suffer from any patent illegality warranting interference by this Court. He also contended that there is no discrepancy amounting to patent illegality with regard to Clause 16 of the Tender and Clause 4 of the Letter of Acceptance. The appellant had unequivocally accepted the Letter of Acceptance dated 01.03.1995 vide their reply letter dated 11.03.1995. The learned counsel vehemently contended that there was no error on the part of the learned Sole Arbitrator in determining the date of commencement of the licence period as 16.11.1995 as the said date had been fixed at the request of the appellant themselves. The learned counsel further submitted that there is no error on the part of the learned Single Judge in applying principle laid down by the Hon'ble Apex Court in *Fiza Developers* case in the instant case. He also contended that there was no error in the finding of the Sole Arbitrator that the series of letter of correspondence between the parties clearly established a concluded contract and that the findings of the Arbitrator are based on evidence and do not warrant interference under Section 34 and prays for dismissal of the Appeal.

10. We have heard and considered the submissions of the learned counsel appearing for both sides and also perused the materials placed on record.



11. A perusal of the order impugned herein would indicate that either side had made their submissions on the patent illegality and the question with regard to applying Section 34 of the Act. An attempt had been made by the appellant to re-appreciate the evidences recorded during the Arbitral Proceedings to convince the Court that the view taken by the Arbitral Tribunal was an erroneous view, which had led to patent illegality. Analysing the award, the learned Judge had found that there was no patent illegality as claimed by the appellant as the Arbitral Tribunal had considered all the factors, which had been raised by the respective parties and had recorded proper reasoning. In such view of the matter, the contentions raised by the appellant that the facts of the case have not been considered, much less properly, cannot be a reason to interfere with the award. Just because the Court could arrive at a different conclusion than that had been arrived at by the Arbitral Tribunal cannot be in any manner a reason to interfere with the findings and reasonings arrived at by the Arbitral Tribunal and in that context, we are convinced that the learned Single Judge had correctly applied the principles of the Hon'ble Apex Court judgment indicated therein for rejecting the application filed by the appellant under Section 34 of the Act. The various grounds that have been raised by the appellant in the Grounds of Appeal would also only require us to revisit the order on the facts of the case in taking a different view than that had been taken, which we are not inclined to exercise.



12. For the aforesaid reasons, we do not find any infirmity or illegality in the orders impugned herein and accordingly, the appeal fails and the same is dismissed. No order as to costs.

(C.V.K.,J.) (K.B.,J.)
.....04.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Maya

To

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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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