
(1995) 03 MAD CK 0006

In the Madras High Court

Case No : O.P. No. 191/95 and A.No. 1378/95 in O.P. No. 809/94 in
C.S.No.139/94

The Executive Engineer and Administrative Officer, Trichy
Housing Unit, Tamil Nadu Housing Board, Trichy and The
Chief Engineer, TNHB, Madras

APPELLANT

Vs

C. Srinivasa Rao and M/s. VRK Construction, Madras

VRK Constructions Vs C. Srinivasa Rao, Retd. Chief
Engineer ('Railways) Madras-4., The Chief Engineer, TNUDP,
TNHB, Madras-35 and The Executive Engineer and
Administrative Officer, Tiruchirappalli Housing Unit, Trichy-20

RESPONDENT

Date of Decision : 17-03-1995

Acts Referred:

Citation : (1995) 03 MAD CK 0006

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : V. Sundar Anand, in O.P. 195/95, for the Appellant; M.K. Kabir, for
the Respondent

Final Decision : Dismissed

Judgement

Jayasimha Babu, J.—The defendant in C.S. 139/94 has found O.P. 191/95 for
setting aside the Award made by the Arbitrator appointed

by this Court in C.S.139/94, which had been filed under Sec 2 (sic) of the
Arbitration Act. The Award was made in 28.11.94. A.1378/96 in

O.P.809/94 has been filed by the plaintiff in the suit for passing the decree in
terms of the award. In this order (sic) are referred to with reference

to their rank in the civil suit. By the said Award, the arbitrator has decided the
disputes that had arisen between the parties to the agreement

bearing No. SEAgT No.9/90-91 for providing storm water drain and culvert phase
3 Navalpattu. Plaintiff/Claimant's case is that his contract was

illegally terminated by the defendant on 15.5.1991. The Arbitrator has found that the termination so effected was not legally tenable and has

awarded a sum of Rs.1,73,415.70 together with interest at 18% p.a. from the date of the Award till date of payment.

2. The defendant having filed a (sic) claim for payment of triple the value of the materials which had not been returned by the plaintiff, the Arbitrator

has allowed the counter claim of the respondent to the extent of single recovery of the value of such unreturned materials (sic) the claimant the

amount being Rs.50,945.40 Further, a sum of Rs.3,518/- being the single recovery of the materials used in the works has also been awarded by

the arbitrator to the defendant.

3. The defendant in the suit by O.S. No. 191/95 has sought the setting aside of the Award inter alia on the following grounds-that the Award is not

a reasoned one that there are (sic) of bias; that the facts and principles of law as also the documents were not considered by the arbitrator in the

proper perspective; that the termination ought to have been held to be legal that the EMD and Security Deposit ought not to have been directed to

be refunded; that the Award exhibits bias and has not discussed on the points raised by the petitioner in detail; and that interest awarded at the rate

of 18% p.a. is high.

4. The contention that the award is not a reasoned one is wholly untenable. A perusal of the Award shows that reasons have been given in support

of the findings rendered by the arbitrator. The arbitrator had considered the documents placed before him, has adverted to the arguments

addressed before him and then proceeded to give reasons for the conclusion arrived at.

5. As regards the contention that there are traces of bias, no case of bias is made out by the plaintiff. The Award does not disclose any bias on the

part of the Arbitrator. Due opportunity has been given to the parties to place their respective cases and the evidence placed by the parties has

been duly considered.

6. The contention that the Award was passed without considering the documents and other evidence in the proper perspective is not only vague

but also is contrary to the record. In any event, it was within the jurisdiction of the arbitrator to consider the documents and on basis of such

consideration reach his own conclusions,

7. As regards the contention that the termination ought to have been held as legal and valid, reasons have been given holding that the termination

was not legal. The law bearing on this point has been adverted to and discussed and only thereafter, the arbitrator reached the conclusion that the

termination, without making time the essence of the contract, was not valid. Having held so, the arbitrator has held further, that the claimant is

entitled to refund of EMD and the security deposit in view of the termination itself being illegal. As regards, interest it is not in dispute that the

arbitrator has the power to award interest. The appropriate rate of interest is a matter for the arbitrator to decide, so long as it does not amount to

a penalty and is not usurious. The rate of 38% p.a. awarded by the arbitrator is neither penal nor usurious.

8. None of the grounds on which the defendant has sought to have the Award set aside are tenable.

9. Learned Counsel for the plaintiff referred to and relied on several rulings of the Supreme Court and of the other Courts. These decisions have

emphasised the limited scope of the enquiry by the court while considering an application for setting aside the Award of an arbitrator.

10. In the case of N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, , the Supreme Court held that mistakes of law or

facts are not grounds for setting aside the Award and that the Award can be set aside if it is based on erroneous propositions of law.

11. In the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, , it was held that the Award cannot be set aside on the

ground that it is based on wrong conclusion or that the Arbitrator has failed to appreciate the facts.

12. In the case of Coimbatore District Podu Thozillar Samgam Vs. Balasubramania Foundry and Others, as also in the case of State of Orissa and

Others Vs. Lall Brothers, and Supreme Court held that a mistake of law in the award is not amenable to the direction by the Court.

13. Learned Counsel referred to the case of Goa, Daman and Diu Housing Board Vs. Ramakant V.P. Darvotkar, Municipal Corporation of Delhi

v. M/s.Jaganath Ashok Kumar and another (1937 (4) SCC 497);" State of Orissa Vs. Harihar Palo, and Eastern and North East Frontier

Railway Co-operative Bank Ltd. Vs. B. Guha and Co., in support of the submission that a reasoned award based on evidence cannot be set

aside. State of Kerala and Others Vs. T.A. Thomas, was referred to by counsel in support of the submission that an award made after observing

rules of fair play cannot be set aside.

14. Finally reliance was placed by the counsel for the plaintiff on the decision of this Court in the case of Superintending Engineer, TNUDP

Madras Circle and another v. A. V. Rangaraja and another (AIR 1994 Mad. 217) in support of his submission that High Court cannot sit in

appeal or review or reappraise the evidence nor the conclusion arrived at by the Arbitrator.

15. In the instant case, the Arbitrator has applied, given due opportunity to the parties to place their respective cases before him, has discussed the

evidence, has applied well settled propositions of law to the facts of the case and has given a reasoned award. The award is not vitiated by bias.

The Arbitrator has not misconducted himself or the proceedings. In the result, this petition for setting aside the award is rejected. There shall be

decree in terms of the Award.