IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2026
PRONOUNCED ON : 06.04.2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.Nos.108, 109, 110 and 111 of 2020

Sri Swarna and Co.,
rep. by Managing Partner,
B.Venugopala Reddy,
10/329, Thambu Chetty Street,
II Floor, Chennai 600 001. ...Appellant in all Appeals

Vs.

1. The Chief Engineer (Construction)
   Gauge Conversion, Southern Railway,
   Chennai – 600 008.

2. The Deputy Chief Engineer (Construction),
   Gauge Conversion,
   Southern Railway,
   Calicut, Kerala.

3. Hon'ble Mr.Justice K.P.Sivasubramaniam (Ret.,)
   Sole Arbitrator, Pulla Reddy Avenue,
   Shenoy Nagar, Chennai – 600 030. ...Respondents in all Appeals

Prayer in all Appeals: These Original Side Appeals have been filed under Order XXXVI Rule 1 of Original Side Rules r/w Section 37(1)(c) of Arbitration & Conciliation Act, 1996 (as amended) to allow the appeals and set aside the common order dated 10.12.2019 made in O.P.Nos.87 and 88 of 2014, O.P.No.168 of 2015 and O.P.No.446 of 2016 on the file of Original Side of this Court.

For Appellant : Mr.K.V.Ananthakrushnan and
Ms.A.Janani – in all the Appeals

For Respondents : Mr.P.T.Ramkumar, Standing Counsel
for RR1 & 2- in all the Appeals

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COMMON JUDGMENT

P.VELMURUGAN, J.

All these Original Side Appeals are arising out of the common order dated 10.12.2019 passed by the learned Single Judge in O.P.Nos.87 & 88 of 2014, 168 of 2015 and 446 of 2016 and hence they are disposed of by this common judgment.

2 The appellant herein initiated arbitration proceedings based on the four agreements entered into between the appellant and the first and

second respondents viz. Railways. The appellant is the successful bidder in the tender called for by the Railways and the Railways issued respective Letters of Acceptance to the appellant in respect of 4 related works in connection with the doubling of track between Shoranur and Mangalore and Cannanore-Uppala sections and the scope of work, as between these 4 work orders, was similar but not identical. Disputes arose between the appellant and the Railways in relation to the execution of these works, which were the subject matter of separate arbitrations before a common Arbitrator, namely, the third Respondent. In each of the arbitrations, the appellant made claims under the following heads:

(i) final bill
(ii) refund of security deposit with interest
(iii) loss of profit with interest
(iv) idle labour
(v) idle machinery and equipment
(vi) overheads
(vii) 20% increase in rates for the work that was completed during the extended period
(viii) labour amenities
(ix) costs

3 All the four arbitrations were disposed of by a separate Arbitral Award, which were challenged by the Railways in O.P.Nos.87 & 88 of 2014, O.P.No.168 of 2015 and O.P.No.446 of 2016, before this Court. The Railways in the abovesaid Original Petitions challenged the Award in respect of idling of men and machinery, overheads, 20% increase in rates for work done during the extended period, loss of profits and pre-reference and pendente lite interest.

4 The learned Single Judge, by a common order dated 10.12.2019, allowed all the four Original Petitions by setting aside the respective Awards in part, in respect of award amounts against the claims for idling of men and materials, overheads, enhanced rate of 20% during the extended period, loss of profits and pre-reference and pendente lite interest. Aggrieved over the said order, the claimant is before this Court with the present Original Side Appeals.

5 The learned counsel for the appellant would contend that the learned Single Judge failed to appreciate the fact that all the findings of the

learned Arbitrator are based on the facts pleaded by the appellant and the Railways and the oral and documentary evidence. Hence the said findings of the facts by the learned Arbitrator cannot be interfered with on a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "the Act").

5.1 The Railways had never pleaded Clause 43(1) of General Conditions of Contract before the learned Arbitrator and raised the same only in the petitions under Section 34 of the Act. In the absence of any specific challenge to the calculation of loss arrived at by the appellant, the interference of the learned Single Judge, is not sustainable. The learned Arbitrator awarded overheads for the expenditure for the salary paid to the supervisory staff such as the engineer, supervisors and watchmen employed as per the terms of the contract and the learned Judge ought to have called for the records of the learned Arbitrator and considered the same in a proper manner.

5.2 The delay occurred due to non supply of PSC Sleepers in time by the Railways and the learned Arbitrator discussed the same and analysing

the evidence adduced before him and the pleadings, rightly came to the conclusion that the delay in executing the work by the appellant was only due to the default on the part of the Railways. The learned Arbitrator in his award has stated that no other objection has been taken except reference to Clause 16(2) in the course of argument by the learned counsel for the respondent, which would amply prove that the Railways never ever raised the objection to the interest on the basis of Clause 16(2) and hence the conclusion arrived at by the learned Single Judge that the appellant is not entitled for the interest is liable to be set aside.

5.3 The learned counsel for the appellant would further contend that with regard to claim under the head of Idle Labour, the appellant deployed engineers, staff and workers and large contingent of workers from Andhra Pradesh and to prove the same, produced labour agreement C.W.1, which is in Telugu and Ex.C3A is its translated version. The learned Arbitrator considering Ex.A9 Auditor's certificate, Ex.A8 volume of ledgers and the fact that the same are not seriously disputed by the Railways, granted Rs.120/- for 40 employees for a period of 500 idle days totalling to Rs.24,00,000/-, which is well considered and reasoned.

5.4 As per Clause 6.0, the appellant has to keep the required materials ready day and night and as per Clause 12.0, the appellant has to make arrangements for the required vehicle such as trucks, trailors and tractors at his own cost. The learned Arbitrator considering the evidence adduced and Ex.C5 series containing 56 vouchers for hiring crane for the period between June 1998 to June 2001, granted Rs.7,50,000/- for Idle Machinery and Equipments.

5.5 The appellant claimed Rs.4,00,000/- for overheads since as a result of prolongation of the period of work, he has suffered heavy loss by retaining the services of the employees and there was no cross examination of C.W.1 on that aspect. Considering the loss suffered by the appellant, the learned Arbitrator awarded Rs.3,00,000/-. Further as the Arbitrator came to the conclusion that the delay has occurred only due to the Railways, 15% of escalation was granted.

5.6 Therefore the learned Arbitrator considering the claim made by the appellant/claimant along with the evidence adduced and the documents

marked and the laws laid down by the Hon'ble Supreme Court in various cases, passed the Awards and the learned Single Judge without considering the well founded reasons assigned by the learned Arbitrator, set aside the Awards, which warrants serious interference of this Court.

6 Per contra, the learned standing counsel for the Railways viz., the first and second respondents would submit that the contracts were originally intended to be executed in three months, whereas they were subsequently extended by exercising powers under clause 17 (2) of the General Conditions of Contract (the GCC). All the claims under challenge are prohibited under clause 43 of the GCC, which stipulates that the Contractor shall prepare and furnish to the Engineer, once in every month, an account giving full and detailed particulars of all claims for any additional expense to which the Contractor may consider himself entitled. Moreover, he pointed out that the said clause stipulates that no claim for payment for any such work will be considered unless it is included in the aforesaid account.

6.1 Further, the appellant/contractor had issued a "No Claims" Certificate in each of these contracts, whereby they agreed that no claims would be made against the Railways in respect of the relevant contract. Hence the appellant/contractor could not claim anything from the Railways and even though the learned Arbitrator failed to consider the same, the learned Single Judge considering the above, rightly disallowed the claims in part, granted by the Tribunal.

6.2 The learned Arbitrator allowed the claim for overheads on a completely arbitrary basis without examining the evidence, in that regard, and recording reasoned conclusions on that basis.

6.3 The learned Arbitrator foisted the responsibility of the delay caused in carrying out the works on the Railways merely the extension was granted under Clause 17(2) of GCC recording irrational and unjustifiable findings. Each time extension of time was sought for by the appellant/contractor agreeing that the work would be carried out at the agreed contractual rates and not at the enhanced rates. Furthermore Clause

16(2) and 64(5) of GCC clearly prohibits the interest claims both during the pre-reference period and pending arbitration. Therefore considering the above facts the learned Single Judge disallowed the interest claim and also enhanced rate @ 20% during the extended period.

6.4 The Hon'ble Supreme Court in its decisions reported in *Union of India vs. Bright Power Products (India) Pvt., Ltd.,* reported in *(2015) 9 SCC 695* held that an arbitral tribunal should not award interest for the pre-reference and *pendente lite* periods, if the contracts prohibits the same. The learned Standing Counsel for the Railways would further contend that the learned Single Judge, allowed the Original Petitions considering the law laid down by the Hon'ble Supreme Court in many of its decisions and many of the judgments rendered by this Court. Therefore there is no merit in the appeals and the same are liable to be dismissed.

7 Heard the learned counsel on either side and perused the materials available on record.

8 It is the main contention of the learned counsel for the appellant that the delay has occurred only due to the fault on the part of the Railways in supplying the PSC Sleepers in time and the learned Arbitrator considered all the facts and evidence rendered before him and granted the claims in favour of the appellant, whereas, the learned Single Judge, without considering the reasons assigned by the learned Arbitrator, set aside the Awards.

9 The said contention of the appellant has been resisted by the Railways mainly on the ground of Clause 43 and 16(2) of GCC and the "no claim certificate" issued by the appellant/Contractor, which are clearly prohibits the appellants from all the claims made before the Tribunal.

10 Now it is useful to extract the Clauses 43 and 16(2) of GCC, which reads as follows:

> "*43. (1) The Contractor shall prepare and furnish to the Engineer once in every month an account giving full and detailed particulars of all claims for any additional expense to which the Contractor may consider himself entitled and of all extra or*

additional works ordered by the Engineer, which he has executed during the preceding month and no claim for payment for any such work will be considered which has not been included in such particulars.

(2) The Contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claim, if made by the Contractor, after he shall have signed a "No claim" certificate in favour of the Railway, in such form as shall be required by the Railway, after the works are finally measured up.

***16(2)** No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon."*

11 The above General Conditions of Contract as agreed by the appellant/Contractor clearly shows that the appellant has to give full and detailed particulars of all claims for any additional expenses once in every month to the Railways and no claim for payment for any such work will be considered, which has not been included in such particulars. Further the

appellant/Contractor is not entitled to claim any amount after signing the 'No Claim" certificate and as per Clause 16(2) of GCC, the appellant/Contractor cannot claim interest for any dues.

12 The learned Single Judge has elaborately discussed the Award passed by the learned Arbitrator in each and every head and given reason for setting aside the Award with regard to the claim granted under the heads of idling of men and materials, overheads, enhanced rate of 20% during the extended period, loss of profits and pre-reference and *pendente lite* interest. The relevant portions of the order of the learned Single Judge is reproduced hereunder"

> *"17. In this case, it is the admitted position that the Contractor issued a no claims certificate in respect of each of the four Contracts. In addition, clause 43 (1) also provides that no claim would be considered unless the Contractor included such claim in the monthly statement that is provided to the Engineer. The claims that were made and allowed in part by the Arbitral Tribunal were admittedly not included in the monthly statement. The learned Arbitrator relied upon judgments of the Hon'ble Supreme Court such as Chairman and MD, NTPC Ltd. v. Reshmi Constructions (2004) 2 SCC 663 and that of a Division Bench of the Bombay High Court in R.A. Deshmukh v. City and Industrial Development Corporation of Maharashtra AIR 1997*

Bom 284 so as to hold that the no claim certificate and clause 43 (1 and 2) do not preclude subsequent claims. Although there are decisions to the contrary, such as those in Union of India v. Master Construction Company (2011) 12 SCC 349 and ONGC Mangalore Petrochemicals Ltd. v. ANS Constructions Ltd. (2018) 3 SCC 373, in a recent judgment in Union of India v. Parmar Construction Company 2019 SCC Online SC 442, the Supreme Court held, in the specific context of Clause 43(2) of the GCC of the Railways, that no hard and fast rule can be laid down and that the cases fall into two categories. In these circumstances, the conclusions of the Arbitral Tribunal, in this regard, cannot be said to be based on an unreasonable application of the law laid down by the Supreme Court and, therefore, do not warrant interference.

18. Nevertheless, it remains to be seen as to whether the Awards in respect of these claims are otherwise sustainable. For this purpose, each of the heads of claim should be separately analysed. The claim for idle labour and machinery is essentially a disruption claim, i.e. a claim for compensation for costs incurred when the labour and machinery/equipment could not be deployed. Therefore, the first Respondent would be required to plead that there was disruption of work during a particular period on account of the Petitioner and, thereafter, adduce evidence on the cost incurred on the idle labour and machinery/equipment during such period. In this case, the idle claims are made for the entire extended period or the entire period of the contract and not for the disruption period, as would be evident

from internal pages 21 to 23 of the Award in O.P. No.87 of 2014 (21.7.1999 to 30.06.2001 for labour and June 1998 to 30.06.2001 for machinery), internal pages 21 and 22 of the Award in O.P. No.88 of 2014 (03.04.2001 to 30.06.2002), internal pages 20 and 21 of the Award in O.P. No. 168 of 2015 (17.08.1999 to 12.05.2000) and internal page 22 of the Award in O.P.No.446 of 2013. The petitioners stand was that payments were made for work executed during this period and, therefore, there was no idling of labour or machinery / equipment. A disruption claim for the entire extended period of the contract is fundamentally misconceived and flawed because such a claim should only be made for the period when work is disrupted or halted for reasons attributable to the Railways, thereby resulting in idling of labour and machinery. On the contrary, in the extended stay or prolongation period, unless there was disruption during the extended period, the Contractor can only claim overheads and profits, which are separately claimed herein. Consequently, the idle claim, on the one hand, and the overheads and profits claims, on the other, overlap and this claim should have been rejected for that reason. Therefore, there is an error apparent or patent flaw in the Awards as regards the claim for idle labour and machinery. In addition, the Arbitral Tribunal completely disregarded the requirement of mitigation under section 73 of the Indian Contract Act, 1872. In specific, if the Contractor was unable to execute work due to reasons attributable to the Railways, if the disruption was for an extended period, the Contractor was required to mitigate loss by demobilising

men and materials until required. This aspect was not taken into consideration by the Arbitral Tribunal.

19. As stated earlier, a claim for overheads is a prolongation or extended stay claim and, as regards site office expenses and off site project specific expenses, should be proved by adducing evidence of actual expenditure incurred during the extended period. In this case, in O.P. No.87 of 2014, the claim of Rs.4 lakhs was made in respect of the salary for one engineer, two supervisors and one watchman per month during the extended stay period. As against the claim of Rs.4 lakhs, the Arbitral Tribunal awarded Rs. 3 lakhs without analysing the evidence or providing any basis or justification for the amount awarded except stating that it is a fair estimate. In O.P. No.88 of 2014, a sum of Rs.2,85,000 was claimed towards overheads, whereas a sum of Rs.1,75,000 was awarded without any basis or justification. In O.P. No. 446 of 2013, as against a claim of Rs.1,39,332, a sum of Rs.1 lakh was allowed by taking into account the possibility of leave/absence. While in O.P. No. 168 of 2015 the entire claim was awarded, the evidence is not appraised so as to conclude as to how the claim was proved. In each of the Awards in respect of this head of claim, the patent or fundamental flaw is that evidence that this expenditure was actually incurred is a pre-requisite to sustain a claim for site office overheads and such evidence should have been appraised, whereas there is no such appraisal. Therefore, the Awards cannot be sustained as regards overheads.

20. In respect of the claim for enhanced rates during the extended stay period, in each letter requesting extension of time, the Contractor agreed to execute work during the extended period at the same rates. Therefore, this claim should have been rejected on that basis. However, the learned Arbitrator allowed the claim by relying on P.M. Paul v. Union of India 1989 Supp.(1) SCC 368, which is a case where the contract was silent and did not prohibit the grant of escalation, and the Sathyapalan case, where the contractor agreed to a no escalation clause in a supplementary agreement under protest. In cases where there is a contractual prohibition, the Hon'ble Supreme Court held that escalation should not be granted: Continental Construction Co. Ltd. v. State of MP (1988) 3 SCC 82 and New India Civil Erectors (P) Ltd. v. ONGC (1997) 11 SCC 75. In addition, with regard to escalation, as against the claim of 20% enhancement over the contractual rates, the Arbitral Tribunal arbitrarily awarded 15% without appraising the evidence. Given that this was a claim for escalation, the conclusions of the Arbitral Tribunal should have been based on an appraisal of evidence. In the absence of such appraisal of evidence, the award in respect of escalation is arbitrary and perverse.

21. As regards the claims for loss of profits, the claims have been made and awarded at 15% of the unexecuted value of work without adducing evidence. The learned Arbitrator allowed these claims by referring to the judgments of the Hon'ble Supreme Court in A.T. Brij Paul Singh and Bros. v. State of Gujarat 1984 (4) SCC 59 (the Brij Paul case) and Dwarka Das v. State of MP 1999(3) SCC 500

(the Dwarka Das case). In the Brij Paul case and the Dwarka Das case, as would be evident from paragraph 10 and 8, respectively, of the judgments, evidence was adduced with regard to the basis for the loss of profits claims, unlike in this case. Consequently, the claim should have been rejected because there was no evidence as held in paragraphs 52 to 55 of State of Rajasthan v. Ferro Concrete Construction (P) Ltd. (2009) 12 SCC 1, in the specific context of a claim for loss of profits, and generically, in a no evidence scenario, in paragraph 31 of Associate Builders v. DDA (2015) 3 SCC 49 (the Associate Builders case).

22. Consequently, the Awards in respect of the claims towards idling of men and material, overheads, enhanced rates and loss of profits cannot be sustained as per the law laid down in ONGC v. Saw Pipes (2003) 5 SCC 705 and the Associate Builders case both on the ground of patent illegality and violation of public policy.

23. As regards interest, the learned counsel for the Railways adverted to several judgments of the Supreme Court and this Court wherein clauses 16 (2) and 64 of the GCC were interpreted as prohibiting the award of interest. Although the learned counsel for the first Respondent relied upon the judgment in the Raveechee case, in light of multiple judgments to the contrary such as the Sree Kamatchi Amman case and the Chittaranjan Maity case, which were followed by this Court in several judgments, including the order dated 02.04.2019 which follows a recent unreported judgment of the Hon'ble Supreme Court in Jaiprakash Associates Ltd., (JAL) vs. Tehri Hydro

Development Corporation India Ltd., in Civil Appeal No.1539 of 2019, order dated 07.02.2019, the award of interest by the Arbitral Tribunal during the pre-reference and pendente lite periods is liable to be set aside. "

13 This Court, while exercising power under Section 37 of the Act, cannot re-appreciate the evidence and can only interfere, if the Court, which dealt with the petition under Section 34 of the Act failed to exercise its jurisdiction or exceeded it. The appeal under Section 37 of the Act is restricted to the narrow grounds provided under Section 34 of the Act, as it is having a limited, supervisory scope focused on minimal judicial interference.

14 In the present case, a careful reading of the materials including the Awards passed by the learned Arbitrator and the orders of the learned Single Judge of this court, reveal that the learned Arbitrator granted the claims made by the appellant/Contractor observing that the Railways had not raised any serious objections, whereas, the learned Single Judge, set aside the Awards in part, citing the Clause 43 and 16(2) of GCC agreed by both the appellant/Contractor and the Railways and many of the decisions

rendered by the Hon'ble Supreme Court.

15 Further, the appellant/Contractor, having agreed to the terms of GCC and also agreed to carry out the remaining works at the original rate, while seeking for extension of time and executed the works, they cannot claim any interest or escalation for the extended period, as the clauses of GCC clearly prohibits the same. Furthermore admittedly the appellant/Contractor also issued "No Claim" certificate, which also, as per the clauses of GCC, clearly prohibits the appellant/Contractor from making any dues against the Railways, thereafter.

16 In view of the above observations and reasons, we do not find any reason to interfere with the order of the learned Single Judge and these Original Side Appeals lack merits and substance and hence the same are dismissed. No costs.

[PVJ] [KGTJ]
06.04.2026

Speaking Order/Non Speaking Order
Neutral Citation case: Yes/no
cgi

P.VELMURUGAN. J.
and
K.GOVINDARAJAN THILAKAVADI, J.
cgi

Pre-Delivery Judgement in
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