In the High Court of Judicature at Madras

Reserved on	Delivered on:
07.1.2026	**20.1.2026**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.603 of 2022

M/s.Muthu Construction – Salem,
rep.by its Proprietor Mr.Kannan,
House No.7/119, A-6,
Devanankurichi PO,
Tiruchengode Taluk,
Namakkal District-637 209. ...Petitioner

Vs

Union of India, rep.by its
Principal Chief Engineer,
Southern Railway, through DEN/
W/Salem, Office of the Divisional
Railway Manager, Salem-635 011. ...Respondent

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 22.1.2022 passed by the Arbitral Tribunal in the matter of SSE/PW/ED and SSE/ PW/TUP Sections-Contract Agreement No.SA/279 dated 06.2.2019, to the extent to which it is challenged and to direct the respondent to pay the costs.

For Petitioner : Mr.Sharath Chandran
For Respondent : Mrs.V.J.Latha, SCGSC

ORDER

In this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act), the petitioner assails the award dated 22.1.2022 passed by the Arbitral Tribunal.

2. Heard both.

3. The facts leading to filing of this case are as follows:

(i) The petitioner is a proprietary concern, which entered into a contract with the respondent titled as repairs to the existing dily changing corroded fittings over points and crossings/SEJs/bridges/ curves, boxing and tidying of ballast, painting of boards, etc. Two contracts were entered into namely SA/279 and SA/280. This case pertains to SA/279.

(ii) The petitioner participated in the tender that was floated by the respondent and was declared as the successful bidder, pursuant to which, they were awarded the contract. The letter of acceptance 28.11.2018 for a value of Rs.1,55,15,697/- was also issued.

(iii) The claims made by the petitioner before the Arbitral Tribunal pertained to earnest money deposit, security deposit, final bill amount and payment for the difference as per the unit of measurement of ***"track metre"***. It was an admitted case that the only issue, which became the subject matter of adjudication before the Arbitral Tribunal, was with regard to the last component namely payment for the difference as per the unit of measurement of ***"track metre"***.

(iv) Ultimately, the Arbitral Tribunal came to the conclusion that the claim made by the petitioner under this head was found to be untenable and hence, it came to be rejected. Aggrieved by that, the above petition has been filed before this Court.

4. The learned counsel for the petitioner questioned the award mainly on two grounds and they are:

(a) that it is vitiated by bias, that it violates Section 18 of the Act and the principles of natural justice and that therefore, it is liable to be interfered under Section 34(2)(i)(b) of the Act; and

(b) that the interpretation given by the Arbitral Tribunal to deny the claim made by the petitioner suffers from patent illegality and

hence, it is liable to be interfered under Section 34(2A) of the Act.

5. Per contra, the learned Senior Central Government Standing Counsel appearing for the respondent submitted that the dissenting note of one of the Arbitrators rendered in the other award in respect of the same parties cannot automatically result in attributing bias as against the unanimous award passed by the Arbitral Tribunal, that the Arbitral Tribunal has rightly interpreted the relevant clause in the agreement, that it is a possible view taken by the Arbitral Tribunal and that it cannot be interfered by this Court while exercising its jurisdiction under Section 34 of the Act.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. This Court will first deal with the second issue raised with respect to the interpretation of the expression ***"per track metre"*** and test as to whether the view taken by the Arbitral Tribunal is a possible view.

8. The sum and substance of the contention raised on the side of the petitioner is that Schedule B in the agreement consisted of six categories of works, which used the expression ***"per track metre"*** as the unit of measurement. Except with respect to item Nos.1 and 2, for all the other items, the measurements were taken separately for each track whereas in so far as item Nos.1 and 2 were concerned, they were treated differently and the measurements were recorded by clubbing two tracks (up and down) and it has been questioned by the petitioner on the ground that these two items could not be treated/ measured differently especially when the unit of measurement was one and the same.

9. For proper appreciation, item Nos.1 and 2 in Schedule B are extracted as hereunder:

S.No	*Description of Work*	*Quantity*	*Unit*	*Rate*	*Amount*
1	*Boxing and tidying of ballast duly cleaning and uprooting bushes all vegetation available over the ballast and 60 cm from edge of ballast and cutting of other bushes grown above cess level on either side of track on the cess including de-weeding of vegetation/bushes in between track and on the cess including labours and tools, etc. complete and as directed by the engineer in charge at site (in parallel track) (Both up & down line) i. SSE/PW/TUP*	*72600*	*Per track metre*	*Rs.48/-*	*Rs.34,84,800/-*
2	*..... Charge at site (in parallel track)*	*10,000*	*Per track*	*Rs.48/-*	*Rs.4,80,000/-*

	(Both up & down line) ii. SSE/PW/ED.		*metre*		

10. The Arbitral Tribunal rendered a finding that the schedule could have been better drafted to avoid any ambiguity in the interpretation. However, the Arbitral Tribunal also rendered a rather curious finding that there was a mutual understanding between the parties that in so far as item Nos.1 and 2 were concerned, the same was understood by both parties that the measurement would be made by clubbing two tracks (up & down). In short, when the respondent was attempting to give a different interpretation for item Nos.1 and 2 with respect to the yardstick for computation and payment, the Arbitral Tribunal, without assigning any reason to justify such a stand taken by the respondent, adopted a different yardstick for item Nos.1 and 2 for the very same unit of measurement.

11. That apart, the Arbitral Tribunal, by casting aside the actual wordings in the contract, replaced them with the supposed mutual understanding between the parties and such a construction made by the Arbitral Tribunal, when the terms of the contract were clear and unambiguous, suffers from patent illegality.

12. Useful reference can be made to the judgment of the Hon'ble Apex Court in ***State of Chhattisgarh Vs. SAL Udyog (P) Ltd. [reported in 2022 (2) SCC 275]*** wherein the relevant portion is extracted as hereunder:

> *"**26.** To sum up, existence of Clause 6(b) in the agreement governing the parties, has not been disputed, nor has the application of the Circular dated 27-7-1987 issued by the Government of Madhya Pradesh regarding imposition of 10% supervision charges and adding the same to cost of the Sal seeds, after deducting the actual expenditure been questioned by the respondent Company. We are, therefore, of the view that failure on the part of the learned sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference. Accordingly, the present appeal is partly allowed and the impugned award, insofar as it has permitted deduction of "supervision charges" recovered from the respondent Company by the*

appellant State as a part of the expenditure incurred by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant circular. The impugned judgment dated 21-10-2009 is modified to the aforesaid extent."

13. Further reference can be made to the decision of the Hon'ble Apex Court in ***Delhi Airport Metro Express (P) Ltd. Vs. Delhi Metro Rail Corporation Ltd. [2022 (1) SCC 131]*** wherein the relevant portion is extracted as hereunder:

"29. ..... The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the

ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'."

14. The interpretation given by the Arbitral Tribunal is certainly not a possible view as it has actually wandered outside the contract by ignoring the specific terms of the contract, which would render the findings perverse and would have to be set aside on the ground of patent illegality. In view of the same, this Court finds that the Arbitral Tribunal ought to have adopted the same yardstick for item Nos.1 and 2 like it was done for the other items where the measurements were recorded separately for each track and the amount was computed.

15. Two of the Arbitrators, who formed part of the Arbitral Tribunal in this case were also the members in the other Arbitral Tribunal and it formed the subject matter in Arb.O.P.(Com.Div.) No.602 of 2022. In the other award, which was the subject matter of challenge in Arb.O.P.(Com.Div.) No.602 of 2022, the dissenting Arbitrator made the following observations:

"1. In para 10.7 of the arbitral award, Shri Neeraj Jain, the learned Presiding Arbitrator and Ms.Aradhana Chak, the learned Co-Arbitrator have stated that-

'The Arbitrators place on record that the Presiding Arbitrator Neeraj Jain and Co-Arbitrator Ms.Aradhana Chak have both also acted as Co-Arbitrators in an almost similar case conducted almost concurrently pertaining to agreement SA/279 dt. 06/02/2019 where the issues are similar and the award has been declared recently.'

……

For the reasons mentioned above, my both the learned colleague arbitrators did not discuss this case with me with open mind and kept their preconceived conclusions and findings in this case too. Hence, my views were kept aside while writing the arbitral award.

…….

(xi) Most of the above mentioned issues were deliberated in detail in the hearing held on 08.01.2022 and also figured in the order sheet of this hearing issued by the learned Presiding Arbitrator under his signature as Arbitration Notification No.7 vide communication No.NJ/Arb/ SR/Muthu/12 dt. 10.01.2022. Surprisingly the same have been kept aside by Shri Neeraj Jain, the learned Presiding Arbitrator and Ms.Aradhna Chak, the learned Co-Arbitrator while drawing the

conclusions, finding facts and deciding the arbitral award."

16. A Court, which deals with an award rendered by majority of the Members, need not apply its mind on the findings rendered by the dissenting Arbitrator. This is in view of the fact that the majority award becomes the actual award that governs the particular dispute. However, there is one exception to this rule where the dissenting Member alleges bias against the majority Members. This issue has to be certainly considered by the Court since bias vitiates the award for violation of the principles of natural justice and it also goes against the fundamental policy of the Indian Law.

17. In the other case involved in Arb.O.P.(Com.Div.) No.602 of 2022, the dissenting Arbitrator has gone on record and stated that his colleagues on the Tribunal were openly biased and had adjudicated the case with a preconceived notion and did not discuss the case with him.

18. At this juncture, it will be relevant to take note of the judgment of the Hon'ble Apex Court in ***Central Organization for Railway Electrification Vs. ECI SPIC SMO MCML (JV) [reported***

in 2025 1 MLJ 289] wherein the relevant portions read thus:

> *"76. The principles of natural justice principally consist of two rules: (i) no one shall be a judge in their own cause (nemo judex in causa sua); and (ii) no decision shall be given against a party without affording a reasonable opportunity of being heard [Express Newspaper (P) Ltd. v. Union of India, 1958 SCC OnLine SC 23 [95]; A K Kraipak v. Union of India, (1969) 2 SCC 262 [20]; Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405 [52]; Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 [27]] Adherence to the principles of natural justice is a facet of procedural fairness. A decision made by the State to the prejudice of a person must be after following the basic rules of justice and fair play {State of Orissa v. Binapani Dei, 1967 SCC OnLine SC 15 [9]}. The principles of natural justice are applied because administrative or quasi-judicial proceedings can abridge or take away rights {Union of India v. K P Joseph, (1973) 1 SCC 194 [10]}. Application of the principles of natural justice prevents miscarriage of justice {A K Kraipak (supra) [20]}. Natural justice has both an intrinsic and an instrumental function. The intrinsic function values natural justice as an end in itself. It values natural justice as an essential feature of fairness. In its instrumental element,*

natural justice is viewed as a means to achieving just outcomes.

77. The principle of nemo judex is based on the precept that justice should not only be done but manifestly and undoubtedly be seen to be done The King v. Sussex Justices, [(1924) 1 KB 256]. The principle of nemo judex applies to judicial, quasi-judicial, and administrative proceedings J Mohapatra & Co. v. State of Orissa, {(1984) 4 SCC 103 [9]}. An adjudicator should be disinterested and unbiased {A K Roy v. Union of India, (1982) 1 SCC 271 [97]}. A bias is a predisposition to decide for or against one party, without proper regard to the true merits of the dispute {Government of TN v. Munuswamy Mudaliar, 1988 Supp SCC 651 [12]}.

……..

88. The principle governing the doctrine of bias is that a member of a judicial body with a predisposition in favour of or against any party to a dispute or whose position in relation to the subject matter or a disputing party is such that a lack of impartiality would be assumed to exist should not be a part of a tribunal composed to decide the dispute Gullapalli Nageswara Rao v. State of AP {1959 SCC OnLine SC 53 [6]}; relied in Mineral Development Ltd. v. State of Bihar {1959 SCC OnLine SC 49 [10]}. This principle is applicable to authorities who have to act judicially

in deciding rights and liabilities and bodies discharging quasi-judicial functions. A quasi-judicial authority empowered to decide a dispute between opposing parties "must be one without bias towards one side or the other in the dispute." {Gullapalli Nageswara Rao v. A P State Road Transport Corporation (supra)}. A member of a tribunal which is called upon to try issues in judicial or quasi-judicial proceedings must act impartially, objectively, and without bias {Manak Lal v. Dr. Prem Chand Sighvi {1957 SCC OnLine SC 10}."

19. The above judgment of the Constitution Bench reiterated that the adherence to the principles of natural justice is a facet of procedural fairness, that bias is a pre-disposition to decide for or against one party without proper record to the true merits of the dispute and that this goes against the fundamental principle of doctrine of bias since the Members of the Arbitral Tribunal are expected to act impartially, objectively and without bias.

20. In this case, out of three Members of the Arbitral Tribunal, two of the Members formed part of the other Arbitral Tribunal. In fact, one of the Members in this Arbitral Tribunal was the Presiding

Arbitrator in the other Arbitral Tribunal. Of course, in this case, a unanimous view was expressed by the Arbitral Tribunal. However, two of the Members of the Arbitral Tribunal in this case were also the Members of the Arbitral Tribunal in the other case and bias was alleged against them by the dissenting Arbitrator.

21. Therefore, the question is as to whether that bias on the part of two of the Members of the Arbitral Tribunal in that case would also vitiate the present award wherein the very same issue on the interpretation of the relevant items namely item Nos.1 and 2 in Schedule B were the subject matter.

22. The learned counsel for the petitioner has brought to the notice of this Court a very interesting judgment of the Court of Appeal for Ontario in ***Vento Motor Cycles Inc. Vs. United Mexican States [reported in 2025 ONCA 82]*** wherein the relevant portions are extracted as hereunder:

> *"44. There is no doubt that a commercial arbitration award would properly be set aside if it were rendered by a single arbitrator whose conduct was found to give rise to a reasonable*

apprehension of bias. Does it make a difference that Perezcano was one of three arbitrators on the Tribunal?

45. The application judge concluded that it did, as it affected the potential impact of what she described as a "procedural error". She noted that the parties did not refer to any cases dealing with the question but concluded, based on Wewaykum, that the reasonable apprehension that one member of a panel is biased does not necessarily "taint" the award and the entire panel. It is unfortunate that the application judge did not have the benefit of fuller argument on the matter.

46. The decision to set aside an award does not depend on a demonstration that the participation of the disqualified member affected the outcome – that the disqualified member cast the deciding vote in a split decision. On the contrary, the bias of one member taints the tribunal. The rationale is plain: it is impossible to know whether – or to what extent – the participation of a biased member affected a panel's decision. It cannot be left to conjecture, nor can it be ignored by assuming that the presumed impartiality and independence of the other two members of the panel rendered it harmless. The parties to an arbitration are entitled to an independent and impartial tribunal, not simply the decision of a quorum of panel members who are

unbiased.

47. This approach can be traced at least to the 1963 decision of McRuer C.J.H.C. in R. v. Ontario Labour Relations Board; Ex parte Hall (1963), 39 D.L.R. (2d) 113 (Ont. H.C.), at pp. 117-18, citing Frome United Breweries Co. v. Keepers of the Peace & Justices for County Borough of Bath, [1926] A.C. 586 (H.L.), at p. 591. The British Columbia Court of Appeal endorsed McRuer C.J.H.C.'s approach in R. v. B.C. Labour Relations Board, Ex. p. International Union of Mine, Mill & Smelter Workers (1964), 45 D.L.R. (2d) 27 (B.C. C.A.), at p. 29, stating that it is 'clear that the decisions of a tribunal or board consisting of more than one member will be vitiated if the circumstances establish a real likelihood that any member participating in the decision would be biased in favour of one of the parties'.

48. This principle, sometimes described as "poisoning the well", was endorsed by Esson J.A. in Haight-Smith v. Kamloops School District No. 34 (1988), 51 D.L.R. (4th) 608 (B.C. C.A.), at p. 614, and by Rothstein J. (as he then was) in Sparvier v. Cowesses Indian Band (T.D.), [1993] 3 F.C. 142, at p. 166. Writing in 2001, David J. Mullan summarized the law as follows: "[a] reasonable apprehension of bias in one member of a tribunal is sufficient to disqualify the whole tribunal, even though that member merely sat at the hearing

without taking an active role in either it or subsequent deliberations. Mere presence is generally enough": Administrative Law (Toronto: Irwin Law, 2001), at p. 131.

49. This principle is also well established in English law, even where the finding of bias concerns a member of a judicial, as opposed to an arbitral, panel. See In re Medicaments and Related Classes of Goods (No 2), [2001] EWCA Civ 1217, [2001] 1 W.L.R. 700, at para. 99, endorsed by the Judicial Committee of the Privy Council in Stubbs v. The Queen, [2018] UKPC 30, [2019] A.C. 868, at para. 33. As that court explained, the bias of a single member necessarily vitiated a panel's decision: 'the whole point of the appeal was that three judges should consider the issues', and 'the mutual influence of each member of the court over the others necessarily means that if any of them was affected by apparent bias the whole decision would have to be set aside'.

50. Vento cites several annulment decisions under the ICSID Convention in support of this position. I appreciate that such decisions may be relevant, but the citation of foreign authority from non-common law jurisdictions is fraught with difficulty. The court has no way of knowing whether these decisions are representative of the law of foreign jurisdictions or anomalous. Moreover, the decisions are not easily accessible in any event:

Some of them are not available in English while others are cited in translated, excerpted form.

51. There is no need to rely on these cases and I will not review them here. The principle they are said to stand for is well established in Canadian law: The participation of a biased member requires the decision to be set aside regardless of the unanimity of the panel.

52. This conclusion is not in tension with Ontario's responsibility as a venue for international arbitration. On the contrary, it reinforces the integrity of the Canadian legal system and relatedly, the integrity of the arbitration process. Finality and efficiency are important goals, but they are not to be achieved at the cost of an impartial hearing."

23. In the above judgment, it has been held that bias of even a single Member taints the decision of the entire Panel. This principle has been adopted from the earlier judgments of the Court of Appeal ***In re Medicaments and Related Classes of Goods (No 2), [reported in (2001) 1 W.L.R. 700 paragraph 99]*** and the Privy Council in ***Stubbs Vs. The Queen [reported in 2018 UKPC 30 paragraph 33].***

24. This Court is in complete agreement with the said principle of

law enunciated in the above judgment. This is in view of the fact that it is impossible to know whether or to what extent the participation of the biased Member affected the Tribunal's decision. It cannot be assumed that the presumed impartiality and independence of one of the Co-Arbitrators of the Panel rendered it harmless. In other words, a party is entitled for an independent and impartial Tribunal, which means that all the Members of the Tribunal must be impartial and without bias. In the absence of the same, the bias of even a single Member will necessarily vitiate the award rendered by the Arbitral Tribunal.

25. In the light of the above discussions, this Court also holds that the award passed by the Arbitral Tribunal is tainted by bias/ premeditation. Hence, the principle of poisoning the well will apply and the award will be afflicted by bias. In view of the same, it violates Section 18 of the Act and it goes against the fundamental policy of the Indian Law under Section 34(2)(i)(b) of the Act.

26. The conspectus of the above discussions leads to the only conclusion that the impugned award is liable to be set aside on the ground of bias/premeditation.

27. Accordingly, the impugned award is set aside and the above original petition stands allowed ***with costs of Rs.1,50,000/- (Rupees one lakh and fifty thousand only)*** payable by the respondent to the petitioner.

20.1.2026

Index : Yes
Neutral Citation : Yes

RS

N.ANAND VENKATESH,J

RS

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