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O.P. No.21 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.12.2024

Pronounced on:10.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.P. No.21 of 2020

M/s. Unique Builders, Rep.by its
Managing Partner, Mr.P.Nallasamy,
No.1369, 5th Street, Golden Colony, Padi,
Chennai 50

Petitioner

Vs

1. The Union of India, Represented by
General Manager, Southern Railway,
Headquarters Office, Park Town,
Chennai 600 003.
2. he Chief Engineer, Construction,
Office of the Chief Administrative Officer,
Gauge Conversion, Southern Railway
Egmore, Chennai.
- 3.The Deputy Chief Engineer,
Gauge Conversion, Sourthern Railway,
MC Nichols Road, Chetpet, Chennai-31.

...Respondents

PRAYER: This Original Petition has been filed under Section 34(1) of the Arbitration and Conciliation Act, 1996 to set aside the original award dated 30.09.2019 received by the Petitioner on 09.10.2019 of the learned



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Arbitrator in the Arbitration proceedings between the Petitioner and the Respondents, in its entirety under Section 34 of the Arbitration and Conciliation Act 1996.

For Petitioner : Mrs.K.Aparna Devi
For Respondent : Mr.P.T.Ramkumar,
Standing Counsel for Railways.

ORDER

The award dated 30.09.2019 is under challenge under Section 34 of Arbitration and Conciliation Act, 1996 (in short 'Act').

2. I have heard Mrs.K.Aparna Devi, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned Standing Counsel for the Railways. I have also gone through the records, including the impugned award of the learned Arbitrator, besides the decisions on which reliance has been placed by the learned counsel on the other side.

3. The learned counsel for the petitioner, Mrs.K.Aparna Devi, would make a preliminary argument with regard to delay in passing of the award and she would make elaborate submissions in this regard. According to the



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learned counsel for the petitioner, the delay in passing the award renders the award liable to be set aside, without even going into the merits. Even otherwise, she would submit that the Arbitrator, in a haste to pronounce the award, has mingled issues together without any substance or basis whatsoever and therefore, the award passed is liable to be set aside, even if not on the ground of delay. The learned counsel for the petitioner would refer to the various dates which are relevant to determine her contention with regard to delay in passing of the award.

4. According to learned counsel, the arguments were closed before the Arbitrator on 03.01.2017 and the matter was reserved for passing of the award. However, since there was a delay in passing the award, the petitioner made a mention to the Arbitrator and a fresh hearing was held on 06.01.2018 and on the same day, orders were again reserved in the matter. Subsequently also, according to learned counsel for the petitioner, there has been an inordinate delay on the part of the Arbitrator to pronounce the award.

5. The learned counsel for the petitioner would also invite my



attention to the petition filed in O.P. No.759 of 2019 under Sections 14 and 15 of the Act in view of non-passing of the award within a reasonable time.

She would further contend that immediately on the said OP being taken on file, the Arbitrator had hastily proceeded to pass the award on 30.09.2019 and an e-mail was sent to the learned counsel for the petitioner on 01.10.2019. Subsequently, the petitioner collected the award on 09.10.2019. The learned counsel would further submit that the Arbitrator ought to have given cogent and satisfactory reasons explaining the delay in pronouncing the award. Taking me through the award, the learned counsel would emphasise that absolutely no reasons have been assigned for the delay in passing the award and therefore, on the ground of delay, the award is liable to be set aside as has been done in the decisions which have been relied on and extracted herein below.

6. On the merits, the learned counsel for the petitioner again taking me through the award, would submit that the Arbitrator has not even ventured to give a finding, leave alone reasons for several of the claims. According to learned counsel for the petitioner, as many as 18 claims were made. However, the Arbitrator has not rendered any finding, leave alone



assigning reasons in respect of claim numbers 4, 7, 8 to 12 and 16.

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7. She would further state that the reason for the omission to answer the above claims is only because of the filing of the OP.No.759 of 2019 by the petitioner under Sections 14 & 15 of the Act and an immediate requirement to pass an award which has resulted in such a hasty award being passed by the learned Arbitrator.

8. Per contra, the learned Standing Counsel for the Railways, Mr.P.T.Ramkumar would submit that the contentions of the learned counsel for the claimant are bereft of any substance. He would take me through the award, pointing out the findings of the Arbitrator with regard to all the claims made in the claim statement.

9. He would further submit that with regard to delay, the claim was filed in September 2014 and therefore, prior to the amendment Act bringing in timelines for passing of the award. He would therefore submit that there is no delay in passing the award. The learned counsel would also state that the Arbitrator has discussed the available evidence and arrived at possible



conclusions which cannot be set aside under Section 34 of the Act, unless the petitioner is able to show existence of any of the limited grounds under Section 34 of the Arbitration and Conciliation Act, 1996.

10. The learned counsel for the respondent would also place reliance on the decision of this Court in *Eagle Earth Movers vs The General Manager, Southern Railway and others* in O.P.No.422 of 2018 dated 17.10.2022 in support of his contentions.

11. Having considered the submissions advanced by the learned counsel on either side, I am first taking up the issue of delay in passing of the award. If on this ground, the award is liable to be set aside, then there would be no requirement to go into the challenge on the merits of the award. Insofar as the contention of the learned counsel for the respondent that the arbitration proceedings were instituted prior to the Amendment Act of 2015 is concerned, no doubt Section 29 A was inserted by Act 3 of 2016 with effect from 23.10.2015. Before the Amendment Act, there was no provision which required the Arbitrator to pass an award within a particular period of time. However at the same time the decisions that have been



relied on, especially by the learned counsel for the petitioner, clearly point out to the fact that delay would certainly affect the validity of an award. In fact several of the Judgments which have been relied on by learned counsel for the petitioner were only relating to awards passed prior to the Amendment Act 3 of 2016.

12. In *Harji Engineering works Pvrivate Limited vs Bharat Heavy Electricals Limited and Another* reported in *ILR (2009) II Delhi 286*, the Delhi High Court referring to the UNCITRAL MODEL held that the purpose of Arbitration was to get speedy justice and there is a possibility of the Arbitrator forgetting the facts if there is a long gap. The Delhi High Court further held that where there is a delay and even if it is abnormal, the Arbitrator should provide an explanation and in the absence of the same the award was vitiated on the ground of being contrary to public policy.

13. This Court in *K.Dhanasekar vs Union of India and ors* reported in *MANU/TN/9389/2019*, where there was a delay of 3 years after completion of the hearing, held, following the ratio laid down in *Harji Engineering works iefferred herein supra*), when there is a huge gap between the last date



of hearing and the date on which the award has been made, when the Arbitrators were required to publish the award within a reasonable time, the Arbitral Tribunal had to explain the delay and when there is no satisfactory explanation, it would cause serious prejudice to the aggrieved party.

14. The Delhi High Court in *Department of Transport, GNCTD vs Star Bus Services Private Limited* reported in *Neutral Citation No.2023:DHC:3410* held when there is an inordinate, unexplained and substantial delay of more than 1.5 years from the date on which the award was reserved, then it would be in contravention of public policy. In *Gian Gupta vs MMTC Limited* reported in *2020 SCC Online Del 107*, the Delhi High Court again came down on an award passed after lapse of 6 years after conclusion of the hearing.

15. The Hon'ble Supreme Court in *M/s.Dyna Technologies Private Limited vs M/s. Crompton Greaves Limited* reported in *CDJ 2019 SC 1455* emphasized the requirement of a reasoned award and held that it should be proper, intelligible and adequate. Finding the award of the Arbitral Tribunal in the said case to be confusing and jumbled without appropriate distinction



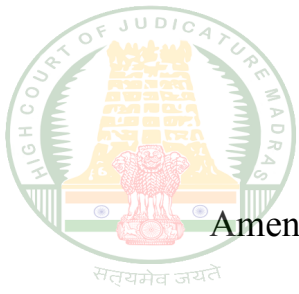
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and proper reasons, the Hon'ble Supreme Court set aside the award.

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16. Insofar as the decision is relied on by learned counsel for the respondent in *Eagle Earth Movers* (referred herein supra), this Court held that a delay of 8 months cannot be held to be fatal and that it should be viewed in factual context and finding that the proceedings were concluded on 22.04.2017, the award came to be pronounced on 04.01.2018, this Court held that the delay did not vitiate the award.

17. In *Rajasthan Small Industries Corporation Limited vs Ganesh Containers Movers Syndicate* reported in (2019) 3 SCC 282, the Hon'ble Supreme Court held that the provisions of the Amendment Act, 2015 would not have retrospective operation to the arbitral proceedings already commenced, unless the parties otherwise agree. In *Union of India vs Parmar Construction Company* reported in 2019 (5) SCALE 453, the Hon'ble Supreme Court again reiterated the legal position that the Amendment Act, 2015 came into force only on 23.10.2015 and same would not apply to arbitration proceedings which had commenced in accordance with Section 21 of the principal Act, 1996, before coming into force of the



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Amendment Act, 2015, unless the parties otherwise agree.

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18. Similarly, in *S.P Singla Constructions vs State of Himachal Pradesh and another* reported in (2019) 2 SCC 488, the Hon'ble Supreme Court held that the provisions of the Arbitration and Conciliation (Amendment) Act 2015, more specifically Section 26, would not apply to arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act, unless the parties otherwise agree.

19. In all the above cases, the Hon'ble Supreme Court was not dealing with Section 29A which came to be inserted by Act 3 of 2016. It was not dealing with a case of delay in passing of the arbitral award under Section 29A. It was dealing with cases where there was unilateral appointment of Arbitrator and in such circumstances held that the Amendment Act would not invalidate the earlier proceedings which were duly and properly initiated under the Arbitration and Conciliation Act of 1996.

20. Even in the decision of *Eagle Earthmovers* (referred herein above), this Court has clearly held that the appropriate length of time to



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pronounce a verdict in any legal proceedings would have to be considered as to whether the delay in the facts of the case would warrant setting aside the award, on the ground of delay. On facts, this Court held that the delay was only 8 months and hence, it did not seriously prejudice the interest of the parties.

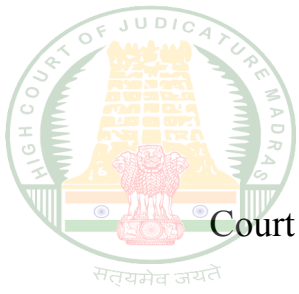
21. Though it is vehemently contended by the learned Standing Counsel for the Railways that the Amendment Act having no appliance to the present Arbitration proceedings and award under challenge, the question of imputing delay does not arise, cannot be countenanced for more than one reason. Firstly, the question of delay on the part of the Arbitrator or the Arbitral Tribunal in passing an award has not been appreciated by the High Courts as well as the Hon'ble Supreme Court in several cases. Even though there was no specific time frame for passing the award, the Courts, by various rulings have consistently expected the Arbitrators/Arbitral Tribunals to pronounce the award within a reasonable time.

22. I have already discussed the ratio laid down by the Delhi High Court in *Harji's case*, *Department of Transport* as well as *Gian Gupta's*



(referred herein supra). In all those matters, firstly, the High Court came down heavily on the Arbitral Tribunal/Arbitrator for the delay in publishing the award and on the ground of delay alone the awards in those cases were set aside. Secondly, when there is a delay, the Arbitral Tribunal/Arbitrator is bound to explain the delay by giving satisfactory reasons. Testing the facts of the present case in the light of the settled legal position, as already, I have stated herein and above and at the risk of repetition, the parties concluded their oral submissions on 03.01.2017, on which date the Arbitrator adjourned the proceedings '*sine die*' and also if the Arbitrator entertains any doubt, he will post the case on any date, after informing the parties for necessary clarifications.

23. Admittedly, for over a year the award was not published by the Arbitrator. However, on 06.01.2018, the learned counsel for the parties made submissions with regard to pendente lite interest with specific reference to Clause 16(3) and 64.5 of the General Conditions of Contract. After hearing the submissions, the learned Arbitrator adjourned the case for judgment on the same day that is 06.01.2018. Thereafter, also the Arbitrator has not published the award, till such time the petitioner moved to this



Court in O.P.No.759 of 2019 on the ground that the Arbitrator has not even published the award even after a lapse of 17 months. However, immediately after the petitioner moved this Court in O.P.No.759 of 2019 seeking termination of the mandate and substitution of the Arbitrator, within a week, thereafter the award came to be published.

24. Further, though Section 31(5) of the Act, mandates that the Arbitral award is made and a signed copy is delivered to the party. Admittedly in the present case after publishing the award on 30.09.2019, the Arbitrator has only sent it to the learned counsel for the petitioner and only after a lapse of about 10 days, the petitioner has collected the copy of the award from the Arbitrator. This is also a procedural irregularity committed by the Arbitral Tribunal which is not in consonance with Section 31(5) of the Arbitration and Conciliation Act, 1996. In any event, considering the aspect of delay, I am constrained to set aside the arbitral award on the ground that despite the Arbitrator reserving the matter for passing the award even as early as on 03.01.2017, did not publish the award till 06.01.2018, when again the matter was reserved for judgement. Thereafter also, until the petitioner moved this Court to terminate the mandate of the Arbitrator,



the Arbitral Tribunal has not published the award. More importantly, the Arbitral Tribunal has not adduced any reasons whatsoever for the delay in passing the award. The delay would certainly prejudice the parties and as held in the various decisions discussed herein above, there is strong likelihood of the Arbitrator forgetting the arguments and relevant facts with passage of long intervals of time. Therefore delay certainly affects the rights of the aggrieved party and the same is clearly against public policy. Therefore, having found that the award is vitiated on the ground of delay on the part of the Arbitrator in publishing the award within a reasonable time, I do not see any necessity to further delve into the grounds of challenge on the merits of the award.

25. With regard to the contention of the learned counsel for the respondent that the proceedings being prior to the 2015 Amendment, delay would never arise, I am unable to agree with his submission. In fact, as seen above in several of the cases, the High Court of Delhi as well this Court have come down on awards which were passed belatedly. All these decisions where the award came to be passed was prior to the Amendment Act inserting Section 29A. Therefore to state that Section 29A cannot be



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pressed into service in the present proceedings is a misnomer. Even prior to the Amendment Act, the Arbitrator/Arbitral Tribunal was expected to publish the Award within a reasonable time and whenever there is a delay, it should be satisfactorily explained. Here, not only there is an inordinate delay, but the delay is also unexplained.

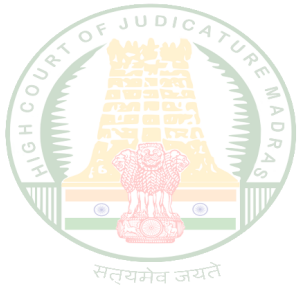
26. For all the above reasons, I am constrained to set aside the award on the only ground that there has been an inordinate and unexplained delay in passing the award. This Original Petition is allowed. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No



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