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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.10.2026

ORDERS PRONOUNCED ON : 11.11.2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Original Petition No.312 of 2020
and Application No.1243 of 2020

Union of India
Represented by
Chief Engineer, Chennai Zone
Military Engineer Services
Island Grounds, Chennai – 600 009. ... Petitioner

Vs.

M/s. Anil Annasaheb Patil
Plot No.88/Angol Mal
Bhagyanagar, Belgaum-590 006. ... Respondent

PRAYER: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award of the Arbitrator dated 23.10.2018 arising out of CA.No.CECZ/BEL/02 of 2010-11 dated 09.04.2010 entered into between the petitioner and the respondent and to direct the respondent to pay costs.

For the petitioner : Mr.AR.L.Sundaresan
Additional Solicitor General of India
for Mr.K.Subbu Ranga Bharathi
Central Government Counsel

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For the respondent : Mr.Uday Holla, Senior Counsel
for Ms.Sneha Tiwari
for M/s.Surana & Surana

ORDER

This Original Application is filed to set aside the award dated 23.10.2018 of the learned Arbitrator arising out of C.A.No.CECZ/BEL/02 of 2010-11, dated 09.04.2010, entered into between the petitioner (Union of India, represented by the Chief Engineer, Chennai Zone, Military Engineer Services, Island Grounds, Chennai) and the respondent (Anil Anna Saheb Patil), and for costs and for further or other reliefs.

2. The brief factual background in which the Original Petition arises is that, under a contract, upon the respondent/claimant being the successful bidder, a contract was executed on 09.04.2010 between the parties for the provision of a security wall at HQ JL Wing, at Turkamatti, Belgaum, bearing contract agreement No. CECZ/BEL/02 of 2010-2011, for a total value of Rs.6,47,64,232/-. The contract is a lump sum contract quoted by the respondent, which is inclusive of part I (buildings and structures), part II (internal water supply), part III

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(internal electrification), part IV (site clearance), part V (sewage disposal) and part VI (compound wall and gates).

3. Pursuant thereto, a work order was issued by the petitioner on 19.04.2010. The site was handed over on 26.04.2010, and the work was required to commence on 26.04.2010 and be completed by 25.04.2011. At the respondent's request, communicated on 20.05.2011, the completion time was extended to 22.09.2011. Thereafter, it was further extended up to 31.03.2012, 31.12.2012, 30.04.2013, and 03.01.2014. On 18.01.2014, a deviation order to the original work was also served on the respondent. Approximately 85% of the work had been completed, and the respondent had received the amounts due in respect thereof. However, the respondent demanded enhanced rates for the remaining work. Since the petitioner did not accede to the said demand, the respondent invoked arbitration.

4. The respondent claimed amounts for non-payment of dispersal of the excavated earth (2787 cum) and for surface dressing (18580 sqm) for a distance exceeding 50 meters and not exceeding 100

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meters. The respondent also claimed non-payment for excavation of hard rock (523.75 cum at the rate of Rs.1359.10 per cum) and removal of the same.

5. The respondent further claimed non-payment of additional expenditure incurred in the foundation, i.e., provision of a 150 mm offset around column/plinth beams for fixing the steel frame work. The respondent also claimed the balance payment towards the concertina coil of 1470 kg, which was lying at the site on completion of the work. The respondent claimed non-payment of the enhanced rate for the works executed after the original completion period of the contract.

6. It is the contention of the petitioner that the variation in the amounts claimed by the respondent is untenable. Firstly, the cost of removal of excavated earth is already included in the quoted rate. The contract also provided for excavation of hard/dense soil, with a provision that any deviation will be paid, etc. Therefore, no further amount is payable in that regard. As per engineering practice, a 150 mm offset in lieu of a 75 mm offset for column 14/plinth beam is not

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provided. The respondent did not dispute the concept of a concertina coil, and it was submitted that the rate can be considered at Rs.86.68/- based on the purchase voucher and transportation.

7. The enhanced rates claimed by the respondent are not tenable, as they can be claimed only if a new law comes into force or a new statutory rule or order is issued, on account of which the price exceeds 10%. The respondent served no notice under condition No.63, and submitted no supporting details. It is further contended by the petitioner that there is a special condition No.39.1, under which, if it is not possible to make the entire site available on the award of the work, the contractor has to arrange his working programme accordingly, and no claim for not giving the entire site on award of the work, or for giving the site gradually, will be tenable. In view thereof, the claim in that regard is also not tenable. In the teeth of the said pleadings, the Learned Arbitrator framed six issues.

8. The Learned Arbitrator framed Issue No.1 to interpret Special Condition No.31.1, particularly as to whether the site for execution of

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the work could be provided in phases, and answered the issue in the negative, in favour of the respondent. The Learned Arbitrator framed the issue as to whether the claimant proved that he was induced by the petitioner herein to enter into the contract by fraudulent misrepresentation regarding the availability of the site for execution of the work, and answered the same in the affirmative, in favour of the respondent/claimant.

9. The Learned Arbitrator framed Issue No.3 as to whether the claimant proved that the respondent handed over only part of the site and the compound wall during the original contract period, and found the answer in the affirmative, in favour of the claimant. The Learned Arbitrator framed Issue No.4 as to whether the claimant proved that the part of the site provided by the respondent during the original contract period was not free from encumbrances, and therefore he had to execute the work in piecemeal on the said site, and found the answer in the affirmative, in favour of the claimant.

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10. The learned Arbitrator framed issue No.5 as to whether the claimant proved that there was abnormal delay on the part of the respondent in ordering add-back deviation orders pertaining to the provisional schedules, thereby causing the petitioner (Union of India) to breach schedule 'A' note 5 in Serial page.7 of CA and condition No.5 of GCC, and found the answer in the affirmative in favour of the claimant. The learned Arbitrator framed issue No.6 as to whether the respondent proved that, due to the non-mobilisation of adequate resources by the claimant, the claimant could not complete the work within the stipulated time, and found the answer in the negative in favour of the petitioner (Union of India).

11. After making such findings, the learned Arbitrator rejected the claims relating to belated payment interest, GST, and certain other claims. The Arbitrator found that the respondent/claimant would be entitled, in the first part, to the amount of schedule, Part VI, as per the contract rate for the works executed during the original contract period, being Rs.1,87,42,700/-. It was further found, in the second part, that the respondent/claimant would be entitled to the amount of

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schedule 'A', Part VI, at the enhanced rate for the work executed after the original contract period, and awarded a sum of Rs.4,89,56,531.25/-. In all, it was found that the respondent/claimant was entitled to a total sum of Rs.6,76,99,231.25/-.

12. After finding that, towards the running bills, a payment of Rs.5.13 crores had already been made, it was determined that the total further amount receivable by the claimant was Rs.2,04,90,760.26/-.

13. Aggrieved by the award of the aforesaid amount, the rejection of its claims, the consequential award of costs and the rejection of its counterclaim, the present application has been filed.

14. *Mr AR.L.Sundaresan,* the learned Additional Solicitor General of India, by taking this Court in detail through the various exhibits and clauses of the contract, would first submit that the primary claim with reference to the enhanced rates in this case is made on the ground of delay. He would submit that it is the respondent/claimant himself who

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had requested an extension of time, which was acceded to. As far as the reason for delay is concerned, it may be true that the entire site was not handed over on the day of granting the work order; however, special condition No.31.1 in the contract is confined to ground conditions. It categorically states that if the entire work site is not made available, the contractor has to carry out the work only with reference to the portions allotted to him and to conclude the work as and when the site is made available. When the parties have expressly agreed to such a clause, the Arbitrator cannot go on equitable considerations and ought to have adjudicated the issue strictly based on the contract between the parties.

15. Further, with reference to issue No.2, the Arbitrator himself has found that different departments are dealing with ground clearance and the grant of work order and, therefore, the finding that there was a fraudulent misrepresentation while floating the tender is incorrect and is against the evidence on record.

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16. The learned Additional Solicitor General of India would submit that the major portion of the claim pertains to the demand for enhanced rates. The claimant had not raised any such demand during the execution of the work, despite repeated extensions of time having been granted. Having completed the work at the rates stipulated in the original work order, the claimant, only after completion of the work, sought to raise a claim for enhanced rates, which was clearly an afterthought. The enhanced rates are not supported by sufficient evidence, and the findings on all five heads are incorrect and not supported by the evidence. Thus, the learned Additional Solicitor General of India would submit that on a cumulative reading of the award as a whole, it can be seen that the learned Arbitrator did not consider the foundational principles of Indian law, by which the parties are bound by the mutual terms of the contract, and passed the award on equitable considerations. The award on the claim, as well as the rejection of the counterclaim, is patently illegal and warrants interference by this Court.

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17. *Per contra,* the learned counsel appearing on behalf of the respondent/claimant would submit that a thorough reading of the award and the evidence adduced on both sides would categorically prove that, knowing fully well that the site was not available, the tender was floated. The bidders were not put to notice that there may be a delay in handing over the site. The quotation was submitted on the assumption that the work would be executed within the contractual period. The delay on the part of the petitioner in granting the site, part by part, is enormous, and during the interregnum, the prices of the various components increased significantly. Special Clause No.31.1, by its very terms, is intended to apply only to exceptional circumstances. While floating the tender, the petitioner was aware of the encumbrances and other issues affecting the site. In any event, in light of the oral and documentary evidence on record, the learned Arbitrator has rendered his findings, and the arguments cannot be made as if this Court were an appellate authority.

18. I have considered the rival submissions made on either side and perused the material records of the case.

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19. As rightly contended by the learned counsel for the respondent, every argument relating to each of the six issues revolves (a) the reading and construction of the contract; (b) considering the same in the context of the evidence relating to execution of the terms on ground and the subsequent conduct of both sides; (c) the communications and exchanges that came into being during the course of the same and to render findings. When the learned Arbitrator has duly appreciated the evidence on record and arrived at plausible conclusions, the Court cannot interfere in the exercise of powers under Section 34 of the Arbitration and Conciliation Act, 1996. The power of judicial review on the limited grounds available cannot be elevated to that of an appellate Court re-appreciating the entire evidence. On a reading of the entire award, the findings of the learned Arbitrator are just and reasonable and do not, in any manner, violate the fundamental policy of Indian law or suffer from patent illegality. As regards Special Condition 31.1, the learned Arbitrator framed Issue No. 1, construed it by taking into account the entire contract as a whole and the attendant circumstances, and rendered his finding. The

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same cannot be termed as patently illegal or violative of the fundamental tenets of Indian law.

20. In view thereof, finding no merits, the Original Application stands dismissed. The costs of this Original Petition are made easy. Consequently, the connected application is closed.

11.11.2026

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Neutral citation : Yes/No

D.BHARATHA CHAKRAVARTHY, J.,
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Pre-Delivery Order made in
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