

CASE NO.:
Appeal (civil) 2880-2881 of 2005

PETITIONER:
TAMIL NADU WATER SUPPLY & DRAINAGE BOARD

RESPONDENT:
M/S. SATYANARAYANA BROTHERS PVT. LTD

DATE OF JUDGMENT: 07/02/2007

BENCH:
Dr.AR.LAKSHMANAN & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

Dr.AR.LAKSHMANAN, J.

1. Heard Mr.Mohan Parasaran, learned Additional Solicitor General for the appellant and Mr.Dipanker P.Gupta and Mr.T.L.V.Iyer, learned senior counsel for the respondent.

2. Aggrieved against the order passed by the Division Bench of the High Court of Madras dt.24.03.2004 in OSA Nos.248 of 1989 and 59 of 1993, the above two appeals were filed.

3. The case on hand has a chequered history .

The Government of Tamil Nadu formulated a scheme known as "Veeranam Project" to provide drinking water to the city of Chennai and thereby overcome the problem of acute water scarcity in the city of Chennai. In order to implement the aforesaid scheme, the Government invited tenders for manufacturing, supplying and delivering 1676 mm pre-stressed concrete pipes and fittings including transporting to site, laying, jointing and testing for raw water and clear water conveying, from Veeranam Tank to Chennai City. The Secretary to Government, Public Works Department requested for clearance of foreign exchange from the Government of India. This was done with a view to avoid delay in the project. The respondent herein submitted their tender. The tender submitted by the respondent was the lowest tender and on negotiation the same was accepted by the Government and the Government issued G.O.Ms.No.1607 Public (Twad) Department accepting the tender of the respondent. Subsequently, the Government suggested that the respondent should approach ICICI Ltd. for foreign exchange loan. The Government accepted the request of the respondent for a hike in the tender amount in view of the reduction on foreign exchange component. An agreement was entered into between the respondent and the Chief Engineer, Public Works Department. The Government of India also approved the foreign collaboration arrangements. The import license for the gasket manufacturing unit was also cleared and a factory at Thirukalikundram was commenced and the equipment for manufacturing pipes was also received. The factory at Panrutti also commenced the operation and the equipment for manufacturing rubber gaskets was received in two shipments. The respondent sought extension of time till 31.12.1975 in order to complete the work. On considering the prevailing circumstances, the time for completion of work was extended till 30.06.1975. Again the respondent wrote to the appellant informing it that the work will not be completed even by 30.06.1976 and that it is impossible for them to carry out the work as per the original agreement, unless the rates are revised and on 30.06.1975, the work was abandoned by the respondent. Again a request was made for further extension of time and the time was also extended for completion of the work till 31.12.1975. The respondent stated that they were prepared to continue the work only if the rates are revised. The appellant further extended the time for completion of the work till 31.03.1976.

4 Since disputes arose between the parties, the respondent invoked the arbitration clause in the agreement and appointed Sri.P.S.Subramaniam as their Arbitrator. The appellant appointed Sri.C.K. Sreenivasan as their Arbitrator. Both the Arbitrators appointed Hon'ble Mr.Justice K.S.Palaniswamy, a retired Judge of the High Court as their umpire. The arbitrators entered upon the reference on 18.03.1978. The statement of claim of Rs.13,92,00,478.17 was also filed by the respondent before the Arbitrators. The appellant Board also made a claim of Rs.50,29,63,320/- filed before the Arbitrators.

5 The learned Arbitrator Sri.P.S.Subramaniam gave an award in favour of the contractor for a sum of Rs.6,98,54,780/-. However, the other Arbitrator, namely, Sri.C.K.Sreenivasan gave notice of his disagreement to the award. Therefore, on 02.04.1979, the Umpire entered upon the reference. The Umpire passed his award, inter alia, holding that the respondent-contractor is entitled to Rs.40,02,591/- from the appellant and that after allowing deduction for the same the respondent is liable to pay to the appellant a sum of Rs.2,69,93,674/- with interest at 9% p.a. from the date of the Award. Out of the said Award only a sum of Rs.5,000/- was awarded as damages for breach of contract.

6 The Umpire filed the Award in the High Court of Madras and the same was numbered as O.P.No.428 of 1979. The appellant filed Application No.560 of 1980 in O.P.No.428 of 1979 praying for a decree to be passed in terms of the Award. Aggrieved by the Award, the respondent filed O.P.No.122 of 1980 before the High Court for setting aside the aforesaid Award dated 10.09.1979. The learned Single Judge allowed O.P.No.122 of 1980 filed by the respondent and set aside the award passed by the Umpire and consequently application No.560 of 1980 in O.P.No.428 of 1979 and O.P.No.428 of 1979 were dismissed. On the same day, C.S.No.176 of 1978 was also dismissed. Aggrieved by the order allowing O.P.No.122 of 1980, the appellant preferred an appeal in O.S.A.No.248 of 1989 and aggrieved by the order dismissing Application No.560 of 1980 in O.P.No.428 of 1979, the appellant herein preferred an appeal in O.S.A.No.59 of 1993. Aggrieved by the order dismissing C.S.No.176 of 1978, the appellant herein preferred an appeal in O.S.A.No.211 of 1990.

7. The Division Bench allowed O.S.A.Nos.248 of 1989 and 59 of 1993, preferred by the appellant, inter alia, holding that the respondent had stopped work without any cause, that the respondent had abandoned the work, that the award amount arrived at by the Umpire is correct and, therefore, passed a decree in terms of the Award dated 10.09.1979 passed by the Umpire. It was further held that the appellant is entitled to costs throughout and to interest at 9% p.a. from the date of Award.

8. Aggrieved by the aforesaid order, the respondent herein preferred Special Leave Petition (Civil) Nos.2096-2097 of 2002. The Division Bench dismissed O.S.A.No.211 of 1990. The Special Leave Petition (Civil) Nos.2096-2097 of 2002 were filed which were re-numbered as Civil Appeal Nos.9136-9137 of 2003 and this Court remitted the matter to the Division Bench of the High Court to be considered in the light of the observation made in the paragraph 16 of the Judgment. [Sathyanarayana Brothers (P) Ltd. vs. T.N.Water Supply & Drainage Board, reported in (2004) 5 SCC 314]. On remission, the Division Bench dismissed the appeals holding that foreign exchange was to be obtained by the joint efforts of the appellant and the respondent, that the Government was not extending the time reasonably but in piecemeal, that the respondent had not committed breach of contract.

9. Aggrieved by the order dt.24.03.2004, the appellant preferred the above appeals.

10. It is also pertinent to notice that the SLP filed by the respondent-contractor against the very same judgment was also

dismissed by this Court at the admission stage.

11. Before dealing with the matter on merits, it is beneficial to refer to the order passed by this Court in *Sathyanarayana Brothers (P) Ltd. vs. T.N. Water Supply & Drainage Board*, reported in (2004) 5 SCC 314. This Court after an elaborate consideration of the entire materials placed before it held that the learned Single Judge has given it as one of the reasons to hold that it vitiated the award. The Division Bench was of the view that the learned Single Judge was right in inferring that such an infirmity would vitiate the award. However, this Court held that the order of the Division Bench, reversing the decision of the Single Judge was not sustainable and the matter be required to be remitted to be considered in the light of the "handing over note" of the Chief Engineer in respect whereof an application was moved by the appellant before the Arbitrator as well as before the Umpire which remained unattended to by the forum and which later did not accede to the request. Considering the fact that it is an old matter and it being a speaking award, the matter having also been considered by the learned Single Judge, this Court felt that it would better serve the ends of justice to ensure expeditious disposal of the matter and, therefore, the Division Bench of the High Court was requested to consider the matter afresh taking into account the "handing over note" of the Chief Engineer of the project and other relevant documents. In the result, this Court allowed the appeals filed by the contractor-Sathyanarayana Brothers (P) Ltd.- and set aside the order of the Division Bench of the High Court and remitted the matter to the High Court for being decided afresh by the Division Bench in the light of the observations made in the Judgment.

12. We have carefully perused the order passed by the Division Bench in O.S.A.Nos.248 of 1989 and 59 of 1993 after remittance. After hearing extensive arguments advanced by Mr.Mohan Parasaran, learned ASG and countered by two learned senior counsel appearing on behalf of the respondent, we are of the view that on remand, the learned Judges of the Division Bench have considered the entire matter afresh and came to the conclusion that the reasons recorded in the said Judgment and that the sustainability of the claims of the contractor need not be considered in these appeals and equally the Board is also not entitled to any decree on the basis of the Award for the reasons given in the said Judgment. It was also further observed that the Bench was not dealing with the respective claims of the contractor and the Board against each other on different headings and they were inclined to set aside the award passed by the Umpire.

13. In the instant case, the appellant is still proceeding under a false premises that the contractor is solely responsible for the delay in the execution of the work and the breach of contract which have been conclusively found against the appellant by the learned Single Judge as well as the Division Bench of the High Court while setting aside the award passed by the Umpire in the present case. The appellant has not raised any substantial question of law that needs to be considered by this Court. The questions raised are only question of fact and in view of the concurrent findings by both the learned Single Judge and the Division Bench, no interference by this Court is called for particularly when a matter was fully heard in the earlier round by the Supreme Court. The matter was remitted to the Division Bench of the High Court by this Court only after considering all aspects and the questions involved in the case. Now, it has been conclusively found that the respondent-contractor was not responsible for any breach of contract. According to the contractor, all the advances were granted only for the mobilization of the work with specific condition that pro-rata deductions will be made in the bills for the work carried out by the contractor and now the completion of the contract the advances will be adjusted from the bills for the dues to be paid to the contractor.

14. As already noticed, the appellant has not raised any ground

that warrants interference with the impugned judgment. The High Court, in our opinion, has decided the matter strictly in accordance with the remand order made by this Court in the judgment in Civil Appeal Nos.9136-9137 of 2003 reported in [(2004) 5 SCC 314]. The High Court also has not entered into any finding regarding the respective claims of the parties but set aside the award of the Umpire only on the ground of legal mala fides.

15 In our opinion, the well-considered judgment rendered by the High Court on remission from this Court does not call for any interference. We, therefore, affirm the order passed by the Division Bench and dismiss the Civil Appeal Nos.2880-2881 of 2005 filed by the appellant.

16 We also make it clear that if any claim survives with reference to this particular contract, the parties will be free to agitate the same before the sole Arbitrator in terms of the Arbitration Clause. For the said purpose, we, by consent of both parties, appoint Hon'ble Mr. Justice S. Mohan, a retired Judge of this Court as the sole arbitrator. The parties are at liberty to file any claim if it survives and also documents, records etc. The sole arbitrator is requested to dispose of the arbitration proceedings within six months from the date of entering upon the reference.

17 The Arbitrator is at liberty to fix his remuneration and other expenses to be equally shared by both the appellant and the respondent.

18 The Arbitrator should file his Award in this Court.
19 The Civil Appeals stand dismissed. No costs.