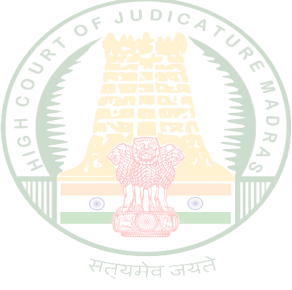


IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2025

PRONOUNCED ON : 23.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

OP No. 60 of 2018

AND

ARB O.P(COM.DIV.) NO. 77 OF 2021

OP No. 60 of 2018

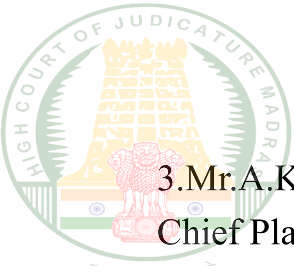
Chief Engineer
Metropolitan Transport Project
(Railways), Southern Railway, Egmore,
Chennai-600 008.

Petitioner(s)

.Vs.

1. Engineering Products (I)
Limited, 3D, EC Chambers,
No.92, G.N.Chetty Street, T.Nagar,
Chennai-600 017.

2.Mr.S.Balachandran
Chief Electrical Engineer,
Delhi Metro Rail Corporation Limited,
Kochi.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3.Mr.A.K.Sinha
Chief Planning and Development
Engineer, Southern Railway
Chennai-600 003.

4.Mr.K.Govindasai Babu
Deputy Financial Adviser and Chief
Accounts Officer,
Headquarters Office, Southern Railway,
Chennai-600 003.

Respondent(s)

PRAYER

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award of respondents 2 to 4 dated 17.11.2014 made in relation to the disputes arising out of Agreement No.MTP/Civil/ 368/2000 in so far as the award under claims 5,8, and 12 are concerned and to direct the respondents to pay the cost to the petitioner.

For Petitioner(s): Mr.P.T.Ramkumar
Standing Counsel

For Respondent(s) : Mr.K.Harishankar
and
Ms.Mithreyi Kasthurirangan

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Arb O.P(COM.DIV.) No. 77 of 2021

M/s. Engineering Projects (i) Ltd
3-D, EC Chmabers, 92 GN Chetty
Street,T.Nagar
Chennai 600 017.

Petitioner

.Vs.

The Chief Engineer
MTP (Railways)
Southern Railways, Egmore,
Chennai 600 008.

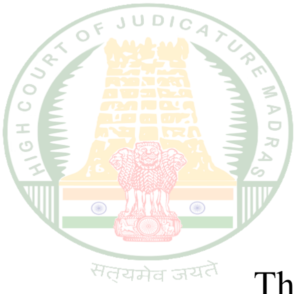
Respondent(s)

PRAYER

Petition filed under Section 34 of Arbitration and Conciliation Act, 1996, that the Award of the Arbitral Tribunal dated 17.11.2014 made by the Arbitrators in relation to the disputes arising out of the agreement No.MTP/CIVIL/368/2000 dated 12.09.2000 in so far as disallowing part of the claim No.1, 2, entire claim No.3, part of claim No.5,6, entire claim No.7, part of claim No.8. entire claim No.10, part of claim No.12 and entire claim No.13 are concerned may be set aside.

For Petitioner(s): Mr.K.Harishankar
and
Ms.Mithreyi Kasthurirangan

For Respondent(s) : Mr.P.T.Ramkumar
Standing Counsel for Railways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COMMON ORDER

These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity hereinafter referred as 'the Act'] against the award of the Arbitral Tribunal dated 17.11.2014. Insofar as Arb.O.P(Com.Div.)No.77 of 2021, disallowing the part of the Claim Nos.1, 2, 5, 6, 8 and 12 and disallowing the entire claim in Claim Nos. 3, 7, 10 and 13 has been put to challenge. Insofar as OP.No.60 of 2018, the award granting Claim Nos.5, 8 and 12 has been put to challenge.

2.The respondent invited tenders for execution of MRTS Phase-II between Thirumalai (LUZ) - Velachery, specifically for Pile Foundation and RCC works in columns, beams and slabs of the station building at Kotturpuram adjoining Buckingham Canal.

3.The petitioners bid was accepted by Letter of Acceptance dated 22.5.2000 for a contract value of Rs.5,52,08,490/-. The agreement was executed on 12.09.2000 with a stipulated completion period of 12 months

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commencing from 22.5.2000 upto 21.5.2001.

4.The completion of work was delayed due to several factors. Extension of time was granted by the respondents under Clause 17(2) of the General Conditions of Contract [GCC]. The work was ultimately completed on 10.11.2004 and completion certificate was also issued by the respondents.

5.Disputes arose between the parties and hence an Arbitral Tribunal was constitued by order dated 29.01.2008. The Tribunal after hearing both sides passed an award dated 17.11.2014. The same has been put to challenge in these petitions by both the petitioner and the respondents with respect to certain claims.

6.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

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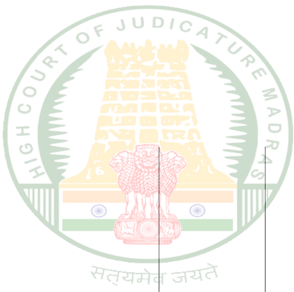
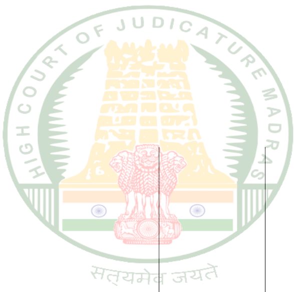
7.The claim made by the claimant, the substantiation made by the claimant, the defence taken by the Southern Railways and the findings rendered by the Arbitral Tribunal are tabulated and extracted hereunder for easy understanding:

S.No.	Description of Claim	Substantiation made by the Claimant	Defence raised by the Respondent	Findings rendered in the Arbitral Award
Claim 1	Increase of 30% on the value of the work done during the extended	The Claimant submits that though the contract stipulated a completion period of 12 months, delays in drawings and material supply on the part of the Respondent extended the work by over 3 years. It is urged that the rates quoted became unworkable owing to inflation and escalation. The Claimant contends that substantial work to the value of ₹4,88,50,501/- was executed during this extended period, for	The Respondent has sought rejection of the claim, contending that the delays were occasioned by the Claimant's failure to mobilize skilled labour, machinery and planning, including repeated failures of the batching plant. It is further contended that extensions were granted only upon the Claimant's request and rider agreements were executed	The Tribunal held that the original 12-month completion period for the Rs. 5,52,08,490/- Crores contract was unrealistic and unjustified, given the difficult site conditions (coffer dam in water, excavation of slum). Relying on Clause 17(2) of the GCC, the Tribunal found no delay attributable to the claimant and upheld the application of



		which reimbursement of escalation at 25% (₹ 1,22,12,625/-) is sought, placing reliance on decisions of the Hon'ble Supreme Court permitting compensation despite contractual prohibitions when delay is attributable to the Respondent.	reaffirming the original rates. It is also the case of the Respondent that the Claimant furnished a "No Claim Certificate" before settlement of the final bill. Hence, the demand for enhanced rates is urged to be an afterthought and untenable.	the Price Variation Clause (PVC) formula as per Railway circulars. It fixed a reasonable completion period of 18 months and applied PVC formula to works executed beyond 12 months. Based on bill-wise records from CC Bill No. 8 onwards, the Tribunal calculated escalation at Rs. 9,24,035/- and awarded this amount to the claimant, ensuring compensation while acknowledging shared responsibility of both parties.
Claim 2	Payment for the additional quantity of coffer dam arrangements made.	The Claimant submits that though Item 8 of Annexure IVA referred to cofferdams in the Buckingham	The Respondent has sought rejection of the claim, contending that payment	The Tribunal held that the Respondent failed to prove non-execution of coffer dam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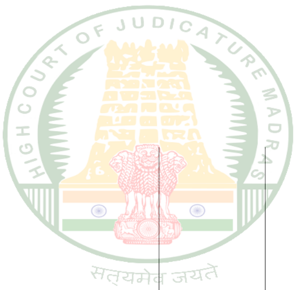
		Canal alone, site conditions made cofferdams necessary for pile caps and tie beams across the site. It is urged that execution extended to 4960 RM as against 1000 RM stipulated in the agreement, and the Claimant, under instructions and supervision of the Respondent, carried out such works. Payment for the balance 1720 RM, amounting to Rs.96,95,000/-, is therefore sought.	for cofferdam works is governed by Item 8 of Annexure IVA and its necessity is determined by the Engineer-in-Charge. It is submitted that the Claimant was duly paid wherever cofferdams were executed, even beyond agreed quantities, and that the Claimant had signed the final bill and variation statement without protest. The claim is urged to be an afterthought and unsustainable.	works and offered no justification for differential treatment between similar pile rows (Row E vs. Row F). It found that coffer dams were technically necessary for Rows F, G and H, given their cut-off levels below MSL. Rejecting the claim for full rates, the Tribunal adopted a reasonable rate of one-third agreement rate (Rs. 1,875/Rm) for makeshift coffer dams, applying compensatory percentages—50% (Row F), 25% (Row G), 15% (Row H)—based on inspection. The admissible perimeter was fixed at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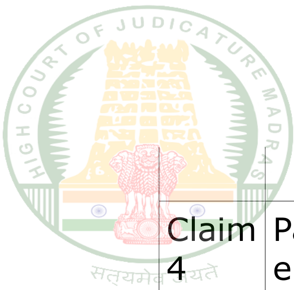
				858.4389m, subject to a 4% reduction for exceeding the 125% quantity limit. Accordingly, the Tribunal awarded Rs. 12,51,604/- for the unpaid coffer dam work.
Claim 3	Compensation for reduction in scope work of station building works.	The Claimant submits that the removal of station building works, without any default on its part, amounts to partial prevention and breach of contract. Loss of profit is claimed at 10% of the value of work worth Rs. 80,00,000/-, i.e., Rs. 8,00,000/-.	The Respondent has sought rejection of the claim, contending that the Claimant executed the entire scope of work and, in fact, exceeded the agreement value by 3.73%. It is submitted that works worth Rs. 5,75,89,250.80/- Crores were executed as against the agreement value of Rs. 5,55,20,848.90/- Crores. Hence, the allegation of reduction of scope or loss of profit is baseless.	The Tribunal held that the overall variation in execution, even without the purported office building, was only 3.73% above the agreement value. It found that no agreed work had been dropped and the Respondent's official notes could not serve as proof of any contractual obligation to construct an office building. Accordingly, the claim was rejected.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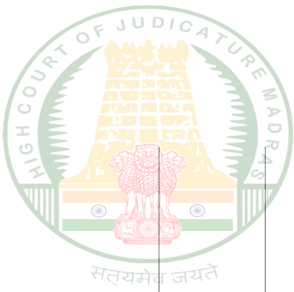
Claim 4	Payment for empty boring	The Claimant submits that though the contract specified no limit for empty boring, abnormal depths were encountered, which could not have been anticipated while quoting rates. It is contended that 810m of empty boring was carried out across piles, incurring Rs. 9,80,726/- and reimbursement is sought as the work was essential and unavoidable.	The Respondent has sought rejection of the claim, contending that the contractor was required to fix the working platform level to minimize empty boring, and that no extra payment was admissible under the agreement. It is further urged that the Claimant failed to set the platform optimally, resulting in excess empty boring, and that the claim constitutes an excepted matter under the contract.	The Tribunal noted that the Respondent had not disputed the quantum of empty boring, thereby accepting the claimant's figures. It held that the final drawing was issued during execution, preventing the claimant from foreseeing and pricing this work at the tender stage. Rejecting the allegation of poor planning, the Tribunal emphasized that the claimant, as an experienced contractor chosen by the Railways, could not be presumed negligent. Accordingly, applying a reduced rate to the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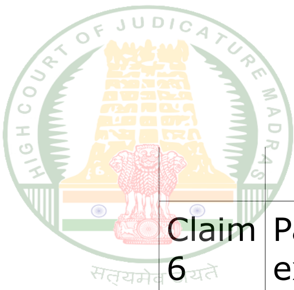
				undisputed extra empty boring quantities, the Tribunal awarded Rs.9,17,952/-.
Claim 5	Compensation towards loss of profits and overheads.	The Claimant submits that the Respondent failed to hand over the site and drawings as required under Section 52 of the Contract Act, thereby committing breach. Though the contract period was 12 months, the work extended to 42 months solely due to the Respondent's delays. It is further urged that schedule quantities were misleading, payments were delayed, and the Claimant suffered heavy cost escalation. By applying Hudson's formula, loss of overheads and profit is quantified at Rs. 277,60,000/-.	The Respondent has sought rejection of the claim, contending that the PVC formula was inapplicable, that extensions were granted only at the Claimant's request through rider agreements reaffirming original rates, and that therefore no escalation or compensation was payable. The claim is alleged to be an afterthought.	The Tribunal rejected most of the claimant's contentions as unsubstantiated and abstract statements, except the proven delay in payment of CC Bills 26 and 27. It held that the claimant was entitled to compensation for the lost opportunity of funds during the delayed period. Accordingly, the Tribunal awarded Rs. 21,246/- towards interest at 12% p.a. on the amounts of the two bills.



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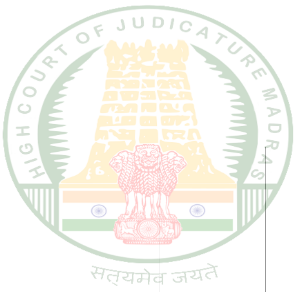
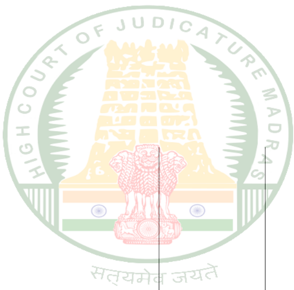
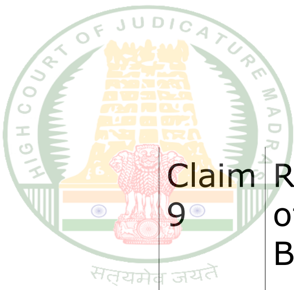
Claim 6	Payment for the extra works done not covered by the agreement	The Claimant submits that under the instructions and supervision of the Respondent, it executed additional works such as demolition of abandoned structures, cable protection, earth cutting, and formation of earthen bunds. It is urged that the total value of such works comes to Rs. 36,42,025/-, for which reimbursement is claimed.	The Respondent has sought rejection of the claim, contending that demolition works were already settled under the final bill and no-claim certificate, that cable protection was a contractual obligation without any protest. The earthwork for pile caps and diversions was incidental to the contract. It is contended that the claims are contrary to the contract and unsupported by any records.	The Tribunal held that the claimant had not produced any proof of the Respondent directing execution of the alleged works and had never raised these claims prior to arbitration proceedings. As the claims were unsubstantiated, they were rejected.
Claim 7	Compensation for idle labour	The Claimant submits that it mobilized labour, machinery, and staff immediately after the letter of acceptance,	The Respondent has sought rejection of the claim, contending that despite 67% of the site and	The Tribunal acknowledged idling caused by shared delay but found that the claimant had provided no



		but due to the Respondent's failure to issue drawings, the workforce remained idle. It is contended that this led to infructuous expenditure on idle labour quantified at Rs. 18,49,250/-, which is sought as compensation.	drawings being available, the Claimant failed to make preliminary arrangements such as winches, chisels, bailers, power supply, and liner bending setups. It is urged that the delay was due to poor planning by the Claimant, and the department cannot be held liable.	documentary proof of expenditure. Since compensation for delays was already considered under Claims 1 and 5, the Tribunal rejected the claim.
Claim 8	Compensation for idle Machinery and Plants - Loss of productivity	The Claimant submits that various equipment remained idle due to the Respondent's defaults and claimed compensation as follows: 1.Rigs and other machinery (including generator, plate bending, etc.) – Rs.21,41,750/-. 2.62 KVA Generator – Rs. 1,35,000/-.	The Respondent has sought rejection of the claim, contending that only two tripods were initially brought, that essential machinery such as liner bending machines, winches, and batching plants were delayed by the Claimant, and that no alternate arrangements	The Tribunal partly upheld the claimant's idling claims based on admitted facts and reasonable market rates: 1. Piling Rigs: Accepted Respondent's own letter showing 2119 hours idling; compensation awarded at market rental rate. 2. Generator: Rejected for



		3.Plate Bending Machine – idle from 01.06.2000 to 16.10.2000, at Rs. 20,000/- per month. 4.Batching Plant – idle from 05.11.2000 to 15.04.2001, claim of Rs. 5,50,000/-. 5.Welding Transformer – idle from 01.06.2000 to 16.10.2000 (Rs. 67,500/-) and from 16.10.2000 to 01.03.2001 (Rs. 33,750/-).	were made. It is submitted that idle periods were attributable solely to the Claimant's poor planning and failure to mobilize resources.	lack of proof. 3. Plate Bending Machine (10hp): Found 34 days idling, awarded at market rate (lower than claimant's rate). 4. Batching Plant: Held Respondent failed to hand over land, causing 5.5 months delay; compensation awarded at market rate. 5. Concrete Mixer: Rejected as not required for the project. 6. Welding Transformers : Awarded partial compensation for 3 units at a conservative rate. Accordingly, the Tribunal awarded a total of Rs. 4,09,659/-.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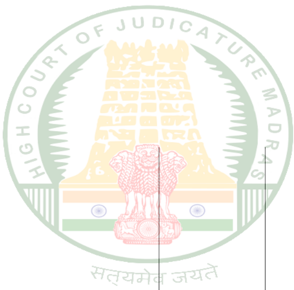
Claim 9	Refund of the cost of empty Gunny Bags recovered	The Claimant submits that the Respondent recovered Rs. 4,43,946/- towards the cost of empty cement bags despite there being no clause in the contract authorising such recovery. It is urged that since empty cement bags are not the Respondent's property under Clause 33(3) of the GCC, the recovery is without contractual basis and refund is sought.	The Respondent has sought rejection of the claim, contending that under Clause 33(3) of the GCC empty cement bags are departmental property and that the Claimant failed to return them. Hence, recovery of Rs. 2,95,964/- at Rs. 2 per bag was rightly made.	The Tribunal noted that the Respondent did not dispute the claimant's contention that cement was issued in HDPE bags and offered no evidence of supply in gunny bags. It held that the recovery made on this basis was unjustified. Accordingly, the Tribunal awarded Rs. 2,95,964/- to the claimant.
Claim 10	Refund of the rebate of 19% offered	The Claimant submits that it relied on the Respondent's planning and cooperation to complete the work on time, but due to misrepresentation, suppression of facts and failure of project management, the rebate granted has no justification. Refund of the	The Respondent has sought rejection of the claim, contending that the quoted rate was based on the Claimant's own assessment, and that delays arose from the Claimant's failure to mobilize rigs, batching plant	The Tribunal held that a negative percentage quoted in the tender constituted a firm value accepted by the Railways and could not be treated as a rebate. Since the claimant had not attached any conditions to the rate



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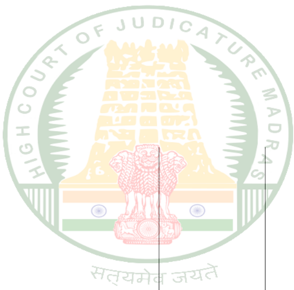
		rebate of 19% amounting to Rs. 1,33,32,164/- upto Bill No CC-32 dated 01.02.2006 is sought for from the Respondent.	and manpower, except for minor delay in handing over encroached portions for which extension was granted.	offered, the claim was found not maintainable and was rejected.
Claim 11	Refund of recovery towards cost of excess consumption of cement	The Claimant submits that the Respondent recovered Rs. 5,80,422/- for alleged excess cement consumption, despite the Claimant demonstrating that usage was within the supplied quantities. Refund of the recovered sum is sought.	The Respondent has sought rejection of the claim, contending that excess cement consumption of 2477 bags arose due to wastage, pipe choking, and finishing works. It is further contended that recovery, including penalty, was rightly made, and that the Claimant had signed the material reconciliation statements and furnished no-claim certificates.	The Tribunal found that wastage for operational procedures like priming and testing is an "indispensable" and "inevitable" part of the work. The Respondent's own admission of cement use for "touch up works" and "choking of pipeline" supported this. At the same time, the Tribunal found the Claimant partly at fault for not keeping separate records of cement used for priming,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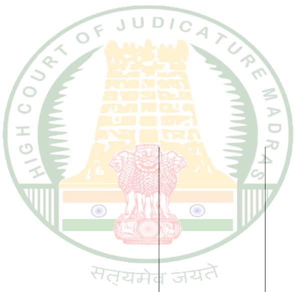
				which led to confusion. Considering this shared responsibility, the Tribunal ordered 50% reimbursement of the recovered amount, awarding Rs. 2,72,829/-.
Claim 12	Loss of business	The Claimant submits that delay of more than 30 months in execution due to the Respondent's breach caused late return of deposits and guarantees, resulting in a loss of potential profits of Rs. 60,00,000 /- from alternate projects.	The Respondent has sought rejection of the claim, contending that delays were caused solely by the Claimant's failure to mobilize materials, skilled manpower and poor day to day management.	The majority held that the Respondent's withholding of funds caused the claimant a financial loss from erosion of money value due to inflation. Applying an Annual Monetary Appreciation Rate (AMAR) of 11.08% (derived from the average SBI lending rate) to the withheld sums, the majority calculated compensation at Rs. 4,40,370/-. One arbitrator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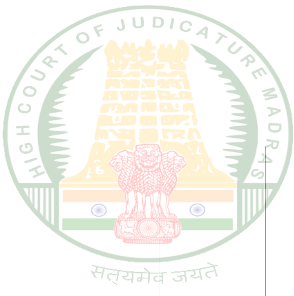
				dissented, awarding NIL on the grounds that the claim was speculative, the contract barred interest on guarantees and no proof of potential profit existed. Accordingly, by majority, the Tribunal awarded Rs. 4,40,370/- for the money that was wrongly withheld.
Claim 13	Interest charges on the amount of final bill and security deposit	The Respondent unduly delayed payment of the final bill and retention of the security deposit and performance guarantee, depriving the Claimant of rightful funds. The Respondent is liable to pay interest of Rs.8,13,935/- (Rs.1,46,227 on the final bill and Rs.6,67,708 on security/guarantee) at 18% p.a. from due dates to actual payment from 10.12.2004 to 03.02.2006.	The Respondent has sought rejection of the claim, contending that delay in final payment was solely due to the Claimant's defaults in providing a site engineer, finalising measurements, and scrutiny of documents. It is urged that no interest is payable.	The claim for interest on delayed release of security deposit amounts to double compensation and is barred under Clause 16(3) of the GCC, which expressly prohibits payment of interest on amounts due to the contractor. Since this clause



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				governs the contract, the tribunal holds that the claimant's demand for interest on delayed payment of the final bill is untenable and therefore rejected.

8.The learned counsel for the claimant submitted that the findings that were rendered by the Arbitral Tribunal insofar as Claim Nos.1, 2, 3, 5, 6 and 7 are concerned, it is unintelligible and it suffers from perversity and the same is liable to be interfered by this Court. The learned counsel in order to substantiate his submission, relied upon the following judgments:

a) ***Associate Builders .Vs. Delhi Development Authority*** reported in ***(2015) 3 SCC 49***

b) ***Ssangyong Engineering & Construction Company Limited Vs. National Highways Authority of India (NHAI)*** reported in **(2019) 15 SCC 131**

c) ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.,*** reported in **(2019) 20 SCC 1**

d) ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.,*** reported in **(2025) 7 SCC 1**

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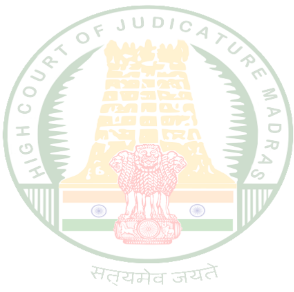
9.Per contra, the learned Standing Counsel appearing on behalf of the Southern Railways justified the findings rendered by the Arbitral Tribunal insofar as all the claims are concerned except Claim Nos.5, 8 and 12 are concerned. The learned Standing Counsel further submitted that out of the total claim amount of Rs.45,33,700/-, already the Southern Railways has paid a sum of Rs.36,00,000/- to the claimant.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.Insofar as the Judicial approach that is expected while dealing with a petition under Section 34, it will be relevant to take note of the judgment of the Apex Court in **Associate Builders** case referred supra and the relevant portion is extracted hereunder:

> ***28.*** *In a recent judgment, ONGC Ltd. v. Western Geco International Ltd. [(2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , this Court added three other distinct and fundamental juristic*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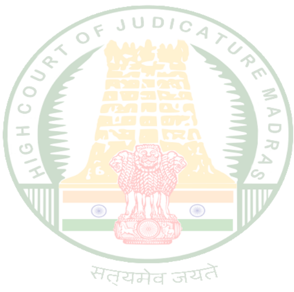
principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held : (SCC pp. 278-80, paras 35 & 38-40)

"35. What then would constitute the 'fundamental policy of Indian law' is the question. The decision in ONGC [(2003) 5 SCC 705 : AIR 2003 SC 2629] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults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that can render the decision of a court, tribunal or authority vulnerable to challenge.

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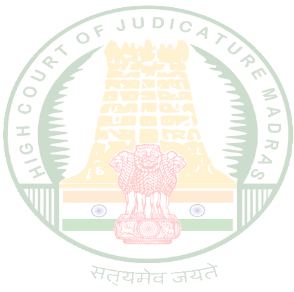
38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in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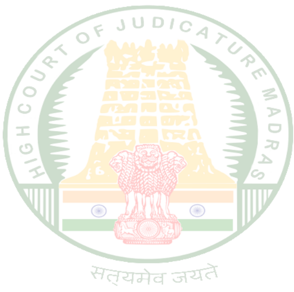
the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

12.It is also relevant to take note of the judgment of the Apex Court in **Ssangyong Engineering & Construction Company** case referred supra and the relevant portion is extracted hereunder:

76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 - in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly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bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.

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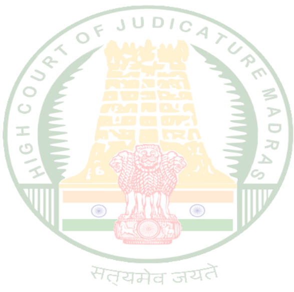
13.Insofar as the scope of Section 31 and the triple test applied in **Dyna Technologies** case referred supra, the relevant portions are extracted hereunder:

> ***34.****The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.*
>
> ***35.*** *When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to*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be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

14.Keeping the above principles in mind, this Court will test the reasoning given by the Arbitral Tribunal and the decision arrived at for each claim.

15.Insofar as the first claim is concerned, it is basically a claim made for escalation in cost due to the delay in the completion of the work.

16.The Arbitral Tribunal came to a categorical conclusion that the nature of work was such that it was highly unlikely that the work could have been completed in 12 months. However, a time frame of 12 months was fixed under the contract. The time was not the essence of the contract since the Southern Railways was granting several time extensions under Clause 17(2) of GCC. The Tribunal found that it is the Southern Railways which was responsible for the delay. Having rendered such a finding, the Tribunal went on to apply, Price

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Variation Clause [PVC] formula for calculating the compensation for escalation in cost.

17.In the considered view of this Court, the contract is of the year 2000 and the work was completed in the year 2004 and at that point of time, this PVC formula was not even in force. This came into existence only in the year 2011. Hence, as a fundamental principle, the Tribunal ought not to have applied the PVC formula for a contract which came into existence much before the coming into force of this formula. The error in applying this formula further gets even more bad since both the parties were not put on notice and were not heard on the application of the PVC formula. Therefore, it clearly amounts to violation of principles of natural justice. If the claimant had been informed that the PVC formula is going to be applied, atleast the claimant would have the opportunity to oppose the same and the Tribunal should have considered the said objection. Since this basic procedure was not followed, the Tribunal fell in error by applying PVC formula for calculating the escalation in cost.

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18.Yet another error that was committed by the Tribunal is that the Tribunal unilaterally without any basis fixed a period of 18 months as a reasonable completion period. After doing so, the Tribunal took into consideration only the period from 18.6.2001 for computation of escalation cost.

19.There is yet another error committed by the Tribunal by apportioning a delay of five months on the claimant. There was absolutely no scientific basis for attributing this delay on the claimant and it was done merely on conjectures and surmises. In the light of the above discussion, the compensation that was computed under the heading escalation of cost suffers from patent illegality and the reasoning is also unintelligible. Thus, there was no justification in limiting the compensation amount to Rs.9,24,035/- under this head and the claimant will be entitled for 30% increase in the rates by restricting the same to the quantum of work done during the extended period and the amount claimed by the claimant has to be necessarily awarded.

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20. The next claim pertains to the payment for the additional quantity of coffer dam arrangements made by the claimant. Under this claim, the claimant had provided necessary coffer dams in certain locations when the piles and tie beams came within the close proximity to the canal necessitating creation of working space by means of temporary coffer dams to arrest the flow of running water as well as heavy seepage.

21.While deciding this issue, the Arbitral Tribunal has taken into consideration an enquiry that was made from some persons who were residents living adjacent to the site. If the Tribunal makes any such enquiry and relies upon the statements made by those persons, obviously the claimant must be put on notice and such statements cannot be recorded behind the back of the claimant. This will clearly tantamount to violation of principles of natural justice. When the claimant had made a claim for 1720 meters by providing all the particulars, the Tribunal has restricted to 858.4389 meters and such reduction has been made on mere conjectures and even the rates have been reduced on ad hoc basis. This procedure followed by the Tribunal is in violation

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of Section 28(2) of the Act, which provides as follows:

28(2)

The

only if the parties have expressly authorised it to do so.

22.Even in technical arbitrations, the arbitrators cannot render findings on mere conjectures and on ad hoc basis. There must be some scientific basis for rendering findings. If that is done, the Court cannot sit over such findings of a specialist. In this case, the findings that have been rendered for Claim No.2 and the final compensation arrived at clearly suffers from non compliance of Section 28(2) of the Act, violation of principles of natural justice, patent illegality and it is also unintelligible. Therefore, the compensation that was claimed by the claimant under this head has to be granted.

23.Insofar as the third claim is concerned, the claimant claimed compensation for removal of station building works. This claim was made with the support of the letter dated 22.02.2001 [Ex.P.14] entrusting station building

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works to the claimant. Despite this exhibit, the Tribunal without any reason concluded that there is no reduction in scope merely because the over all executed value exceeded 3.73 %. The Tribunal has gone to the extent of holding that since there was no agreement for carrying out this work, there is no justification for making the claim. This finding disregards the evidence available and also it violates principles of natural justice. Moreover, the findings of the Tribunal insofar as Claim No.3 is concerned suffers from patent illegality due to ignorance of vital evidence. Accordingly, the claimant has sought for 10% of the excluded work value of Rs.80,00,000/- amounting to Rs.8,00,000/-. The quantum of compensation claimed by the claimant is reasonable and it has some basis and it ought to have been granted by the Tribunal.

24.The next issue pertains to Claim No.5 which has been put to challenge both by the claimant as well as the Southern Railways. Claim No.5 pertains to loss of profits and overheads. This claim was made due to prolongation and variation in work. While discussing this claim, the entire finding has been

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rendered in favour of the claimant and the Tribunal also holds that the claimant deserves to be compensated for the lost opportunity by way of reasonable compensation. The compensation that has been arrived at for Claim No.5 is reasonable and the view taken by the Tribunal is probable and plausible view. Hence, no interference is warranted.

25.Insofar as Claim No.6 is concerned, it pertains to payments for other works done not covered by the agreement. The Tribunal has rejected this claim on the ground that till the final bill was submitted, the claimant did not even make any claim under this head.

26.Clause 43(1) of GCC provides that the contractor shall prepare and furnish the engineers once in every month an account giving full and detailed particulars of all claims for any additional expenses to which the contractor may consider himself entitled to and all the extra and additional works ordered by the engineer. Since this condition was not complied with, this claim has been

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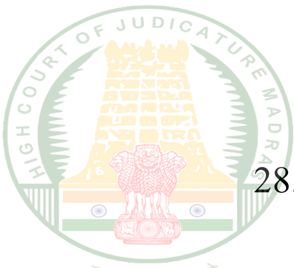
rejected. The view taken by the Tribunal is a possible and plausible view and just because another view is possible for this Court, that is not a ground to interfere under Section 34 of the Act.

27.Insofar as the Claim No.7 is concerned, it deals with compensation for idle labour. The Tribunal has rendered a finding that since compensation has been granted for Claim Nos.1 and 5, no separate compensation can be granted for idle labour. Under this claim, the Tribunal ignored documentary evidence on variation and prolongation which resulted in the machinery and labour being kept idle due to respondent's failure to issue drawings. This Court must only examine as to whether ignoring such evidence had any impact on the final conclusion arrived at by the Tribunal. Claim No.1 pertained to escalation cost and Claim No.5 pertained to loss of profits and overheads. The Tribunal felt that since compensation is given under these heads, no separate compensation is required under this head. This view taken by the Tribunal is a plausible view which does not require the interference of this Court.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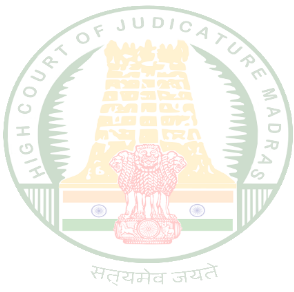
28.Insofar as the findings rendered by the Tribunal for Claim Nos.8 - 13, this Court finds that the reasoning given by the Tribunal does not suffer from any perversity and the compensation that was fixed under Claim Nos.8, 9, 11 and 12 are reasonable. Therefore, the same does not warrant the interference of this Court.

29.The upshot of the above discussion is that except Claim Nos.1, 2 and 3 where this Court has interfered with the award passed by the Arbitral Tribunal, the findings rendered with respect to the other claims are hereby sustained.

30.The next issue is as to whether the invalid portion of the award is severable from the valid portion of the award and the award can be modified. Useful reference can be made to the judgment of the Apex Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd*** reported in **(2025) 7 SCC 1**.

> ***87.*** *Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft*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Technologies Ltd., 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

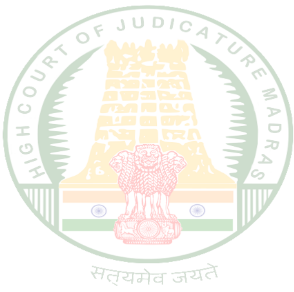
***87.1.** When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in **Part II** of our **Analysis**;*

***87.2.** By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in **Parts IV** and **V** of our **Analysis**;*

87.3. Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

87.4. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.

"5. Extent of judicial intervention.-Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.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31. Form and contents of arbitral award.-(1) An arbitral award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the Arbitral Tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

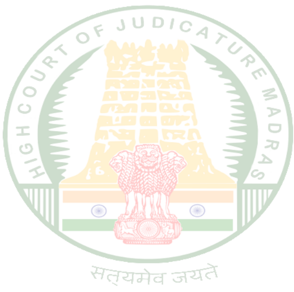
(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under Section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The Arbitral Tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral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award.

(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.-The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).

(8) The costs of an arbitration shall be fixed by the Arbitral Tribunal in accordance with Section 31-A.

31.The interference into Claim Nos.1, 2 and 3 are certainly a severable part and the award passed by the Arbitral Tribunal can be modified insofar as Claim Nos.1, 2 and 3 are concerned.

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32.In the light of the above findings, insofar Claim No.1 is concerned, the entire compensation sought for by the claimant with respect to increase of 30% of value of work done during the extended period for the quantum of work done during the extended period is granted. Accordingly, compensation of Rs.1,22,12,625/- has to be paid by the Southern Railways to the claimant under this head.

33.Insofar as Claim No.2 is concerned, for payment of additional quantity of coffer dam arrangements made, the claimant is entitled to be paid a total compensation of Rs.96,95,000/- as claimed by the claimant.

34.Insofar as Claim No.3 is concerned, for payment towards removal of station building works, the claimant is entitled to be paid a total compensation of Rs.8,00,000/- as claimed by the claimant.

35.In the result, OP.No.60 of 2018, filed by the Southern Railways is dismissed. Arb.OP(Com.Div.).No.77 of 2021, filed by the claimant is partly allowed and the decision arrived at by the Tribunal insofar as Claim Nos.1, 2 and 3 are concerned stands modified and there shall be a direction to the Southern Railways to pay a compensation of Rs.1,22,12,625/- for Claim No.1, a compensation of Rs.96,95,000/- for Claim No.2 and a compensation of Rs.8,00,000/- for Claim No.3 and it shall be paid along with interest at the rate of 18% p.a., from the date of filing of the petition i.e., from 10.8.2021 till the date of actual payment. These amounts shall be paid by the Southern Railways to the Claimant within a period of eight (8) weeks from the date of receipt of the order with interest. No costs.

23-09-2025

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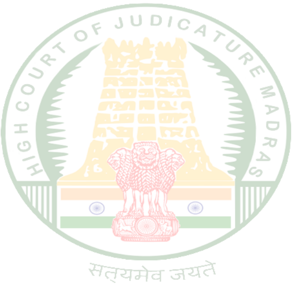
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To

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2.Mr.S.Balachandran
Chief Electrical Engineer, Delhi Metro
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3.Mr.A.K.Sinha
Chief Palnning and Development
Engineer, Chennai-600 003.

4.Mr.K.Govindasai Babu
Deputy Financial Adviser and Chief
Accounts Officer, Headquarters Office,
Southern Railway, Chennai-600 003.

5.The Chief Engineer, Mtp (railways)
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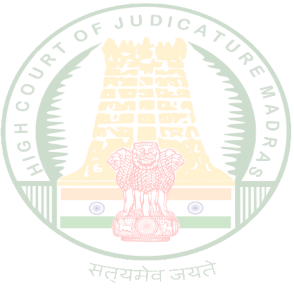

N.ANAND VENKATESH J.

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OP No. 60 of 2018
AND
ARB O.P(COM.DIV.) NO. 77 OF 2021

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