In the High Court of Judicature at Madras

Reserved on	Delivered on:
17.12.2025	**02.1.2026**

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.134 of 2022

Mr.K.Satyanarayana Raju,
M/s.Om Spun Pipes & Concrete
Works, B-43, Sterling Ganges,
Kattupakkam, Chennai-58. ...Petitioner

Vs

The Union of India, rep.by its
Divisional Railway Manager/
Works, Southern Railways,
Park Town, Chennai-3. ...Respondent

PETITION under Section 34(2)(a)(v) and (b)(ii) of the Arbitration and Conciliation Act, 1996 praying to set aside the award passed by the Arbitral Tribunal dated 08.2.2021 and to direct the respondent to pay the costs.

For Petitioner : Mr.A.Vikash

For Respondent : Mr.P.T.Ramkumar,
Standing Counsel

ORDER

The claimant before the Arbitral Tribunal is the petitioner before this Court and he has assailed the award dated 08.2.2021 passed by the Arbitral Tribunal.

2. Heard both.

3. The case of the petitioner is as follows:

(i) The respondent called for tenders involving the work for standardisation of cutting including pitching and construction of side drain and the work was awarded on 29.12.2006 by issuing a letter of acceptance.

(ii) Disputes arose between the parties and an Arbitral Tribunal was constituted on 21.12.2012. At that point of time, even though the petitioner had raised four claims, the respondent referred only one claim in the terms of reference and issued a letter dated 04.2.2013 to the effect that the other three claims were excepted matters and could not be included in the arbitration proceedings. In the meantime, the petitioner wrote a letter dated 16.1.2013 to the General Manager of the respondent to refer all the claims made by the petitioner. The

communication made by the petitioner to the Arbitral Tribunal also did not evoke any response.

(iii) Under such circumstances, the petitioner filed O.P.No.832 of 2014 before this Court seeking to appoint an arbitral tribunal to decide all the claims of the petitioner and in that, an order was passed on 28.4.2015 with a direction to refer all the claims to the same Arbitral Tribunal, which has already been constituted and it was further made clear that the Arbitral Tribunal would deal with the issue of maintainability of those claims, which were brought within the excepted matters by the respondent.

(iv) Pursuant to that, the respondent issued an addendum dated 26.11.2015 following the said order passed by this Court and referring all the claims of the petitioner to the Arbitral Tribunal for adjudication.

(v) After the said addendum was issued, there was a change in the panel of Arbitrators and on 15.3.2016, the petitioner made a communication to the Arbitral Tribunal to commence the proceedings and also to inspect the work site to ascertain the real position while deciding the disputes between the parties.

(vi) Even thereafter, there was absolutely no response from the Arbitral Tribunal and only on 21.3.2018, a communication was received from the respondent intimating that there was a change in the constitution of of the Arbitral Tribunal and a new co-arbitrator has been appointed. The petitioner had also taken a stand that from 26.11.2015 to 25.2.2020, almost for a period of more than four years, no proceedings were held before the Arbitral Tribunal. Thus, the dispute, which started in the year 2012, did not see any progress till the year 2020. Ultimately, on 25.2.2020, the hearing commenced before the Arbitral Tribunal. The next hearing was conducted on 22.12.2020 and this was the only physical hearing that took place.

(vii) In the meantime, before the Arbitral Tribunal, the petitioner filed the claim statement on 20.2.2020. Later, the respondent filed a counter containing counter claims also. Two hearing were conducted through online mode on 05.1.2021 and 21.1.2021. Thereafter, the petitioner filed O.P.No.174 of 2021 before this Court for termination of the mandate of the Arbitral Tribunal under Section 14 of the Act, on 10.2.2021. When O.P.No.174 of 2021 came up for hearing on 18.3.2021, it was informed to this Court that the Arbitral Tribunal already passed an award on 08.2.2021 itself and therefore,

O.P.No.174 of 2021 was closed as infructuous.

(viii) The petitioner thereafter issued two legal notices dated 17.6.2021 and 15.7.2021 to the Arbitrators, who formed part of the Arbitral Tribunal, seeking to send a signed original copy of the award. On receipt of the said legal notices, a copy of the impugned award was furnished to the petitioner under a covering letter dated 23.7.2021. Pursuant to the same, the present original petition came to be filed before this Court.

(ix) By the impugned award, though the petitioner made four claims before the Arbitral Tribunal, the first three claims came to be rejected. Based on the stand taken by the respondent, the earnest money deposit for a value of Rs.2,07,300/-, the performance bank guarantee for an amount of Rs.7,00,212/-, the security deposit for a sum of Rs.4,92,912/- and a further sum of Rs.3,43,740/- towards additional works done, were allowed and the amounts were directed to be paid with interest at the rate of 8% per annum in case the amount was not paid within 60 days from the date of receipt of the copy of the award.

(x) Further, the counter claim made by the respondent for forfeiture of the earnest money deposit and the security deposit came

to be rejected. Challenging the award passed by the Arbitral Tribunal, the petitioner is before this Court.

4. The main focus of the submissions on the side of the petitioner was on the issue of the enormous delay in conducting the arbitration proceedings and passing the final award. According to the learned counsel for the petitioner, the delay, by itself, vitiates the entire proceedings and as a result, the claim made by the petitioner towards the additional works, which were available at the site, was not even able to be inspected by the Arbitral Tribunal due to lapse of more than 10 years. Hence, it was contended that the award is liable to be set aside on this ground alone.

5. At the outset, this Court will focus on the above issue that has been raised on the side of the petitioner. The finding on this issue will determine as to whether this Court has to go into the other issues touching upon the rejection of three claims made by the petitioner.

6. On the ground of delay in passing the award, it will be relevant to take note of the judgment in ***Lancor Holdings Ltd. Vs.***

Prem Kumar Menon [reported in 2025 SCC OnLine SC 2319], in which, the Hon'ble Apex Court was dealing with the specific issue as to the effect of undue and unexplained delay in the pronouncement of an arbitral award and how far it would vitiate its validity.

7. The learned counsel for the petitioner, by relying upon the said judgment of the Hon'ble Apex Court, submitted that the ratio in the said judgment will apply to the facts of the present case and that the award passed by the Arbitral Tribunal is liable to be interfered on the sole ground of delay.

8. The relevant portions in the decision of the Hon'ble Supreme Court in ***Lancor Holdings Ltd.***, read thus:

> *"**18.** Similarly, on 'Duty to act promptly' in Chapter 5, titled 'Powers, Duties, and Jurisdiction of an Arbitral Tribunal', Redfern and Hunter – Redfern and Hunter on International Arbitration, 7th Edition (Paras 5.74 and 5.75) states thus:*
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> *'An arbitral tribunal has an obvious moral obligation to carry out its task with due diligence. Justice delayed is justice denied. Some systems of law endeavour to ensure that an arbitration is carried out with reasonable speed by setting a time*

limit within which an arbitral tribunal must make its award. The time limit fixed is sometimes as short as six months (as in the ICC rules), although generally it may be extended by consent of the parties, or at the initiative of the institution or the tribunal. If an award is not made within the time allowed, the authority of the arbitral tribunal may be regarded as having terminated, with the risk that any award will be null and void. Some systems of law provide that an arbitrator who fails to proceed with reasonable speed in conducting the arbitration and making his or her award may be removed by a competent court, and deprived of any entitlement to remuneration. The Model Law provides that the mandate of an arbitrator terminates if he or she 'fails to act without undue delay'.

The learned authors pointed out that though the above sanctions may act as a spur to the indolent arbitrator, they do not compensate a party who suffered financial loss as a result of delay in the conduct of the arbitration. It was noted that delay in the conduct of an arbitration may have serious financial consequences as awards of interest rarely compensate a party for the financial loss suffered in the interim. It was pointed out that faced with increasing delays in the conduct of arbitrations, major institutions revised their rules to improve the speed and efficiency of arbitrations.

Though the above observations were made in the context of international arbitrations, the same principle would hold good for domestic arbitrations also. Therefore, when the Arbitrator presently took years together to deliver the Award, the least that the parties would expect is a quietus being given to their disputes instead of being relegated to another round of arbitration/litigation. The Arbitrator, therefore, failed to live up to that minimal expectation reposed in him by law and by the parties themselves.

19. *However, the undeniable fact remains that Section 34 of the Act of 1996 does not postulate delay in the delivery of an arbitral award as a ground, in itself, to set it aside. There is no gainsaying the fact that inordinate delay in the pronouncement of an arbitral award has several deleterious effects. Passage of time invariably debilitates frail human memory and it would be well-nigh impossible for an arbitrator to have total recall of the oral evidence, if any, adduced by witnesses; and the submissions and arguments advanced by the parties or their learned counsel. Even if detailed notes were made by the arbitrator during the process, they would be a poor substitute to what is fresh in the mind immediately after conclusion of the hearings in the case. More importantly, such delay, if unexplained, would give rise to unnecessary and wholly avoidable*

speculation and suspicion in the minds of the parties. Absolute faith and trust in the system is essential to make it work the way it is intended to. Once that belief is shaken, it would lead to a breakdown of that system itself. A situation that is to be eschewed at all costs.

20. *That being said, we must also recognize that, in the usual course, long delay in the passing of arbitral awards is not the norm. However, when an instance of undue delay in the delivery of an arbitral award occasionally crops up, given the weighty preponderance of judicial thought on the issue with which we are in respectful agreement, we are of the considered opinion that each case would have to be examined on its own individual facts to ascertain whether the delay was of such import and impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. We are also conscious of the fact that there must be a balance between the pace of the arbitration, culminating in an arbitral award, and the satisfactory meaningful content thereof. In this regard, in his seminal article, titled 'Arbitrators and Accuracy' Journal of International Dispute Settlement (February, 2010), Professor William W Park says thus:*

'Although good case management values speed and economy, it does so with respect for the parties' interest in correct decisions. The parties have no less interest in correct decisions than in efficient proceedings. An arbitrator who makes the effort to listen before deciding will enhance both the prospect of accuracy and satisfaction of the litigants' taste for fairness. In the long run, little satisfaction will come from awards that are quick and cheap at the price of being systematically wrong.'

Therefore, keeping in mind these competing interests, it is only in cases where the negative effect of the delay in the delivery of an arbitral award is explicit and adversely reflects on the findings in the said award, that such delay, and more so, if it remains unexplained, can be construed to be a factor to set aside that award. Once all the requirements, referred to supra, are fulfilled in a given case and the arbitral award therein is clearly riddled with the damaging effects of the delay, it can be construed to be in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996, or Section 34(2A) thereof as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to laying a challenge to a delayed and

tainted award under Section 34 thereof. Both provisions would operate independently as the latter is not dependent on the former. This being the legal position, we would have to examine whether the present arbitral award suffers from any such malady owing to the delay, whereby its very validity would stand vitiated. Further, we would also have to see whether the award is liable to be set aside for falling short, as it did not resolve the disputes between the parties but their positions stood altered irreversibly owing to the interim orders passed during the arbitral proceedings. Lastly, if the award is liable to be set aside, the relief to be granted."

9. A careful reading of the above dictum brings out a ratio that whenever there is an undue delay in delivery of an arbitral award, that, by itself, is not a ground to interfere with the award and each case must be examined on its own individual facts to ascertain as to whether the delay was of such import and impact on the final decision of the Arbitral Tribunal, whereby that award would stand vitiated due to the lapses committed by the Arbitral Tribunal owing to such delay, that it is only in cases where the negative effect of the delay in the delivery of an arbitral award is explicit and adversely reflects on the

findings in the said award, that if such delay remains unexplained, it can be construed to be a factor to set aside that award and that in such a case, the award can be construed to be one in conflict with the public policy of India and is vitiated by patent illegality attracting Section 34(2)(b)(ii) and Section 34(2A) of the Act.

10. In the case in hand, the letter of acceptance was issued by the respondent on 29.12.2006 and the work was awarded for standardization of cutting including pitching and construction of side drain in SSE/P.Way/PUT Section. A period of nine months was fixed for completion of the work i.e by 28.9.2007. But, the work was not completed within the prescribed time and extensions were granted. On 24.9.2007, the parties entered into a contract. It is also seen from the records that certain additional items of work were done by the petitioner and those went on till November 2011.

11. The petitioner issued a trigger notice on 17.10.2011 by referring four claims to the Arbitral Tribunal. It was followed up by two more letters on the side of the petitioner on 10.11.2011 and 24.3.2012. A reply was received from the respondent on 18.5.2012

suggesting the panel arbitrators. The petitioner had chosen the names of the arbitrators and the nomination letter dated 27.8.2012 was issued constituting the Arbitral Tribunal.

12. Even though the petitioner made four claims, the terms of reference were issued by the respondent on 21.12.2012 by referring to only one claim and also the counter claim made by the respondent. The respondent took a stand that claim Nos.2, 3 and 4 made by the petitioner were excepted matters and that they could not be referred to the Arbitral Tribunal. In the meantime, two co-arbitrators were changed on 25.11.2013.

13. Since all the claims were not referred to the Arbitral Tribunal, the petitioner approached this Court by filing O.P.No.832 of 2014 and this Court, by order dated 28.4.2015, directed the Arbitral Tribunal to examine the issue of maintainability of all the four claims. After the said order was passed, the petitioner, by letter dated 08.9.2015, informed the respondent to take immediate action and the respondent, by addendum dated 26.11.2015, included all the claims of the petitioner before the Arbitral Tribunal. But, there was no progress

before the Arbitral Tribunal and hence, on 15.3.2016, the petitioner sent a letter requesting the Arbitral Tribunal to conduct the proceedings and also to inspect the work site to demonstrate the real position, which would enable the Arbitral Tribunal to effectively deal with the claim.

14. Once again, there was a lull for nearly two years and on 21.3.2018, the respondent sent a communication for the change of co-arbitrators. The Arbitral Tribunal, for the first time on 07.2.2020, sent a communication to the petitioner stating that after the issuance of the addendum by the respondent, the petitioner did not file the claim statement and therefore, the Arbitral Tribunal was not able to proceed further. Accordingly, the petitioner was informed that the Arbitral Tribunal proposed to hold the hearing on 25.2.2020. On receipt this notice, the petitioner filed the claim statement on 20.2.2020. The pleadings were complete by December 2020 and the proceedings were conducted by the Arbitral Tribunal through online mode since the covid-19 pandemic had set in by then.

15. The petitioner, by letter dated 25.1.2021, informed the Arbitral Tribunal that they wanted the proceedings to be terminated and that the petitioner also took steps to file a petition for termination of the mandate of the Arbitral Tribunal. By that time the petition came up for hearing before this Court, the award was passed by the Arbitral Tribunal on 08.2.2021.

16. All the above dates and events will have to be necessarily considered to see if the delay in conducting the proceedings and passing the final award had a bearing on the final award passed and whether it adversely reflected on the findings rendered by the Arbitral Tribunal. As already noted, this test has to be applied on a case to case basis to ascertain as to whether the delay was of such import and impact on the final decision rendered by the Arbitral Tribunal. As could be seen from the above dates and events, the proceedings, which commenced during October 2011, after issuance of the trigger notice under Section 21 of the Act, culminated into a final award only on 08.2.2021.

17. In so far as the delay is concerned, the observations made by the Arbitral Tribunal will have a lot of significance. For proper appreciation, the same are extracted as hereunder:

> *"1. After a lapse of more than ten years after the completion of the work, the quantum of work shown by the claimant can be assessed based only on records available with the claimant or respondent in this regard. The claimant has produced the copies of M-Books in this connection. The exact details regarding earth work lead and stacking are not available as per records either with the claimant or the respondent. The only source of information available for the Tribunal are the available records maintained by claimant and respondent. There is no room for any guess work in this regard since it involves payment of public money.*
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> *2. The decision for not conducting a site visit was taken purely by the Tribunal and not based on any objections by the respondent. Such a decision was taken because a visit to the site after more than ten years after the completion of the work would not reveal any details connected with the disputes under discussion by the Tribunal.*
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> *3. The Tribunal has heard both the claimant and respondent in matters pertaining to the scope*

of the arbitration. However, as desired by the claimant it is not possible and fair on the part of the Tribunal to concede without valid reason to the request made either by the claimant or the respondent.

4. Regarding the delay in conduct of the arbitration it is to be noted that after the constitution of the Arbitral Tribunal in 12/2012, the claimant had not attended three sittings of the Tribunal possibly due to the fact that all the claims raised by the claimant were not included in the TOR. It was only after the issue of the revised TOR during 11/2015 that the claimant started attending arbitral sittings. It is also pertinent to note that the claimant could not be contacted for a major duration of time between 2015 and 2020, in spite of repeated attempts to reach him at the last available phone numbers. It can be clearly seen that the Tribunal had made the utmost sincere efforts to finalise the Award at the earliest possible time."

18. Before the Arbitral Tribunal, the petitioner made the following four claims:

"Claim No.1 - Idling of labour and machinery – Rs.2,63,65,200.00;

Claim No.2 - Additional items of works not included in the variation statement and not paid – Rs.3,68,58,590.00;

Claim No.3 - Loss of turn over for not arranging due payment and claimed @ 15% per annum – Rs.2,34,97,332.00; and

Claim No.4 - Interest on the above claims @ 15% per annum till payment – not quantified."

19. The above observations made by the Arbitral Tribunal would show that had the proceedings gone ahead immediately, it would have had the advantage of making a site inspection and collecting the relevant records, which, over a period of time, were not available and that the Arbitral Tribunal certainly faced hardship due to lapse of more than ten years. The Arbitral Tribunal had also acknowledged the fact that there was no progress during the period between 2015 and 2020 and the reason assigned by the Arbitral Tribunal was that the petitioner was not able to be contacted.

20. The above finding rendered by the Arbitral Tribunal is unsustainable for the simple reason that the petitioner, after the order was passed by this Court in O.P.No.832 of 2014 on 28.4.2015 and

after the addendum was issued by the respondent on 26.11.2015, sent a communication on 15.3.2016 to the Arbitral Tribunal to make a site inspection before conducting the arbitration proceedings. In fact, the letter that was addressed by the respondent on 21.3.2018 on the change of co-arbitrator was also received by the petitioner in the same address. Therefore, the finding of the Arbitral Tribunal to the effect that the petitioner was not able to be contacted for the period from 2015 to 2020 is far from satisfactory and it runs contrary to the materials available on record. It is the petitioner, who was making the claims and therefore, there was no need for the petitioner to protract the proceedings and evade notices.

21. The claim statement itself was not able to be filed by the petitioner till 2020. It was filed only after the Arbitral Tribunal issued a notice dated 07.2.2020 to the petitioner fixing the date of hearing as 25.2.2020. If this notice was able to be served on the petitioner, it defies common sense as to why the earlier notices were not able to be served on the petitioner in the same address for the period from 2015 to 2020.

22. The Arbitral Tribunal, while dealing with claim Nos.1 and 2, rejected them and one of the main reasons assigned is the lapse of ten years, as a result of which, the Arbitral Tribunal was not in a position to make a site inspection and to get the relevant records. Therefore, claim Nos.1 and 2 were decided with the limited records available.

23. If the Arbitral Tribunal had decided the claims at the earliest point of time, at least after the order was passed by this Court in the year 2015 in O.P.No.832 of 2014, the Arbitral Tribunal would have had the advantage of the relevant records and also could have conducted the site inspection for proper appreciation of the claims made by the petitioner. Therefore, the lapse of more than ten years certainly had an adverse effect on the findings of the Arbitral Tribunal. The Arbitral Tribunal, which was reconstituted in the year 2020, hardly conducted three hearings and all these happened during the covid-19 pandemic period and the award was passed on 08.2.2021. Therefore, the unexplained exorbitant delay in conducting the proceedings is not attributable to the petitioner and it is purely attributable only to the respondent, which thought it fit to keep the claims in limbo for more than ten years.

24. The whole object of resorting to arbitration proceedings is to speed up the process of adjudication and to grant relief to the party, which, otherwise, will be forced to spend years together before a civil court. Unfortunately, in the case in hand, more than ten years had lapsed before the impugned final award was passed by the Arbitral Tribunal and the whole purpose of having an alternative dispute resolution mechanism has been defeated. This delay in the conduct of the arbitration proceedings seriously affects the rights of the petitioner and at one stage, the petitioner, out of sheer frustration, sought for termination of the mandate of the Arbitral Tribunal. However, the award came to be passed by then.

25. In the light of the above discussions, this Court holds that the exorbitant unexplained delay in conducting the arbitration proceedings and passing the impugned final award has certainly impacted the findings of the Arbitral Tribunal adversely and as a consequence, vitiated the final decision of the Arbitral Tribunal. In view of the same, such an award has to be construed to be in conflict with the Public Policy of India thereby attracting Section 34(2)(b)(ii) of the Act and is also vitiated by patent illegality under Section 34(2A) of the

Act.

26. In the result, the impugned award passed by the Arbitral Tribunal dated 08.2.2021 is hereby set aside and the above original petition is allowed ***with costs of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only)*** payable by the respondent to the petitioner. It is left open to the petitioner to take immediate steps to reconstitute an arbitral tribunal by filing a proper petition before this Court to enable the claims made by the petitioner to be referred to the newly constituted arbitral tribunal.

02.1.2026

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N.ANAND VENKATESH,J

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Arb.O.P.(Com.Div.) No.134 of 2022

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