

**(2025) 12 MAD CK 0027**

**Madras HC**

**Case No:** Arbitration Original Petition (Com.Div.) No. 137 Of 2021

M/S.Chendur Associates

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** Dec. 4, 2025

**Acts Referred:**

- Constitution Of India, 1950-Article 14
- Arbitration And Conciliation Act, 1996-Section 31(7)(b), 34, 34(2A)
- Indian Contract Act, 1872-Section 55, 73

**Hon'ble Judges:** N. Anand Venkatesh, J

**Bench:** Single Bench

**Advocate:** P.J.Sri Ganesh, P.T.Ramkumar

**Final Decision:** Allowed

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**Judgement**

N.Anand Venkatesh, J

1. The petitioner is the claimant and the petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] challenging the award passed by the Arbitral Tribunal dated 14.10.2020 insofar as the rejection of claim Nos.9 to 12, 14 and 15 made by the petitioner.

2. The case of the petitioner is that the Southern Railway called for bids for the proposed new BG Track between Tindivanam and Nagari (via) Walajah Road - Proposed Construction of Major Bridges, Foundations, Substructures & Superstructures to the following spans:

a) Clear span of 3x18.30m PSC 'U' TYPE Girder at CH:34590 (SUKA RIVER)

b) Clear span of 4x12.20m PSC 'U' TYPE Girder at CH:35981

c) Clear span of 2x12.20m PSC 'I' TYPE Girder at CH:35169.62 between TELLAR and VANDAVASI

d) Clear span of 2x12.20m PSC 'I' girder at CH:60000.41 between CHEYYAR and IRUNGUR

e) Clear span of 3x12.20m PSC 'I' girder at CH:85548.78

f) Clear span of 2x12.20m PSC 'I' girder at CH:105614.08 between THIMIRI and ARCOT in TINDIVANAM-NAGARI Section.

3. The petitioner participated in the bid and was declared as a successful bidder and Letter of Acceptance [for brevity 'LOA'] dated 22.03.2012 was issued by the respondent and the contract was awarded to the petitioner for a contract value of Rs.6,85,37,773/-. Thereafter, an agreement was entered into between the parties on 12.07.2012. Subsequently, the contract value was also revised to Rs.7,32,87,528/- by way of a rider agreement dated 17.11.2016.

4. The scheduled period of contract was for 11 months from the date of issuance of LOA i.e. by 21.02.2013, but it was extended for nearly 67 months until it was foreclosed on 30.08.2018.

5. The specific case of the petitioner is that there were major impediments/ hindrances faced by them, which prolonged the project due to

(a) Delay in approving designs & drawings

(b) Delay due to variations in original work

(c) Delay in furnishing centre line and temporary bench mark (d) Delay in clearing hindrances

(e) Delay in handing over work site

(f) Delay due to entrustment of new work.

6. The further case of the petitioner that delay in execution of the project was solely attributable to the Southern Railway and the petitioner has to face extreme hindrance and bottlenecks at various stages. Hence, the petitioner requested the Railways to foreclose the contract owing to indefinite extension of period and finally, on 03.09.2018, the contract was foreclosed. The work experience certificate was issued on 19.09.2018. However, no payment was made towards final bill and the monies retained towards Bank Guarantee, security deposit etc. was also not released. In view of the same, the petitioner, vide its letter dated 25.10.2019 invoked the arbitration clause and an Arbitral Tribunal was also constituted.

7. The petitioner made various claims before the Arbitral Tribunal and the same was resisted by the Southern Railway. Ultimately, after considering the facts and circumstances of the case and the various clauses in the agreement and on appreciation of evidence, the following award came to be passed by the Arbitral Tribunal on 14.10.2020:

Claims	Claim Particulars	Claim Amount (in Rs.)	Award Amount (in Rs.)
Claim 4	Vitiation Amount	6,50,000/-	The respondent would pay the difference amount if the final amount is more than Rs.6,50,000/-
Claim 5	GST	4,78,282/-	The respondent was directed to pay the GST amount if the Claimant submits the proof of payment
Claim 6	Release of PBG	34,27,000/-	Allowed with various riders
Claim 7 & 8	Refund of EMD and SD	4,87,500/- (EMD) 31,55,063/- (SD)	Allowed with various Riders
Claim 9	Overhead Charges	2,24,07,758/-	Rejected
Claim 10	Escalation Cost	2,10,38,340/-	Rejected
Claim 11	Loss of Profit owing to prolongation and work that could not be done	83,62,364/-	Rejected
Claim 12	Loss of Profit due to Turnover Loss	4,46,38,768/-	Rejected

Claim 13	Idling Charges	Given up by petitioner	Nil
Claim 14	Interest	@18% from the Date of Award till realization	Nil
Claim 15	Cost of Arbitration		

8. Insofar claim Nos.1,2,4 & 5 are concerned, these claims were awarded in favour of the petitioner through an interim award dated 20.07.2020. All the other claims were considered and a final award was passed on 14.10.2020 and this petition has been filed insofar as the rejection of claims made towards claim Nos.9 to 12, 14 and 15.

9. This Court carefully considered the submissions made on either side and the materials available on record. This Court carefully went through the award passed by the Arbitral Tribunal.

10. Claim No.9 pertains to compensation towards overhead charges during the extended period of contract. Claim No.10 pertains to escalation cost at the rate of 10% p.a. for the work done beyond the original currency period. Claim No.11 pertains to loss of profit viz., loss sustained during the contract period due to prolongation of contract and loss of profit and for work not done. Claim No.12 pertains to loss of profit due to turnover loss. Insofar Claim No.14 is concerned, it pertains to payment of interest and the petitioner is aggrieved by the fact that the Tribunal failed to grant any post-award interest in violation of Section 31(7)(b) of the Act. Claim No.15 pertains to cost of arbitration wherein the Tribunal had directed both parties to share the cost equally.

11. Learned counsel for petitioner submitted that all the above claims were rejected by the Arbitral Tribunal solely on the ground that Clause 17A(ii) of the General Conditions of Contract [for brevity 'GCC'] provides only for extension of time on the request of the claimant, however, no compensation can be paid to the contractor. Learned counsel submitted that such a clause contained in the GCC is in violation of public policy and even if such a clause is contained in the GCC, it will not bind the Arbitral Tribunal from fixing the compensation on all those claims, which

had arisen due to unreasonable extension of time made by the Southern Railways and where the delay is solely attributable to the Southern Railways.

12. Learned counsel in order to substantiate his submission relied upon the judgment of the Apex Court in Asian Techs Ltd. v. Union of India [(2009) 10 SCC 354]. Learned counsel also relied upon the judgment of the Division Bench of this Court in K.S.Baburaj v. Union of India [O.S.A.Nos.388 of 2011 & 43 of 2012 dated 20.10.2023] and also the judgment of the Delhi High Court in MBL Infrastructures Ltd. v. Delhi Metro Rail Corporation [2023 SCC OnLine Del 8044].

13. Per contra, learned Standing Counsel appearing on behalf of Southern Railway submitted that the petitioner was granted extensions on seven occasions from 21.02.2018 to 30.08.2018 and as per Clause 17A(ii) of GCC, no other compensation is payable for the works carried forward to the extended period of time. Learned counsel further submitted that the Arbitral Tribunal has rightly rejected the claims made by the petitioner and that pursuant to the final award passed by the Arbitral Tribunal, the Bank Guarantee, Earnest Money Deposit and security deposit were refunded to the petitioner. Apart from that, a total sum of Rs.33,00,751/- was settled in favour of the petitioner. Hence, learned counsel sought for dismissal of this petition.

14. On carefully going through the materials available on record, particularly, Ex.R2, which is letter dated 03.09.2019 issued by the Southern Railways foreclosing the contract, it is seen that the Southern Railways was not able to acquire the lands on time and therefore, the entire work of completing the bridge was not able to be completed. It is also mentioned in the said letter that land acquisition will take some more time and that the bridges can be executed only after acquiring the land for Tindivanam-Nagari project. Accordingly, the agreement has been foreclosed. It is thus clear that delay was mainly attributable against the Southern Railways.

15. The Arbitral Tribunal relied upon Clause 17-A(ii) of GCC and has rendered a finding that no compensation can be granted to the petitioner for the extended period of contract. For proper appreciation, Clause 17-A(ii) of GCC is extracted hereunder:

*“(ii) If in the opinion of the Engineer the progress of work has any time been delayed by any act or neglect of Railway’s employees or by other contractor employed by the Railway under sub-clause (4) of clause 20 of these conditions or in executing the work not forming part of the contract but on which contractor’s performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighboring owners or public authority arising otherwise through the Contractor’s own default etc. or by the delay authorized by the Engineer pending arbitration or in consequences of the contractor not having received in due time necessary instructions from the Railway for which he shall have specially applied in writing to the Engineer or his authorized representative then upon happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer within 15 days of such happening but shall nevertheless made constantly his best endeavours to bring down or make good the delay and shall do all that may be reasonably required of him to the satisfaction of the Engineer to proceed with the works. The contractor may also indicate the period for which the work is likely to be delayed and shall be bound to ask for necessary extension of time. The*

*Engineer on receipt of such request from the contractor shall consider the same and shall grant such extension of time as in his opinion is reasonable having regard to the nature and period of delay and the type and quantum of work affected thereby. No other compensation shall be payable for works so carried forward to the extended period of time, the same rates, terms and conditions of contract being applicable as if such extended period of time was originally provided in the original contract itself.”*

16. The above clause comes into operation wherever delay occurs on the part of Railways. This clause provides that no compensation is payable for the works carried forward to the extended period of time.

17. The scope of such a clause was dealt with by the Division Bench of this Court in the case of Baburaj [supra] and the relevant portions are extracted hereunder:

*“31. Despite such clauses, the Division Bench concluded that the Arbitrator is entitled to award damages, after referring to the judgment of the Hon’ble Supreme Court in Balmer Lawrie & Co. Ltd. Vs. Partha Sarathi Sen Roy reported in 2013 (8) SCC 345, wherein the Hon’ble Supreme Court had held that since actions of public bodies bear public character and contain an element of public interest, it is necessary to strike down unconscionable, unfair and unreasonable clauses in the contract that has been entered into by the parties, who do not enjoy equal bargaining power, as violative of the Article 14 of the Constitution of India.*

*32. Similar question arose before the three Judge Bench of the Hon’ble Supreme Court in Assam State Electricity Board and others Vs. Buildworth Private Limited reported in (2017) 8 SCC 146, wherein, the Court after referring to the judgment of P.M.Paul Vs. Union of India, reported in 1989 Supp (1) SCC 368, concluded that escalation is a normal routine incident arising out of gap of time and the same will have to be granted even if there is a prohibition. The Bench also referred to the judgment in K.N.Sathyapalan Vs. State of Kerala referred to supra and State of U.P. Vs. Patel Engineering Co. Ltd., reported in (2004) 10 SCC 566.*

*33. Mr.M.K.Kabir, learned Senior Counsel would also point out that the delay on the part of the Railways in terminating the agreement also worked hardship to the contractors. The clauses of the contract, no doubt, particularly, clause 17(iii) states that the delay on the part of the Railways shall not affect or vitiate the contract or alter the character thereof or entitle the Contractor to damages or compensation therefor, but in any case, the Railways may grant such extension or extensions of the completion date as may be considered reasonable. However, as seen above it has been the consistent view of the Courts that a defaulting party cannot take advantage of its own wrong and deny the sufferer the damages. In fact in Balmer Lawrie & Co. Ltd. Vs. Partha Sarathi Sen Roy referred to supra, the Hon’ble Supreme Court had held that such unconscionable clauses will have to be read down or struck down as violative of Article 14 of the Constitution of India. No doubt, the Arbitrator is a creation of a contract between the parties and he is bound by the contract between the parties. But, as pointed out by the Delhi High court in Simplex Concrete Piles (India) Ltd., Vs. Union of India referred to supra, Section 55 and 73 are heart and soul of the Contract Act and rights available thereunder cannot be waived by the parties.”*

18. The above judgment of the Division Bench was confirmed by the Apex Court when the Special Leave Petition was dismissed on 09.08.2024.

19. Useful reference can also be made to the judgment of the Delhi High Court in MBL Infrastructures Ltd. [supra] and the relevant portions are extracted hereunder:

*"52. The Coordinate Bench of this court in the judgment of Ircon International Ltd. v. DMRC, 2023 SCC OnLine Del 6368 held as follows:*

*"15. Contractor's entire challenge to the impugned Award is premised on the ground of 'patent illegality' which has been explained in plethora of decisions lastly being Delhi Airport Metro Express (P) Ltd. v. DMRC<sup>1</sup>, wherein it was stated that:-*

*"29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*

*16. Through Claim No. 2, Contractor had claimed extra cost incurred due to prolongation of the project. As noted above, the Contract was delayed by 18 months for which, Contractor had sought four EOTs by way of four letters namely 17.02.2017, 12.10.2017, 26.12.2017 and 23.08.2018, which were granted by the DMRC.*

*17. Pertinently, DMRC granted EOT on all the four occasions without imposing any liquidated damages. Indisputably, the Contractor reserved its right to seek compensation only at the time of seeking third EOT vide its letter dated 26.12.2017, and in the earlier requests it did not claim any monetary compensation due to the extensions.*

*18. AT declined to compensate the Contractor for the remaining 12-month period holding that the Contractor had accepted EOT granted by DMRC without compensation and no right to claim the same was reserved by the Contractor, unlike the third EOT sought for the period 01.01.2018 to 30.06.2018. According to the Contractor, the AT committed a judicial error amounting to patent illegality in denying compensation on the ground that the Contractor had forgone its right to claim*

compensation for the extension sought on the other three occasions.

19. Contractor has referred to judgments in *K.N. Sathyapalan v. State of Kerala*<sup>2</sup>, *Asian Techs Ltd. v. Union of India*<sup>3</sup>, *Bharat Drilling v. State of Jharkhand*<sup>4</sup> and *Simplex Concrete Piles (India) Pvt. Ltd. v. Union of India*<sup>5</sup> to contend that even though Clause 4.4 of the Contract and Clauses 2.2 and 8.3 of GCC prohibit the payment of monetary compensation in the cases of EOT however, the Contractor could still claim compensation under Section 73 of the Contract Act, in the event of breach of contract-which the DMRC did by not handing over the sites to the Contractor by the promised time.

20. According to this Court, the Contractor is not required to go as far as to invoke Section 73 of the Contract Act and the aforesaid judgments to assail the award, since the AT has rather recognised the Contractor's right to claim compensation regardless of prohibitive nature of Clause 4.4 of the Contract and Clauses 2.2 and 8.3 of GCC by referring to the judgment in *Simplex Concrete Piles (Supra)*. AT's reluctance to award compensation stems from the Contractor's own waiver of the right to claim compensation, that happened in the first, second and fourth EOT sought by the Contractor, as opined by the AT. AT read the four extension letters sent by the Contractor and interpreted them to conclude that it was only the third one dated 26.12.2017, where the right to claim compensation was reserved. Therefore, according to the AT, out of 18 months of extension, only 6 months were eligible for compensation. The AT does return a finding of fact and interpretation of the contract clauses, in favour of the Contractor, to conclude that DMRC was responsible for delaying the progressive handing over of the sites to the Contractor.

21. The interpretation of the extension letters by AT, is very well within its judicial prerogative. It will be judicially inappropriate for this court sitting in this jurisdiction, to re-examine the evidence and re-interpret the same as per its own understanding. The interpretation adopted by the AT of the evidence is a plausible view and certainly not the kind that will call for any interference from this court."

54. In view of the aforesaid judgment, it is settled law that the learned Arbitral Tribunal can award damages when the clause of the contract contemplates that only extension of time can be given as remedy when there is a delay on the part of the employer. Hence, the act of awarding the damages to the aggrieved party does not amount to transgression from the terms of the contract."

20. It is clear from the above judgments that even when a clause in the agreement contemplates only extension of time when there is delay on the part of the employer and no compensation is payable, that does not tie the hands of the Arbitral Tribunal to award compensation for the damages suffered by the contractor. If the Railways is permitted to take advantage of its own wrong and they are permitted to take umbrage under the above clause, it will result in conflict with the most basic notions of justice. Therefore, if such a clause is contained in the GCC, that will not prevent the Arbitral Tribunal to determine the question of compensation sought towards various claims made by the petitioner on account of extended period of contract.



21. In view of the above discussion, this Court is inclined to interfere with the award passed by the Arbitral Tribunal insofar as the rejection of claims made in Claim Nos.9 to 12. To that extent, the award dated 14.10.2020 passed by the Arbitral Tribunal is set aside. It will be left open to the petitioner to initiate fresh proceedings and agitate the above claims in the manner known to law.

22. Insofar as the award of interest is concerned, the Arbitral Tribunal has taken note of Clause 64.5 of GCC which provides that no pendente lite interest can be granted. This finding is in line with the agreement entered into between the parties and it does not require the interference of this Court. Even insofar as the cost is concerned, this Court does not find the award to suffer from any perversity or patent illegality.

In the result, this petition stands allowed in the above terms.