

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

APPEAL FROM ORDER NO. 31 OF 2023

11TH MAY, 2023

BETWEEN:

Rameshwar Prasad Bhatt

....Appellant.

And

Superintendent Engineer, Construction Circle & others

....Respondents.

Counsel for the Appellant : Mr. Pavan Kumar Nath, learned counsel.

Counsel for the State : Ms. Mamta Bisht, learned Deputy Advocate General.

Counsel for the Respondent Nos.1 & 2 : Mr. B.S. Bisht, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The appellant has filed a supplementary-affidavit. Along with the supplementary-affidavit, the appellant has also placed on record the order dated 31.08.2019, passed by the learned Additional District Judge, Commercial, Dehradun in Misc. Case No.26/2019, whereby the application preferred by the appellant under Section 14 of the Limitation Act, has been allowed, and the learned Additional District Judge, Commercial, Dehradun held that the objections filed by the appellant, under Section 34 of the Arbitration and Conciliation Act (*for short 'the Act'*), were filed within limitation.

2. In the light of the aforesaid, we have heard learned counsel for the appellant on merits as well.

3. The submission of learned counsel for the appellant is that the Arbitral Tribunal had, while passing the impugned Award, constituted a Committee at the level of Superintending Engineer, Construction Circle, Gopeshwar, to be able to find out as to what is the final payment due, if any, to the contractor, i.e. the appellant *herein*, and the disposal and balance material. The English translation of the operative part of the award has been read down, and the same reads as follows:-

"Till date Departmental officers/ employees have not made final payment to the contractor for the contracted work done by him and has found Contractor guilty for not depositing the material amounting to Rs.3,56,919/- back to the branch godown, whereas, till date, the contractor has not been paid for the work done by him in the year 2007. The actual status of material shall only be clear when the final measurements of the work is recorded in the measurement book and final bill is presented. Therefore, it is in appropriate that no related action has been taken at final payment and disposal of balance material a committee should be constituted at the level of Superintendent Engineer, Construction Circle, Gopeshwar. In the present of Executive Engineer and Sri Rameshwar Prasad Bhatt Contractor the hundred percent of the project work done by the contractor should be measured and as per rules the balance payment should be made to the contractor within a month; and material should be adjusted as per the final bill together with the material consumption statement. If thereafter any material remains with the contractor, then at the expense of the department it should be deposit back to the godown of the branch. In case the balance material is not made available by the Contractor appropriate action as per the rule should be taken against him.

The copy of the aforesaid should be provided to both the parties."

4. The submission of learned counsel is that, since the *lis* was between the appellant on the one hand, and the Superintending Engineer on the other hand, the Superintending Engineer could not have been made judge in his own cause.

5. Learned counsel has also drawn our attention to the objections filed by the appellant under Section 34 of the Act. The objections raised by the appellant, insofar as they are worth noting, are in Paragraph Nos.10, 13 and 17. These paragraphs read as follows:-

"10. That in the Arbitral Award, despite all the evidences favouring the Applicant, the Applicant was held guilty and an award was passed that the Applicant should return the material amounting to Rs.3,56,919/-, which is against the law; and the award passed by the Arbitrator against the Applicant is liable to be quashed; and consequently, the revenue recovery against the applicant is liable to be cancelled.

13. That the cause of action, to file the Application has arisen due to the facts that despite all the evidences favouring the Applicant, the Applicant was asked to return the material amounting to Rs.3,56,919/- to the department; and as per the liberty given by the Hon'ble High Court to follow the due process of law; and notice U/s 34(5) of the Arbitration act sent by the Applicant to the opposite-party; and despite the fact that the notice was legally served upon the Opposite-party, the Opposite-party, even after completion of one month from the date of serving the notice, did not respond to that and that is still pending.

17. That the Applicant prays that Ld. Court for the following relief:

(a) That the Arbitral award passed by the Ld. Arbitration dated 09/04/2018 in which the Applicant was found guilty of Rs.3,56,919/- may be quashed; and consequently, the

revenue recovery proceeding initiated against the Applicant be cancelled.”

6. We have considered the submission of learned counsel for the appellant and do not find any merit in the same.

7. From the Arbitral Award, it appears that the parties did not produce the complete facts and figures with regard to the quantum of work done and the balance material available with the appellant-Contractor when the work was stopped by him, before the Arbitrator. The direction issued by the Arbitrator shows that a joint inspection was ordered by him with the participation of the Executive Engineer and the Contractor to measure all the works down by the appellant-Contractor, and the balance payment, if any, to be made to the appellant- Contractor within one month.

8. So far as the material issued to the appellant-Contractor is concerned, it was directed that after measuring the left over material, and taking into account the material consumed in the work down and the material consumption statement, the appellant-Contractor should account for the remaining material.

9. In our view, no challenge could be raised to the said direction issued by the learned Arbitrator under Section 34 of the Act. The Court, while dealing with a petition under

Section 34 of the Act, cannot enter into the merits of the dispute. We have already considered and rejected the submission of the appellant that the respondent-department had been made a judge in its own cause, since a joint inspection was ordered with the participation of the appellant.

10. For the aforesaid reasons, we do not find any merit in this appeal, and the same is accordingly dismissed.

11. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 11th May, 2023

NISHANT