

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.A. No.5 of 2022

1. The State of Tripura, represented by the Secretary, Department of PWD, Government of Tripura.
2. Executive Engineer, PWD (R&B), Bisramganj Division, Bisramganj, Sepahijala District.

..... Appellant (s)

V E R S U S

Shri Raja Raw Ghosh, Contractor, East Bank of Jagannath Dighi, P.O. Radhakishorepur, Udaipur, Gomati Tripura, Pin-799120.

..... Respondent(s)

For Appellant (s) : Mr. P. Gautam, Advocate.

For Respondent(s) : Mr. A. Sengupta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing : **15.05.2024**

Whether Fit for Reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Gautam, learned counsel for the appellants and Mr. A. Sengupta, learned counsel for the respondent.

[2] The instant appeal under Section 37(1)(c) of Arbitration and Conciliation Act, 1996 read with Section 13(1A) of the Commercial Courts Act, 2015 seeks to challenge the judgment dated 25.02.2022 passed in Civil Misc. (Arbitration) No.13 of 2018 by the Judge, District Commercial Court, West Tripura, Agartala whereby the application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) preferred by the appellant-State of Tripura has been dismissed without any interference in the impugned award.

[3] The brief facts which are borne from the record and have been also referred to in paragraph-2 of the impugned judgment convey that the dispute

revolved around the agreement dated 16.07.2007 between the contractor and the appellant-State of Tripura for construction of three numbers of RCC bridge out of which two numbers of bridge were over river 'Burimaa' at Takarjala and Jampuijala market and another was over Senaigang-cherra at Gabordi under the PWD(R&B), Bishramganj Division. The work order was issued on 29.07.2007 and the works were to be commenced from the 15th day of issuance of work order and were to be completed within thirty months, i.e. on or before 12.05.2010. The contractor could not complete the work within the scheduled time and accordingly time was extended. The contractor, however, completed the work on 25.12.2014 but he failed to erect the Bailey bridge for making diversion. Thereafter, the contractor submitted his claims which was not allowed by the employer. Consequently, on an application made under Section 11(6) of the Act of 1996 before this Court, the matter was referred for adjudication to an independent Arbitrator. The Arbitrator, upon consideration of the pleadings and material documents placed on record, framed the following issues for consideration:

“In course of hearing, the following issues were framed:

- 1) Whether the claimant is entitled to get balance payment due on account of value of works done in the final bill (since previous) or any higher or lower amount as per record of the respondent?
- 2) Whether the claimant is entitled to get balance payment due on account of price escalation as per clause 10 CC of the agreement?
- 3) Whether the claimant is entitled to get damages suffered for longer retention of site establishment, staff, plants and machineries etc?
- 4) Whether the claimant is entitled to get refund of the excess amount deducted as TST /TVAT in gross violation of provision of the agreement?
- 5) Whether the claimant is entitled to get refund of security deposit as per record of respondent?
- 6) Whether the claimant is entitled to get interest @18% p.a. on the demanded sum w.e.f. 01.02.2016 till actual date of payment?

7) Whether the claimant is entitled to cost of Arbitration proceedings and incidental thereto?

Issue on the counter claim of the respondent was framed as follows:

i) Whether the contractor breached the condition of the contract by non supply of 3 Nos. of portable bailey bridge?"

[4] The learned Arbitrator, upon consideration of the rival submissions of the parties and the materials on record, rendered the following award:

“The total amount of award is stated below:

Sl. No.	Claim no/ Issue no	Particular of claim/ counter claim	Amount claimed Rs.	Amount allowed Rs
1	1	Balance payment of final bill	13,55,857.00 Thirteen lakh fifty five thousand eight hundred fifty seven only	6,56,067.00 Six lakh fifty six thousand sixty seven only
2	2	Escallation as per clause 10 CC	1,02,36,699.00 One crore two lakh thirtysix thousand six hundred ninety nine only	1,02,36,699.00 One crore two lakh thirtysix thousand six hundred ninety nine only
3	3	Damages for longer retention of men, machineries	45,48,000.00 Forty five lakh forty eight thousand only	32,29,000.00 Thirty two lakh twenty nine thousand only
4	4	Refund of excess deduction of TVAT	9,19,480.00 Nine lakh nineteen thousand four hundred eighty only	9,19,480.00 Nine lakh nineteen thousand four hundred eighty only
5	5	Refund of security deposit	71,47,598.00 Seventy one lakh forty seven thousand five hundred ninety eight only	71,47,598.00 Seventy one lakh forty seven thousand five hundred ninety eight only
6	6	Interest	As may be decided by the Arbitrator	Simple interest on the total amount awarded at the current rate of interest plus 2% on higher side, w.e.f. the date of award if the amount is not paid within

				3(three) months from the date of communication of award to the respondent till payment.
7	7	Cost of arbitration	As may be decided by the Arbitrator	Nil

2,21,88,844.00

(Rupees two crore twenty one lakh eighty eight thousand eight hundred forty four only)".

[5] Being aggrieved by findings on certain Issue Nos. (2), (3) and (5) the State of Tripura preferred an objection application under Section 34 of the Act of 1996. It was submitted that the impugned findings do not refer to the delay of 927 days out of 1618 days caused by the contractor. Apart from that non communication of decision of SPT bridge in place of Baily bridge was actually attributable to the contractor. The contractor did not supply the components of Baily bridge in time. The appellant-State of Tripura further contended that the Arbitrator while deciding the Issue No.(3) awarded an amount of Rs.32,29,000/- which is not permissible due to the fact that the claimant was responsible for the delay and such fact was not considered by the Arbitrator. Apart from that the Arbitrator had awarded an amount of Rs.71,47,598/- without considering the fact that the contractor had not completed the work. That apart, the learned Arbitrator had failed to frame any Issue on the counter claim filed by the appellant-State of Tripura in view of Section 23(2-A)of the Arbitration Act.

[6] The learned Commercial Court in the major part of the judgment has referred to the decisions of the Apex Court on the scope of interference in an application under Section 34 of the Arbitration and Conciliation Act, 1996 and summarily concluded at paragraph-7 as under:

“7. On the basis of the citation of law as referred to above coupled with the provisions of Section 34 of the Arbitration Act, it seems to us that the scheme and scope of the provisions of Section 34 of Arbitration Act aims at keeping

the supervisory roles of the court at minimum level, therefore, we cannot correct the errors so done by the arbitrator by entering into the merits of the case through re-appreciation of the materials on record by sitting as an Appellate Court, it can only be quashed leaving the parties to begin the arbitration again if it is desired. The issues so raised for and on behalf of the petitioner seeking interference of this court are related to merits of the case and do not come within the mischief of any of the grounds as enumerated in Section 34(2) or Section 34(2A) of the Arbitration Act and as such we are lacking in jurisdiction to interfere with the findings and decision so arrived at by the Arbitrator”.

[7] Mr. P. Gautam, learned counsel for the appellant-State of Tripura has assailed the impugned finding on the ground that there is no analysis in respect of the findings rendered by the learned Arbitrator on Issue Nos. (2), (3) and (5) which were specifically under challenge. The learned Arbitrator has straightaway rendered his opinion that the Court under Section 34 exercised supervisory role which cannot correct the errors of the Arbitrator by entering into the merits of the case through re-appreciation of the materials on record. Learned Court went on to observe that the Issues raised by the appellant are related to merits of the case and do not come within the mischief of any of the grounds as enumerated under Section 34(2) or Section 34(2A) of the Arbitration Act. As such the application was dismissed.

[8] It is submitted that there are grounds of patent illegality raised on behalf of the appellant which have not been properly considered and discussed. The findings of the learned Commercial Court are, therefore, without proper application of mind and without any reasons. As such, the impugned judgment may be set aside.

[9] Mr. A. Sengupta, learned counsel for the respondent-contractor has opposed the prayer and *inter alia* submitted that the decision of the learned Commercial Court does not suffer from any errors calling for interference in

appeal under Section 37(1)(c) of the Act of 1996. The learned Court was right in holding that the grounds raised by the appellant-State in respect of the findings of the learned Arbitrator on Issue Nos. (2), (3) and (5) invite interference on the merits of the findings rendered by the learned Arbitrator and are, therefore, not amenable to challenge under Section 34(2A). Therefore, the impugned judgment is proper in the eye of law and needs no interference.

[10] We have considered the submissions of the learned counsel for the parties and taken note of the material pleadings placed from record. We have also gone through the impugned judgment. We have taken note of the grounds of challenge raised by the appellant-State on Issue No.(2), (3) and (5) rendered by the learned Arbitrator. Unfortunately, the learned Commercial Court has not even touched upon the findings rendered by the learned Arbitrator on any of these Issues to come to a considered finding that the grounds of challenge are without merit and border on entering into re-appreciation of the materials on record as an appellate Court in the findings of the learned Arbitrator. The learned Court has only referred to decisions rendered by the Apex Court such as in the case of (i) *Assam State Electricity Board vs Buildworth Private Ltd.* reported in *AIR 2017 SC 3336*; (ii) *G. Ramachandra Reddy & Company vs Union of India & Anr.* reported in *(2009) 6 SCC 414* (iii) *Delhi Airport Metro Express Pvt. Ltd. vs Delhi Metro Rail Corporation Ltd.* decided on *09.09.2021* before coming to a conclusion straightaway at paragraph-7 of the impugned judgment which has been extracted above that none of the grounds fall within the mischief under Section 34(2) or Section 34(2A) of the Arbitration Act. We are afraid in the absence of any analysis of the findings of the learned Arbitrator on the grounds raised by the appellant-State, the conclusions rendered by the learned Commercial Court are without any reason. Reasons are the soul of any judicial

order. It reflects the application of mind of the concerned Court to the Issue at hand in the context of the facts and the relevant law applicable to the case of the parties. It also enables the appellate Court to examine as to whether the reasons are proper in the eye of law. Unfortunately, the learned Commercial Court seems to have been completely oblivious of the requirement of proper adjudication on the grounds available under Section 34(2) or 34(2A) of the Act of 1996 in such a matter. Such an approach of the learned Commercial Court has unnecessarily led to delay in proper adjudication of the disputes between the parties at the stage of Section 34 application. It has led to the appeal under Section 37(1)(c) before this Court. In the absence of any discussion or analysis of findings rendered by the learned Arbitrator on the grounds of challenge raised by the appellant on Issue Nos.(2), (3) and (5) by the learned Commercial Court, we are unable to scrutinize the grounds raised by the appellant at this stage. The contours of jurisdiction under Section 37(1)(c) of the Act of 1996 by this Court are further narrowed than what is available under Section 34(2) of the Act of 1996. In such a situation, we are left with no other option than to remand the matter to the learned Commercial Court for fresh adjudication on the grounds raised by the appellant-State in accordance with law within a reasonable time preferably 12(twelve) weeks from the date of receipt of a copy of this judgment after giving due opportunity to the parties.

Accordingly, the instant appeal is disposed of. Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ