

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 694 of 2003**

Ramjanam Pandey, S/o Shri Ram Nandan Pandey, Aged about 65 years, Aged about 65 years, R/o Jamat Mandirpara, Kawardha (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary Excise Department, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Commissioner, Excise, Raipur (C.G.)
3. Collector, Raipur (C.G.)
4. District Excise Officer, Raipur (C.G.)

---- Respondents

For Petitioner : Mr. Malay Kumar Shrivastava, Advocate.
 For State : Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/11/2017**

(1) Learned counsel appearing for the petitioner would submit that with the passage of time, this petition has become infructuous.

(2) Accordingly, the writ petition is dismissed as having become infructuous.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

In order to resolve the dispute arisen between the parties, the matter was referred to the Sole Arbitrator. Before the Sole Arbitrator, parties filed their statements of claim and after recording their evidence, the learned Sole Arbitrator delivered his award on 15-3-2004 and awarded an amount of Rs. 15,38,100/- along with interest. Dissatisfied with the award passed by the learned Sole Arbitrator, the appellant filed an application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') questioning the award passed. By the impugned order, learned District Judge

has rejected the application affirming the award passed by the learned Sole Arbitrator. Questioning legality, validity and correctness of the order passed by the District Judge, this misc. appeal has been filed under under Section 37 of the Act, 1996.

(2) Learned counsel appearing for the appellant would submit that the learned District Judge is absolutely unjustified in rejecting the application filed by the appellants herein for setting aside the award passed by the learned Sole Arbitrator. He further submits that findings recorded by the learned Arbitrator qua all the claims particularly claims No. 3 & 8 are contrary and perverse and therefore learned District Judge ought to have interfered with the findings recorded by the learned Arbitrator while answering those issues and the interest awarded is also on the higher side.

(3) Learned counsel appearing for the contractor/respondent would submit that the findings recorded by the learned Sole Arbitrator are based on evidence and material available on record and such findings are finding of facts, it is neither perverse nor illegal and therefore learned District Judge is absolutely justified in affirming the findings while hearing the application under Section 34 of the Act of 1996.

(4) I have heard learned counsel for the parties and also considered their rival submissions and gone through the record with utmost circumspection.

(5) In order to judge the correctness of the plea raised at the Bar, it would be appropriate to consider the scope of application under Section 34 (2) of the Act of 1996.

(6) In a decision recently delivered by Their Lordships of the Supreme Court in the matter of **Swan Gold Mining Limited V. Hindustan Copper Limited**¹,

¹ (2015) 5 SCC 739

the Supreme Court has considered the question, whether the finding of facts recorded by the arbitrator can be interfered with by re-appreciating the evidence or material available on record and held that the arbitrator appointed by the parties is the final judge of the facts and the finding of facts recorded by him cannot be interfered with on the ground that evidence has not been properly appreciated. Their Lordships observed in paras 11 and 12 as under:-

“11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The arbitrator's decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in case where the court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is well-settled proposition that the court shall not ordinarily substitute its interpretation for that of the arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the arbitrator or by the court would be erroneous or illegal.

“12. It is equally well settled that the arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.”

(7) In the afore-cited case, Their Lordships have clearly held that the court will not substitute its interpretation for that of the arbitrator and the finding of facts recorded by the arbitrator cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.

(8) At this stage, counsel for the appellant has contended that the finding recorded by the Arbitrator with respect to Claim No. 3 regarding escalation clause is perverse and has been struck off by the parties *whereas* learned Sole Arbitrator has clearly recorded a finding that such plea is not available as escalation clause was not properly struck off. Likewise, claim No. 8 – loss of Profit and overheads due to prolongation of contract could not have been granted.

(9) In the matters of **M/s. A.T. Brij Paul Singh & brothers Vs. State of Gujarat**² and further in the matter of **Dwarka Das Vs. State of Madhya Pradesh and another**³, Their Lordships of the Supreme Court have clearly held that claim of expected profit is legally admissible on proof of breach of contract by erring party.

(10) Learned Arbitration has clearly recorded a finding that respondent – Contractor is entitled for claim of lost of profit; likewise interest awarded by the Arbitrator for pre reference interest and pendente lite interest is 15% per annum and future interest is 18% per annum from the date of award, which is also in accordance with the provisions of Section 37(1)(b) of the Act, 1996 (un-amended).

(11) Applying the principles of law laid down in **Swan Gold Mining Limited** (Supra), if the facts of the case in hand are examined, the findings recorded by the learned Arbitrator qua claims No. 3 & 8 qua the question of interest are the findings of fact based on material available on record, it is neither perverse nor contrary to the record. Learned District Judge while considering the application under Section 34 of the Act of 1996 clearly and specifically considered those findings and came to the conclusion that the findings are not perverse and do not suffer from any illegality.

2 AIR 1984 SC 1703

3 AIR 1999 SC 1031

(12) After hearing learned counsel for the parties and going through the findings recorded by the learned District Judge, I do not find any perversity in the findings recorded by the learned Arbitrator duly affirmed by the learned District Judge, as such, following the law laid down in **Swan Gold Mining Limited** (supra), I do not find any jurisdictional error in the impugned order. The appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

(Sanjay K. Agrawal)
Judge

D/-