

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.25 of 2014

Union of India, Through Senior Divisional Engineer (East), South East Central Railway, Bilaspur

(Respondent)
---- Appellant

Versus

Purushottamdas, S/o Ramniwas Maheshwari, Aged about 64 years, Railway Contractor, Vinoba Nagar, Bilaspur

(Applicant)
---- Respondent

For Appellant:	Mr. H.S. Ahluwalia, Advocate.
For Respondent:	Mr. P.P. Sahu, Advocate.

AND

Arbitration Appeal No.31 of 2014

Purshottam Das, S/o Ramniwas Maheshwari, Aged about 74 years, Railway Contractor, R/o L-4, Vinoba Nagar, Bilaspur (C.G.)

(Applicant)
---- Appellant

Versus

1. Union of India, Ministry of Railways, Through the General Manager, South Eastern Central Railway, Bilaspur (C.G.)

2. Union of India, Through Senior Divisional Engineer (East), South East Central Railway, Bilaspur (C.G.)

(Non-applicants)
---- Respondents

For Appellant:	Mr. P.P. Sahu, Advocate.
For Respondents:	Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/08/2017

1. This order will govern the disposal of Arbitration Appeal

Nos.25/2014 and 31/2014.

2. Union of India entered into an agreement with the contractor for execution of the work of supply, delivery and stacking of 75000 cum ballast at Belpahar Depot and thereafter also for loading the same into wagons with an estimated value of ₹ 3,90,00,000/-. During the course of execution of work, arbitral dispute arose between the parties and with the intervention of the Court, Arbitral Tribunal was constituted by order dated 123-7-2007 and the Arbitral Tribunal has passed the award on 20-8-2011 in favour of the claimant / contractor granting ₹ 14,50,000/- rejecting the counter claim of Union of India. Feeling aggrieved against that award, Union of India as well as the contractor, both, preferred applications under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996') calling in question the parts which have been refused respectively to them. The learned District Judge had passed the impugned order partly allowing the application of the contractor granting post award interest and rejecting the application filed by the South East Central Railway (SECR) against which both the parties have preferred these two appeals under Section 37(1)(c) of the Act, 1996.
3. Mr. H.S. Ahluwalia, learned counsel for Union of India, submits that claims No.2, 3 and 7 ought not to have been allowed being barred by clauses of the agreement. He further submits that counter claim ought to have been decreed by the learned Arbitrator.
4. Mr. P.P. Sahu, learned counsel for the contractor/claimant, submits

that the contractor/claimant is also entitled for claims No.1, 4 and 5 and these claims ought to have been awarded by the Arbitral Tribunal and the counter claim has rightly been rejected. He further submits that the learned Arbitrator has granted claims No.2, 3 and 7 which relate to loss of advances paid to quarry owners; advance and payment on hire charges for the machinery; and cost of legal charges and other expenses, respectively.

5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
6. I do not find that such a claim is inadmissible or contrary to the terms of the award whereas, claim No.7 which relates to cost of legal charges and other expenses is contrary to clause 64.6 of the general conditions of contract, therefore, that part of the award is set aside. Non-grant of other parts of the contract is also based on the evidence available on record which the learned District Judge has rightly not interfered with being based on finding of facts and based on material on record. Even otherwise, the Arbitrator is absolutely justified in rejecting the counter claim of the SECR which is again based on the evidence available on record. Kindly see **K.V. Mohammad Zakir v. Regional Sports Center**¹, **Rashtriya Ispat Nigam Limited v. Dewanchand Ramsharan**² and **Associate Builders v. D.D.A.**³ in which the Supreme Court has clearly held that Arbitrator is the sole judge of quantity and quality

1 (2009) 9 SCC 357

2 (2012) 5 SCC 306

3 (2015) 3 SCC 49

of evidence when he delivers arbitral award.

7. Thus, I find that the award of the Arbitrator is neither arbitrary nor capricious and has rightly been upheld by the District Judge though partly.
8. Consequently, the appeal filed by Union of India is partly allowed setting aside the award of grant of legal charges and other expenses (claim No.7) to the extent of cost of ₹ 50,000/-. It is accordingly directed to be deleted from the award. Rest of the award will remain intact.
9. As a fallout and consequence of aforesaid discussion, both the appeals are accordingly disposed of leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge